2014 IL App (2d) 140863-U
No. 2-14-0863
Order filed September 8, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IN RE MARRIAGE OF THOMAS S. BLOOM,	)	Appeal from the Circuit Court of Du Page County.
Petitioner-Appellee,	)	
and	)	No. 06-D-2265
MICHELLE M. BLOOM,	)	Honorable Brian R. McKillip,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in enjoining respondent from prosecuting action in a foreign jurisdiction; respondent did not establish error in trial court's refusal to permit her to file certain material in the record; and discovery issues raised by respondent were not properly before reviewing court.

¶ 2 Respondent, Michelle Bloom, appeals an order of the circuit court of Du Page County enjoining her from prosecuting a civil action in New York. She also seeks review of the trial court's denial of her request to make a document referred to as the stock-purchase agreement a part of the record for this appeal and asks that we lift the trial court's stay on discovery. This appeal is brought pursuant to Illinois Supreme Court Rule 307(d) (eff. February 26, 2010). We

affirm. We further note that petitioner has moved to supplement the record with a motion to dismiss filed by the defendant in the New York litigation; that motion is granted.

¶ 3 Rule 307(d) permits an appeal of right from an order granting, denying, modifying, dissolving, or refusing to dissolve a temporary restraining order (TRO). Initially, we note that respondent's request that we lift the trial court's stay on discovery is outside the scope of this appeal (see *Short Brothers Construction, Inc. v. Korte & Luitjohan Contractors, Inc.*, 356 Ill. App. 3d 958, 960 (2005)) and we will not address it. Respondent claims that the discovery issue is "intertwined" with the issue of the propriety of the injunction; however, it is well settled that the sole question before the court in an appeal such as this one is "whether there was a sufficient showing to sustain the trial court's order granting or denying the relief sought," that is, the TRO. *Revolution Portfolio, LLC. v. Beale*, 341 Ill. App. 3d 1021, 1027 (2003). As such, we decline to comment on the propriety of the stay of discovery.

¶ 4 As for the propriety of the TRO, we first note that our standard of review is the deferential abuse-of-discretion standard. *Schroeder Murchie Laya Associates, Ltd. v. 100 West Lofts, LLC*, 319 Ill. App. 3d 1089, 1092 (2001). Therefore, we will reverse only if no reasonable person could agree with the trial court. *Brax v. Kennedy*, 363 Ill. App. 3d 343, 355 (2005). Moreover, we note that a TRO is a type of injunction and is equitable in nature. *Arndt v. Department of Professional Regulation*, 154 Ill. 2d 138, 146 (1992).

¶ 5 The TRO issued by the trial court enjoins respondent from prosecuting an action for a declaratory judgment that she instituted in the state of New York seeking to construe documents pertaining to a sale of a company owned by petitioner to NASDAQ. In that action, respondent sought declarations that: (1) petitioner sold all shares in his company to NASDAQ (the defendant in the declaratory judgment action); (2) the consideration paid to respondent was for those

shares; and (3) the consideration paid was not for a personal asset. These declarations could have consequences regarding the pending marital dissolution action pending in this state. Petitioner is not a party to the New York action; however, NASDAQ has moved to dismiss, asserting as one basis that petitioner is a necessary party. Petitioner and NASDAQ are parties to the sale; respondent is not. The sale documents contained a forum-selection clause identifying New York as the chosen venue.

¶ 6 The trial court issued the TRO, first explaining that the forum-selection clause was not relevant to this issue, as it has "nothing to do with [respondent] and where she brings a lawsuit." Having reviewed the complaint filed in New York, the trial court concluded that it is "nothing more that an attempt to obtain a judgment in another forum and use it in this forum to bind this court's hands." The court also noted that when it inquired of respondent's counsel as to the purpose of the New York suit, counsel could not identify one. A reasonable person could agree with these findings, and we perceive no abuse of discretion here.

¶ 7 Respondent raises a number of reasons she believes the TRO should not have issued. First, she contends that she has a "right to raise an action in any, and as many, jurisdictions as [she] sees fit." *Halmos v. Safecard Services, Inc.*, 272 Ill. App. 3d 532, 534 (1995). While this is generally true, a foreign action may be restrained where it results in fraud, gross wrong, or oppression.[1] *Id*. This issue mandates a fact specific inquiry. *Id*. In this case, a reasonable person could conclude that by instituting an action in another state material to the litigation pending in this state, respondent placed petitioner in the position of having to respond via intervention or otherwise to protect his interests. Indeed, respondent is arguably a necessary

[1] " 'Oppression' has been defined as as 'unreasonably burdensome; unjustly severe.' " *Central Standard Life Insurance Co. v. Davis*, 10 Ill. App. 2d 245, 255 (1956).

party in the New York litigation. In turn, a reasonable person could further conclude that this results in oppression. For these reasons, we find respondent's argument that the two actions involve different parties unpersuasive.

¶ 8 Respondent contends that speculative concerns of future litigation are insufficient to warrant an injunction. To this end, she cites *Chicago & Elgin Ry. Co. v. Reserve Insurance Co.*, 59 Ill. App. 3d 206 (1978), and *Halmos*, 272 Ill. App. 3d 532. In the former case, the trial court granted the injunction based on plaintiff's counsel's opinion that "a number of suits [would] be filed because, (1) the defendants would search for pro-insurance company jurisdictions, and (2) he feared defense counsel could not guarantee that all the insurers would agree to a unified strategy." *Chicago & Elgin Ry. Co.*, 59 Ill. App. 3d at 209. The reviewing court found the trial court erred in issuing the injunction because "there was simply no substantial evidence that multiple and vexatious suits were imminent." *Id*. The case before us is distinguishable in that the suit sought to be enjoined is not simply imminent, it has already been filed. In *Halmos*, 272 Ill. App. 3d at 534-35, the trial court determined that a foreign action " 'could possibly' " result in fraud, oppression, or gross wrong to the plaintiff. The reviewing court found that this was an insufficient basis for an injunction. *Id.* In this case, a reasonable person could conclude that the harm to petitioner is much more imminent. It is already being argued that he is a necessary party in the already-filed New York litigation that would have an impact on the litigation here. As such, we find *Halmos* to be of little guidance here.

¶ 9 Respondent contends that she is merely following the forum-selection clause contained in the sales documents. However, she cites nothing to support that proposition that someone other than a party to the contract containing the clause is entitled to invoke it. As such, we reject this argument.

¶ 10 We do find persuasive the trial court's observation that the New York litigation has no purpose beyond affecting the litigation pending between respondent and petitioner in this state. We reiterate, "[w]hat constitutes a wrong and injustice requiring the court's interposition must necessarily depend upon the particular facts of the case" and "[t]here is no general rule as to what circumstance constitutes a proper case for the exercise of the trial court's discretion." *Pfaff v. Chrysler Corp.*, 155 Ill. 2d 35, 58 (1992) (overruled on other grounds by *ABM AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010)). The granting of an injunction will depend on specific circumstances as to whether equitable considerations in favor of granting the injunction outweigh the legal right of the party who instituted the foreign action. A court acting in equity has broad discretion in assessing an appropriate forum. See *Hoskin v. Union Pacific R.R. Co.*, 365 Ill. App. 3d 1021, 1023 (2006). We find no abuse of that discretion here.

¶ 11 Finally, respondent asks that we vacate a protective order issued by the trial court that would allow the stock-purchase agreement concerning the sale of petitioner's company to NASDAQ to be filed in the record. As it pertains to discovery generally, this request is beyond the scope of this appeal. *Short Brothers Construction, Inc.*, 356 Ill. App. 3d at 960. Respondent also claims that lifting this order is necessary "so that this Court can conduct its review of the trial court proceedings properly." Respondent does not explain how this document is relevant to this appeal. We therefore reject this argument.

¶ 12 In light of the foregoing, the order of the circuit court of Du Page County issuing the TRO is affirmed, and the balance of the appeal is dismissed. We hereby deny petitioner's request for sanctions against respondent for filing this appeal.

¶ 13 Affirmed in part and dismissed in part.