2012 IL App (1st) 112452-U

FOURTH DIVISION
March 22, 2012

No. 1-11-2452

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OAK 159th, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 11CH16517
	)	
INLAND REAL ESTATE LB I, LLC,	)	Honorable
INLAND REAL ESTATE-ILLINOIS, LLC,	)	Mary Anne Mason
INLAND COMMERCIAL PROPERTY	)	Judge Presiding.
MANAGEMENT, INC., and RALPHS	)	
GROCERY COMPANY, d/b/a FOOD 4	)	
LESS MIDWEST,	)	
	)	
Defendants-Appellees.	)	

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justice Pucinski and Sterba concurred in the judgment.

ORDER

Held: The denial of plaintiff's motion for a preliminary injunction was affirmed where plaintiff relied on a questionable and otherwise inapplicable exception to the requirement that it demonstrate a likelihood of success on the merits. Plaintiff's remaining assertion was forfeited where plaintiff failed to develop a cohesive argument explaining its entitlement to relief.

¶ 1 This interlocutory appeal arises from the trial court's order denying the motion of plaintiff Oak 159th, Inc., owner of a BP gas station, for a preliminary injunction to prevent defendants from beginning the construction of a Food 4 Less gas station on the property adjacent to the BP station. On appeal, plaintiff asserts the trial court erred in finding that

plaintiff was required to demonstrate a reasonable likelihood of success on the merits in order to obtain a preliminary injunction and by determining that plaintiff's easement over the adjacent property for ingress, egress and parking was undefined. We affirm.

¶ 2 We recite only those limited facts which are necessary for an understanding and resolution of the issues specifically raised on appeal. Defendants Inland Real Estate LB I LLC, Inland Real Estate-Illinois, LLC and Inland Commercial Property Management, Inc. (Inland defendants), each own or manage the Oak Forest Commons Shopping Center located at 5500 West 159th Street in Oak Forest, Illinois (the shopping center). The shopping center generally occupies the northeast corner of West 159th Street and Central Avenue, while plaintiff's BP station occupies the property which is on the immediate northeast corner of that intersection at 5548 West 159th Street. Thus, the shopping center abuts the north and east sides of the BP station. Ralphs Grocery Company, d/b/a Food 4 Less Midwest (defendant Food 4 Less) is a tenant of the shopping center and leased the portion of the parking lot in question which is immediately to the east of the BP station. Defendant Food 4 Less also obtained permission from the City of Oak Forest to construct a gas station on that portion of the parking lot. It appears that construction will lead to a reduction in shopping center parking spaces to the east of the BP station and a reduction of the width of the access way between the BP station and the site of the proposed Food 4 Less Station. In addition, a speed bump will be installed in the access way and cars will be permitted to exit but not enter plaintiff's property through the access way. The remaining entrances and exits to the BP station, including into the remainder of shopping

center parking lot and unaffected parking spaces, will remain intact.

¶ 3 This dispute stems from plaintiff's easement, which was originally created pursuant to a Declaration of Reciprocal Easements (the DRE) entered into in 1980 by the predecessors of plaintiff and the Inland defendants. It appears that a plot plan was intended to be attached to the DRE but was not attached to the recorded copy. The DRE states, in pertinent part, as follows:

> "'Common Areas' means all areas within the exterior boundaries of the Property which are constructed and made available for the general use, convenience and benefit of the Lessees and Permittees, and which are not held for or appropriated to the occupancy of or use by any one Lessee for the conduct of business, delineated upon the plot plan; such term shall include, without limiting the generality of the foregoing, all roads, driveways, sidewalks, malls public restrooms, walkways, traffic lanes, and vehicular parking spaces and areas between such parking spaces, service delivery facilities and dock areas not located within a portion of the Property leased to any Lessee."

¶ 4 The DRE further stated that "Property" referred collectively to Parcels 1, 2 and 3 and also established "a perpetual non-exclusive Easement appurtenant to and for the benefit of Parcel 1, Parcel 2 and Parcel 3 for ingress, egress and for the passage and parking of vehicles and the passage and accommodation of pedestrians in, to, over, and across that

portion of Parcel 1 and that portion of Parcel 2 as compromise the Common areas." It similarly established an easement "across that portion of Parcel 3 as comprises the Common Areas[.]" It appears that the BP station and the site for the Food 4 Less station are on Parcel 1.

¶ 5 Plaintiff commenced this action against defendants in May 2011, seeking a judgment declaring that it had a right to the easement area and also seeking to permanently enjoin defendants from constructing the Food 4 Less station and from disturbing plaintiff's rights of ingress, egress and parking over the easement area without plaintiff's consent. Plaintiff also moved for a preliminary injunction restraining defendants from engaging in construction of the Food 4 Less station. Following a hearing, the trial court denied plaintiff's motion for a preliminary injunction, finding that plaintiff held an undefined easement, and, as a result, the easement was limited to what was reasonably necessary for the easement's specified purposes and the servient estate could be developed without plaintiff's consent so long as its rights were reasonably accommodated. The court also found plaintiff had not shown a reasonable likelihood of success on the ultimate merits of the complaint or that the development of the parking lot next to plaintiff's property would substantially and negatively affect plaintiff's easement rights because plaintiff would continue to have sufficient ingress, egress and parking. The court rejected plaintiff's argument that it was not required to demonstrate a reasonable likelihood of success based on an exception where the subject matter of the preliminary injunction sought would be destroyed in the absence of an injunction. The court found that at most, plaintiff's

easement would be modified, not destroyed. Furthermore, the court found that plaintiff had failed to demonstrate that irreparable harm would result if a preliminary injunction was not issued. Plaintiff now appeals. We note that the Inland defendants have not filed a brief on appeal.

¶ 6 We first consider plaintiff's assertion that it was not required to show a reasonable likelihood of success on the merits in order to obtain a preliminary injunction. Specifically, plaintiff contends such a showing is not required where an injunction is sought to maintain the status quo until a determination on the merits is made or to prevent the destruction of property.

The trial court's decision to deny a preliminary injunction is generally reviewed for an abuse of discretion. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63 (2007). Where a judgment denying injunctive relief involves a question of law however, such as the assertion at hand, we review that question *de novo*. *Mohanty*, 225 Ill. 2d at 63.

¶ 7 The purpose of a preliminary injunction is to preserve the status quo until a decision is rendered on the merits of a case. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk and Western Railway Company*, 195 Ill. 2d 356, 365 (2001). The status quo to be preserved is the last actual, peaceable, uncontested status which preceded the controversy and a preliminary injunction is improper where it alters the status quo, rather than preserves it. *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 397-98 (1994). In addition, the appellate court has stated that the status quo referred to is that which is necessary to prevent the dissipation or destruction of property pending a final decision on the merits.

Heritage Standard Bank & Trust Co. v. Steel City National Bank, 234 Ill. App. 3d 48, 54 (1992); *Gannett Outdoor of Chicago v. Baise*, 163 Ill. App. 3d 717, 721 (1987). Nonetheless, a preliminary injunction is an extreme remedy to be used only where an emergency exists so that serious harm will result if an injunction is not issued. *Beahringer v. H. Page*, 204 Ill. 2d 363, 378 (2003).

¶ 8 As plaintiff recognizes, our supreme court has stated that a party seeking a preliminary injunction must establish (1) a clearly ascertained right which needs protection; (2) an irreparable injury which will occur in the absence of an injunction; (3) no adequate remedy at law; and (4) a likelihood that he will succeed on the merits. *Mohanty*, 225 Ill. 2d at 62; *Callis, Papa, Jackstadt & Halloran, P.C.*, 195 Ill. 2d at 365-66. The party who seeks a preliminary injunction must raise a fair question regarding each element. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010).

¶ 9 Over the course of the last century, certain decisions of the appellate court have found an exception to the requirement that a movant must demonstrate a likelihood of success on the merits, where property may be destroyed and/or the movant seeks to preserve the status quo. See *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 407-08 (1991); *Rhoads v. Village of Bolingbrook*, 130 Ill. App. 3d 981, 983 (1985); *Blue Cross Ass'n v. 666 North Lake Shore Drive Associates*, 100 Ill. App. 3d 647, 650-51(1981); *Hoffman v. Wilkins*, 132 Ill. App. 2d 810, 818-19 (1971); *Fishwick v. Lewis*, 258 Ill. App. 402, 410 (1930). In addition, certain appellate court decisions have found that a status quo exception existed even after acknowledging that preservation of the status quo is a

general requirement for obtaining any preliminary injunction. See *Save the Prairie Society v. Greene Development Group, Inc.*, 323 Ill. App. 3d 862, 867, 870 (2001); *In re Marriage of Weber*, 182 Ill. App. 3d 212, 218, 220-21 (1989); *Gannett Outdoor of Chicago*, 163 Ill. App. 3d at 721, 723. We further note that plaintiff has not cited and our research has not revealed any opinion rendered by our supreme court acknowledging an exception to the likelihood of success requirement. See *Webb v. Rock*, 80 Ill. App. 3d 891, 895 (1980) (observing that no supreme court case had recognized that probable success on the merits is not a necessary element for obtaining interlocutory injunctive relief). Furthermore, it appears that the origins of this exception predate the supreme court's unequivocal formulation of the four elements required to obtain a preliminary injunction. See *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 387 (1985) (observing that "[t]he criteria governing the issuance of a preliminary injunction has been stated in various ways, all of which are similar in content" and identifying the aforementioned four elements necessary for a preliminary injunction); *Kanter & Eisenberg v. Madison Associates*, 116 Ill. 2d 506, 510 (1987) (observing that different formulations of the standard for issuing a preliminary injunction had been stated but recognizing that the formulations contained common threads, including likelihood of success on the merits).

¶ 10 We find that in light of the current state of case law concerning the purpose of and requirements for issuing a preliminary injunction, the exception to the likelihood of success on the merits requirement on which plaintiff relies can no longer be valid. We

first find that because all preliminary injunctions are intended to preserve the status quo, a rule excusing a plaintiff from demonstrating a likelihood of success whenever he seeks to preserve the status quo would render the likelihood of success element a complete nullity. We also find that effectively eliminating the likelihood of success element would turn the extraordinary remedy of a preliminary injunction into a far more easily obtainable and ordinary one. In addition, at first blush, the continuing validity of an exception to the likelihood of success element where property may be destroyed is more compelling. On closer examination however, it is clear that such concerns are addressed in the second and third requirements for obtaining a preliminary injunction. Where specific or irreplaceable property may be destroyed, it surely follows that irreparable injury will occur absent an injunction, and that there may be no adequate remedy at law. Thus, the second and possibly the third requirements set forth by the supreme court would become redundant if a party is allowed to substitute the likelihood of success element with a demonstration that property may be destroyed. We further note that the challenged alterations here do not substantially involve the destruction of any property owned by plaintiff, but largely involve changes to property owned by the Inland defendants, leased by Food-4-Less and used by plaintiff. In any event, the trial court did not err by finding that no exception applied to plaintiff's obligation to show that it was likely to ultimately succeed on the merits.

¶ 11 Plaintiff also contends the trial court erred in finding that plaintiff's easement for parking, ingress and egress under the DRE was undefined and thus, limited to that which is

reasonably necessary. Plaintiff has not developed an argument asserting that if this court agrees plaintiff held a definite easement, we should find the trial court erred in determining the proposed Food 4 Less gas station would not substantially interfere with plaintiff's easement. More importantly, plaintiff has not explained how this alleged error affects the elements of a preliminary injunction so that the trial court was wrong in determining plaintiff was not entitled to this specific type of relief. "The appellate court is not a depository onto which a litigant may dump the burden of research and review of the record." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). This court is entitled to clearly defined issues, cohesive legal arguments and citations to relevant authority. *Country Mutual Insurance Co. v. Styck's Body Shop, Inc.*, 396 Ill. App. 3d 241, 254-55 (2009). Absent a cohesive argument, as required by Illinois Supreme Court Rule 341(h) (eff. July 1, 2008), that the trial court erroneously determined plaintiff did not demonstrate every required element for obtaining a preliminary injunction, this claim is forfeited. See *First National Bank of LaGrange v. Lowery*, 375 Ill. App. 3d 181, 208 (2007).

¶ 12 For the foregoing reasons, we affirm the trial court's judgment.

¶ 13 Affirmed.