2017 IL App (2d) 170825-U
No. 2-17-0825
Order filed December 4, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MARK BRADLEY,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 17-L-349
	)	
GRACE PARTNERS OF DUPAGE L.P. and	)	
THE CHARGER CORPORATION,	)	Honorable
	)	Anne T. Hayes,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order requiring defendants to maintain $7 million in a segregated, interest-bearing account until further order of court and until final disposition of the litigation was affirmed; defendants' arguments on appeal were barred by the invited-error doctrine.

¶ 2 Defendants, Grace Partners of DuPage L.P. (Grace Partners) and The Charger Corporation (Charger), appeal an order requiring them to maintain $7 million in a segregated, interest-bearing account pending final disposition of an action filed against them by plaintiff, Mark Bradley. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 24, 2017, plaintiff filed a verified complaint against defendants alleging as follows. Grace Partners is a limited partnership which, in turn, is the limited partner of First Trust Portfolios L.P. and First Trust Advisors L.P. (collectively referred to as "First Trust"). First Trust operates as an "active investment manager that provides investment products and advisory services." Charger is the general partner of both Grace Partners and First Trust. Plaintiff was employed by First Trust from October 1991 until he retired in December 2015. He has also been a limited partner of Grace Partners since January 1999. As of March 23, 2016, plaintiff owned 2.625 units of Grace Partners.

¶ 5 Plaintiff alleged that Grace Partners is governed by a limited partnership agreement, which contains certain provisions pertaining to the redemption of ownership units. On March 23, 2016, plaintiff made a written demand to redeem two of his units. He understood "in a general sense" the method for calculating the value of such units—specifically, he understood that it included "analyzing an earnings multiplier and applying certain known discounts." According to plaintiff, the value per unit was roughly $7.122 million. However, on June 28, 2016, Grace Partners wired $5.25 million to plaintiff's personal account as payment for both units. Plaintiff returned that money to Grace Partners. Although Grace Partners later gave plaintiff certain materials in response to his demands for information about the calculation method, he needed more information to determine whether Grace Partners had complied with the partnership agreement. Upon information and belief, "the redemption price suggested by Grace Partners does not comply with the calculation method" described in the partnership agreement.

¶ 6 In count I of the complaint, plaintiff alleged breach of contract against Grace Partners for failing to provide him with its books and records in accordance with the terms of the partnership agreement. According to plaintiff, although Grace Partners offered to schedule an inspection,

the inspection had not yet been scheduled. Plaintiff demanded relief in the form of specific performance: *i.e.*, requiring Grace Partners to provide access to its books and records.

¶ 7 In count II, plaintiff alleged breach of contract against Grace Partners for failing to comply with the redemption calculation method set forth in the partnership agreement. Plaintiff alleged, upon information and belief, that the $5.25 million that Grace Partners offered him for his two units was less than the redemption price required by the partnership agreement. Plaintiff requested a judgment requiring Grace Partners to specifically perform a calculation in compliance with the partnership agreement, along with a judgment awarding him the required redemption price. He also requested a preliminary injunction requiring Grace Partners to provide him "the minimum Redemption Price" of $5.25 million without waiver of his claims.

¶ 8 In count III, which was intended as an alternative to count II, plaintiff alleged breach of contract against Grace Partners for failing to use good faith and fair dealing in applying the calculation method. He complained that he had no way of verifying that Grace Partners had "used accurate or consistent calculation methods." The prayer for relief in count III mirrored the prayer in count II.

¶ 9 In count IV, plaintiff alleged breach of fiduciary duty against Charger for failing to comply with the redemption calculation method set forth in the partnership agreement. Plaintiff again alleged, upon information and belief, that the $5.25 million offer price for his two units was less than what was required by the partnership agreement. The prayer for relief in count IV was the same as the prayers in counts II and III, except that it was directed toward Charger.

¶ 10 In count V, which was intended as an alternative to count IV, plaintiff alleged breach of fiduciary duty against Charger for failing to use good faith and fair dealing in applying the calculation method set forth in the partnership agreement. According to plaintiff, Charger failed

to maintain accurate records and improperly refused to disclose the calculation method and inputs. The prayer for relief in count V mirrored the prayer in count IV.

¶ 11 On April 25, 2017, plaintiff filed a "motion for turnover order or alternatively motion for mandatory permanent injunction" (the "motion for turnover"). He submitted that, although the correct redemption price for his two units was yet to be determined, it was undisputed that he was owed no less than $5.25 million. In support of that assertion, plaintiff explained that Grace Partners was holding funds equal to $5.25 million, but that it would deem the transfer of such funds to plaintiff as an acceptance by him in full satisfaction of his claims. Plaintiff thus sought "equitable relief for the immediate release and turnover of $5,250,000 to him, without any waiver or accord." Alternatively, he requested a "mandatory permanent injunction of the payment of $5,250,000 by Grace Partners to [him] or the escrow of those funds in an interest bearing account pending the resolution of this matter." As an exhibit to his motion, plaintiff attached a copy of an August 24, 2016, letter from defendants' attorney to his own attorney. In that letter, defendants' counsel indicated that Grace Partners "has segregated into a separate account, and is holding for the benefit of Mr. Bradley, the redemption payment of $5,250,000 for Mr. Bradley's two redeemed units."

¶ 12 On June 2, 2017, defendants moved to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)).

¶ 13 On June 26, 2017, defendants filed their response to plaintiff's motion for turnover. Defendants disputed plaintiff's assertion that they admitted owing him "a minimum" of $5.25 million. Instead, they claimed, the two units at issue were worth exactly $5.25 million when plaintiff attempted to redeem them. According to defendants, no authority supported plaintiff's position that he is entitled to that $5.25 million while he litigates the issue of whether he is

entitled to more. Defendants further maintained that plaintiff's requests for equitable relief should be denied, as he had an adequate remedy at law in the form of money damages and he would not suffer any irreparable harm. Additionally, defendants claimed, because plaintiff was not entitled to injunctive relief, his request for a turnover amounted to a prejudgment attachment of defendants' assets, which was prohibited under Illinois law. To that end, defendants insisted that plaintiff had no interest in any specific, identifiable funds that they were holding.

¶ 14 According to a status report that plaintiff filed in anticipation of a September 8, 2017, court appearance, the court took the fully-briefed motion for turnover and the motion to dismiss under advisement. Plaintiff's counsel indicated in the status report that plaintiff recently had the opportunity to inspect certain of Grace Partners' records and books. Plaintiff, however, wanted additional information from defendants. Plaintiff's counsel also noted in the status report that on August 28, 2017, Grace Partners exercised its right under the partnership agreement to redeem plaintiff's remaining 0.625 unit. Apparently, Grace Partners wired $1.75 million to plaintiff's bank account for that partial unit without explaining how it calculated the redemption price. According to the status report, Grace Partners would not agree to allow plaintiff to retain that $1.75 million without waiving his claim as to the propriety of the redemption price. Plaintiff thus intended to return those funds. Plaintiff's counsel further explained that he anticipated amending the complaint to include allegations about the additional 0.625 unit and to allege that defendants' proffered inspection of the books and records was inadequate.

¶ 15 The supporting record includes a transcript of the September 8, 2017, proceedings. Defendants' counsel informed the court that defendants were willing to put $7 million (the amount they claimed was owed to plaintiff for his 2.625 units) in a segregated, interest-bearing account:

> "We briefed this and we talked about last time [*sic*], the money that he [plaintiff] sent back with respect to the two units was put in an interest bearing segregated account. Willing to do that [*sic*] with respect to the money he sent back with respect to the partial unit. And that's an interest bearing account."

Nevertheless, defense counsel reiterated that Illinois law prohibits prejudgment attachments on a defendant's property. He also insisted that plaintiff here had no right to a mandatory injunction, given that this case was "all about money." Later during the proceedings, the court asked defense counsel if defendants had already put the $1.75 million in a segregated account. Defense counsel responded: "I don't know if we have received it back yet, but when we do we represent to the court we will put it into a segregated account." He further agreed to provide "proof" that the account was segregated. Defense counsel lodging no objection, the court granted plaintiff leave to amend his complaint. The court also gave plaintiff leave to amend his motion for turnover to reflect the additional $1.75 million relating to the 0.625 unit that defendants redeemed.

¶ 16 On September 11, 2017, plaintiff filed his amended motion for turnover. He argued that it was undisputed that the redemption price of his initial two units was "no less than $5,250,000" and that the redemption price for his remaining 0.625 unit was "no less than *** $1,750,000." In light of defendants' purported admission that Grace Partners owed him a minimum of $7 million, plaintiff sought an immediate release and turnover of such amount to him without any waiver or accord. Alternatively, plaintiff requested a mandatory permanent injunction requiring Grace Partners to either pay him the $7 million or escrow such funds in an interest-bearing account pending the resolution of the matter.

¶ 17 On September 14, 2017, defendants filed their response to plaintiff's amended motion for turnover. Defendants reiterated the objections that they had raised in their response to plaintiff's original motion. However, they continued:

> "Despite that Defendants have no legal obligation to do so, Defendants are holding in a segregated, interest-bearing account (the 'Account') the redemption payments for Plaintiff's 2.625 units, which total $7,000,000 (*i.e.*, $5,250,000 for the two redeemed units that Plaintiff returned in August 2016, and $1,750,000 for the 0.625 redeemed unit that Plaintiff returned in September 2017). *** The Account, which is located at JPMorgan Chase Bank N.A., bears account number [***3234] and the name 'Grace Partners of DuPage-Partner Unit Tender-MB.' *** Defendants will maintain the redemption funds in the Account until the litigation is resolved."

Defendants proposed that their "maintenance of the redemption payments in the Account renders Plaintiff's request for turnover of those assets moot, as the Account provides the only relief Plaintiff could hope to achieve pending outcome of the litigation—*i.e.*, deposit of the assets into a segregated account." Defendants attached to their response memorandum a September 13, 2017, letter from their counsel to plaintiff's counsel confirming that Grace Partners was holding $7 million in a segregated, interest-bearing account and that "[t]he redemption payments will remain in the Account until the above-captioned litigation is resolved."

¶ 18 The matter was again before the court on September 20, 2017. Addressing plaintiff's counsel, the court asked: "I recognize that your first request is that the funds go to your client directly, but your alternative request, you would agree, they have complied with by placing it into an interest-bearing segregated account?" Plaintiff's counsel responded:

> "Not completely. The alternative request, and it is only in the alternative, is that it be in an interest-bearing segregated account not to be disbursed from that account until further order of court. They still have control over the account. We don't."

Plaintiff's counsel thus requested that this be "some type of self-directed account" to allow plaintiff to invest the funds. Defense counsel, in turn, took the position that defendants were not "under any legal obligation to do any of this," but were making "a good faith gesture to resolve this." Defense counsel continued:

> "So we are willing to do this, but I think that as an officer of the court, I have represented it's in a segregated account, have represented it's an interest-bearing account. Obviously the higher the interest the more risk there is to the principal, so we put it in an interest-bearing account that protects the principal which is—but I don't think we have to do anything more than that."

¶ 19 The court ruled that it was "proper to order a turnover of the specific funds in question, that is 7 million, into an interest-bearing escrow account." According to the court, that amount was "agreed by the parties to be at least part or all of the plaintiff's redemption proceeds," and the specific funds at issue would be subject to a final disposition of the court. However, the court explained, there was no authority supporting turning the money directly over to plaintiff. Instead, the court ordered the funds in question to be "maintained in the account that [defense counsel] has them in." The court added that "the funds will not be removed without further of [*sic*] Court and shall remain in said account until the disposition of this case."

¶ 20 Immediately after the court ruled, defense counsel agreed to give plaintiff's counsel a bank statement within seven days. The court then declined plaintiff's counsel's request to add language to the order requiring defendants to provide plaintiff with either electronic access to the

account or "some type of regular statement." The court granted plaintiff 30 days to file an amended complaint.

¶ 21 The court's written order from September 20, 2017, provides:

> "After argument by counsel and hearing[,] Plaintiff's Motion for Turn Over of Funds is granted in part for the reasons stated on the record. Defendants are ordered to maintain the redemption payments for Mr. Bradley's 2.265 [*sic*] units in the amount of $7 Million in the segregated interest bearing account at JPMorgan Chase Bank NA, number ***3234 (the 'Account') until further order of court and until final disposition of this matter.
>
> It is further ordered that Plaintiff has leave to file a First Amended Complaint.
>
> Defendants' Motion to Dismiss Plaintiff's complaint is withdrawn without prejudice to refile.
>
> The matter is continued to October 18, 2018 [*sic*] at 9:00 a.m. for pleading status."

¶ 22 On October 16, 2017, defendants filed a notice of interlocutory appeal from the September 20 order pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), which permits appeals from orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction."

¶ 23 II. ANALYSIS

¶ 24 Defendants argue that the September 20, 2017, order is a mandatory preliminary injunction which ought to be vacated for multiple reasons. They claim that the complaint was insufficient to sustain injunctive relief, as plaintiff had an adequate remedy at law and he failed to plead irreparable harm. Defendants also contend that the preliminary injunction amounted to

an improper prejudgment attachment. According to defendants, even if the complaint were legally sufficient, plaintiff failed to prove his entitlement to injunctive relief. Defendants thus ask us to vacate the preliminary injunction and to remand the matter with directions to dismiss the complaint.

¶ 25 Defendants have no basis to appeal the September 20, 2017, order. "A party cannot complain of error which he induced the court to make or to which he consented." *McMath v. Katholi*, 191 Ill. 2d 251, 255 (2000). In other words, "a party 'may not request to proceed in one manner and then later contend on appeal that the course of action was in error.' " *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 63 (quoting *People v. Harvey*, 211 Ill. 2d 368, 385 (2004)). The invited-error doctrine operates as both a procedural default and a form of estoppel. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004).

¶ 26 Any error that occurred here was actively invited by defendants. In a letter dated August 24, 2016, defendants' counsel informed plaintiff's counsel that Grace Partners "has segregated into a separate account, and is holding for the benefit of Mr. Bradley, the redemption payment of $5,250,000 for Mr. Bradley's two redeemed units." When defendants subsequently redeemed plaintiff's remaining 0.625 unit, their counsel informed the court on September 8, 2017, that defendants were willing to deposit the funds at issue in a segregated, interest-bearing account and were willing to provide proof that the account was segregated. In their memorandum in response to plaintiff's amended motion for turnover, defendants confirmed that they were holding $7 million in a specified segregated, interest-bearing account at JP Morgan Chase Bank N.A. Defendants expressly promised at that time to "maintain the redemption funds in the Account until the litigation is resolved." Defendants reiterated that promise in a letter drafted by their counsel, which was attached as an exhibit to their memorandum: "The redemption

payments will remain in the Account until the above captioned litigation is resolved." Defendants even went so far as to argue to the court that their promise rendered moot the remaining requests in plaintiff's pending amended motion for turnover. And at the September 20, 2017, hearing, defense counsel took the position that defendants did not "have to do anything more than" what they had already done—*i.e.*, depositing the money in a segregated, interest-bearing account.

¶ 27 The trial court ultimately ordered defendants to do no more than what they offered and promised to do: maintain the $7 million—which they had previously deposited into a segregated account that they controlled—in that account until further order of court and until final disposition of the matter. Defendants' attempt to challenge that order on appeal is a textbook example of invited error. See *e.g.*, *Old Second National Bank v. Indiana Insurance Co.*, 2015 IL App (1st) 140265, ¶ 41 (an appellant could not challenge the trial court's ruling regarding the commencement date for the accrual of prejudgment interest where the appellant had argued in the trial court that this particular commencement date was proper); *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶¶ 91, 94 (the plaintiffs could not argue that the trial court erred in admitting certain evidence, because it was the plaintiffs, not the defendants, who first introduced such evidence); *Harvey*, 211 Ill. 2d at 386 (criminal defendants who requested or agreed to mere-fact impeachment at trial could not challenge on appeal any errors that they invited).

¶ 28 Defendants' actions here also implicate another maxim of appellate law: "[a] party cannot complain of error that does not prejudicially affect it, and one who has obtained by judgment all that has been asked for in the trial court cannot appeal from the judgment." *Argonaut-Midwest Insurance Co. v. E.W. Corrigan Construction Co.*, 338 Ill. App. 3d 423, 427 (2003). For all intents and purposes, defendants were fully successful in opposing plaintiff's motion for

turnover, even though the motion was "granted in part." Aside from giving plaintiff the relief that defendants offered (maintenance of the $7 million in the particular account that defendants had established), the court declined all of plaintiff's other requests for relief. Specifically, the court refused to turn the $7 million over to plaintiff directly, refused to give plaintiff control over or electronic access to the account, and refused to require defendants to submit "some type of regular statement." Although defendants may disagree with some of the comments that the trial court made in the course of explaining its September 20, 2017, ruling, "[t]he forum of appellate courts should not be afforded to successful parties who may not agree with the reasons, conclusion, or findings of the trial court." *Argonaut-Midwest*, 338 Ill. App. 3d at 427.

¶ 29 Under the guise of appealing from the September 20, 2017, order, defendants ultimately ask this court to review the sufficiency of plaintiff's complaint. We decline to do so for two reasons. One reason is that, as explained above, any error in connection with the September 20, 2017, order was invited by defendants. They thus have no basis to question whether the complaint was sufficient to support the particular relief that the court granted. The other reason is that the trial court allowed plaintiff to amend his complaint, without objection from the defense. Indeed, the September 20, 2017, court order indicates that defendants withdrew their motion to dismiss without prejudice to re-filing. Even were we inclined to comment on the legal sufficiency of a complaint that the parties and the court agreed would be amended, we would have no power to do so. See *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009) ("As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.").

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 32 Affirmed.