No. 2—11—0243
Order filed March 22, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

STEPHEN PARKER and RANDY ULLRICH, as Beneficiaries under Castle Bank Trust No. 1962,	)	Appeal from the Circuit Court of DeKalb County.
Plaintiffs-Appellees,	)	
v.	)	No. 08—LM—293
THE PATCH FACTORY, INC., and MICHAEL WELSH,	)	Honorable Kurt P. Klein,
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

Held: The trial court properly denied Welsh's request for a temporary restraining order (TRO) seeking to stay execution of the possession order.

On April 2, 2004, defendants, The Patch Factory, Inc., and Michael Welsh (Welsh), entered into a lease agreement with Stephen Parker and Randy Ullrich (collectively referred to as Parker) to rent a portion of a commercial building located at 1600 E. Lincoln Highway in DeKalb. In that building, Welsh had a business of manufacturing and distributing patches. Based on Welsh's nonpayment of rent, Parker sued for possession in a two-count complaint on June 25, 2008

(possession case). The possession case proceeded to a jury trial; the jury found in favor of Parker; and an order for possession was entered on January 15, 2009. Pursuant to that order, Parker's possession was stayed until March 15, 2009, and then stayed again until April 15, 2009, conditioned upon Welsh making agreed-upon payments. In March 2009, Welsh appealed the jury verdict in the possession case, and the order of possession was stayed pending that appeal. This court affirmed that Parker was entitled to possession on March 17, 2010. See *Parker v. The Patch Factory*, No. 2—09—0270 (2010) (unpublished order under Supreme Court Rule 23). In addition, this court denied Welsh's petition for rehearing.

In the meantime, on November 4, 2008, Welsh filed a complaint for specific performance to exercise his option to purchase the relevant property (specific performance case). The gist of the complaint was that when Welsh exercised his option to purchase the property, Parker failed to sign or deliver the necessary documents.

On July 13, 2010, Parker moved for entry of an order of possession. On August 9, 2010, the court ordered that Parker's right to possession be stayed for 60 days, and that Welsh pay rent in advance. Based on Welsh's failure to pay, Parker again moved for entry of an order of possession, and Welsh was ordered to make a rent payment. On September 8, 2010, Welsh moved to amend the August 9, 2010, order giving Parker possession in 60 days, based on his pending specific performance case. On September 14, 2010, the court amended its August 9, 2010, order by striking a "date certain" for Parker's right to possession. Parker's next two motions for entry of an order of possession were not granted, and the court stayed an of order of possession conditioned upon Welsh continuing to make rental payments.

On December 23, 2010, Parker moved for entry of an order for possession, arguing that on December 22, 2010, the court entered judgment in favor of Parker "as to all counts" of Welsh's specific performance case. On December 28, 2010, the court granted Parker's motion but stayed his right to possession until March 15, 2011.

On March 7, 2011, Welsh filed a petition for a TRO and permanent injunction to prevent Parker from taking possession on March 15, 2011. In his petition, Welsh argued that he was appealing the decision against him in his specific performance case, and that he believed he had a meritorious claim to possession and a substantial likelihood of success on appeal. Welsh further argued that his business involved "many items of manufacturing equipment, storage of materials and maintenance of business records and office furniture and machines, not easily movable, except at great expense and at the loss of customers and the good will gained by the manufacturing operation;" and that improvements to the property made it impossible to remove his equipment without damage to the premises. In addition, Welsh argued that requiring him to leave the premises during his pending appeal would cause him substantial and irreparable injury by disrupting "beyond repair" his ongoing business; and that he was without an adequate remedy at law because his business operations would be disrupted "only to subsequently be restored to possession of the premises by decision of the Second District Appellate Court." Granting his motion, Welsh argued, would maintain the status quo until matters were finally resolved.

Parker responded to Welsh's petition for a TRO, arguing that this was a "last effort to remain" in Parker's building; that Welsh's motion for a retrial in the specific performance case was denied on February 14, 2011; that Welsh's notice of appeal was *pro se*; and that the possession case was resolved in favor of Parker over two years ago, meaning that there was no longer a status quo

to maintain. In addition, Parker argued that Welsh failed to establish the elements required for a TRO because: he had no protectable interest in the property at issue; if he prevailed on appeal, Welsh could pursue any and all remedies for any damages incurred by leaving the premises; Welsh could only allege that he "might be damaged" if he prevailed on appeal, which fell far short of an allegation of an actual, substantial injury; and Welsh's likelihood of success on appeal was slim.

On March 10, 2011, the trial court denied Welsh's request for a TRO. According to the court, "this situation has to end and I've been saying that all along that this is going to end and it is going to end, and I would deny the motion [for a TRO] and let the order of the 14th [denying Welsh's motion to reconsider the decision in the specific performance case) stand."

On March 11, 2011, Welsh filed the present appeal pursuant to Supreme Court Rule 307(d) (Ill. S. Ct. R. 307(d) (eff. Feb. 26, 2010)), which allows interlocutory appeals as of right with regard to an order denying a TRO. Welsh argues that the trial court's order denying his TRO should be reversed so as to delay the March 15, 2011, deadline for vacating the building.

A TRO is an emergency remedy issued to maintain the status quo until the case is resolved on the merits. *Bradford v. Wynstone Property Owners' Ass'n*, 355 Ill. App. 3d 736, 739 (2005). It is a drastic remedy which may issue only in exceptional circumstances and for a brief duration. *Bartlow v. Shannon*, 399 Ill. App. 3d 560, 567 (2010). To be entitled to temporary injunctive relief, a party must demonstrate that it (1) possesses a protectable right, (2) will suffer irreparable harm without the protection of an injunction, (3) has no adequate remedy at law, and (4) is likely to be successful on the merits of its action. *Id.* at 567. A party is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a "fair question"

about the existence of his right, and that the court should preserve the status quo until the case can be resolved on the merits. *Id.* at 567. A trial court's decision granting or denying a TRO is reviewed for an abuse of discretion. *Bradford*, 355 Ill. App. 3d at 739. An abuse of discretion occurs only when no reasonable person could adopt the view taken by the trial court. *John Crane, Inc. v. Admiral Insurance Co.*, 391 Ill. App. 3d 693, 700 (2009).

A review of the record reveals that the trial court did not abuse its discretion in denying Welsh's request for a TRO. At the very least, Welsh has failed to establish the fourth element necessary for the granting of a TRO, which is that he is likely to be successful on the merits of the action. In other words, Welsh has not shown that the appeal of his specific performance suit is likely to be successful on the merits.

After the jury found that Parker was entitled to possession of the property in January 2009, and this court affirmed, the trial court stayed the order of possession pending Welsh's suit for specific performance. In that suit, which was a bench trial, Welsh sought specific performance of his option to purchase the property, and he alleged that based upon Parker's actions, he became the "equitable owner" of the property. At issue was a January 27, 2005, document entitled "Agreement to Extend Option to Buy," signed by both Welsh and Parker, which stated that Welsh's option to purchase the property had *not* been exercised and had expired; that a "contract sale" was no longer an option; and that Welsh's option to purchase was extended until to March 31, 2005, with the terms of the sale being a cash purchase. In reference to this document, the trial court found Welsh's testimony that he felt threatened by Parker to sign it, and that he only looked at the last page and did not know what he was signing, to be "totally not believable." According to the court, Welsh's version was a "totally incredible recitation of facts," especially in light of Welsh's own attorney's

testimony that there had been ongoing negotiations between Welsh and Parker leading up to the signing of that document. The trial court thus denied Welsh's suit for specific performance.

Welsh subsequently moved to reconsider the trial court's ruling, which the court denied. In doing so, the court commented further on Welsh's credibility. The court stated:

> "Mr. Welsh has presented several arguments that the January 27, 2005, agreement to extend the option to buy was unenforceable because of duress, fraud, ignorance, mutual mistake, lack of consideration and that the signing parties were not consistent with the original April 2, 2004, and January 20, 2004, documents."

In "addressing" Welsh's arguments, the court found Welsh's testimony "so incredulous that it would stretch the Court's imagination to find that Mr. Welsh was ignorant of what was in that document or that the duress or the fraud occurred." The court noted that the January 27, 2005, document "in its own words superseded any other agreement of the parties, specifically that option [to purchase], and settled all disputes regarding the existence of that option or its exercise." The court continued:

> "Mr. Welsh's testimony as to the events *** are not believed by this Court based upon the testimony of [his own] Attorney Lewis, Mr.Parker, Mr. Welsh's own testimony and the Court's ability to observe Mr. Welsh's demeanor, which, quite frankly, I found at times to be offensive and also to assess his credibility through the days that he testified."

In his petition for a TRO, Welsh did nothing to explain how the trial court erred by denying his suit for specific performance, or why he would prevail on appeal. Instead, he simply asserted that he intended to pursue an appeal in good faith because he believed that he had a meritorious claim to the possession of the property. On appeal, Welsh makes the same conclusory assertion that the appeal of his specific performance suit has a reasonable likelihood of success on the merits. In light

of the trial court's credibility determinations, however, Welsh cannot hang his hat on a pending appeal and nothing more. As Parker points out, Parker's right to possession was stayed pending the outcome of Welsh's specific performance suit, which Welsh lost. An appeal of that suit, without more, does not equate to a likelihood of success on the merits. The status quo in this case is Parker's right to possession of the building, which has been affirmed on appeal. Therefore, the trial court did not abuse its discretion in denying Welsh's request for a TRO.

We likewise reject Welsh's alternative request that this court consolidate "the two appeals" and order a stay of the March 15, 2011, possession order. The two appeals referenced by Welsh consist of his appeal of the specific performance case, which is currently pending, and his (prior) appeal of the possession case, which, as stated, this court decided on March 17, 2010. We know of no authority, and Welsh has cited none, for the proposition that this court can consolidate an appeal that has already been decided. Accordingly, we deny this request.

Finally, in Parker's request for relief, he makes a vague request for sanctions pursuant to Supreme Court Rule 375(b) (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)), which allows for the imposition of sanctions if an appeal is frivolous, not taken in good faith, or for an improper purpose. Parker has failed to cite any case law or parts of the record in support of his request, and we therefore deny it. See *Freedom Graphic Systems, Inc. v. Industrial Commission of Illinois*, 345 Ill. App. 3d 716, 723 (2003) (request for Rule 375(b) sanctions was denied where the request was not supported by case or citations to parts of the record).

For the reasons set forth above, we affirm the judgment of the circuit court of DeKalb, which denied Welsh's request for a TRO.

Affirmed.