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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

INNOVATIVE MECHANICAL GROUP, INC.,)	Appeal from the Circuit Court of Kane County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 13-CH-2758
)	
RODNEY KROG and HVAC EXPRESS, INC.,)	Honorable David R. Akemann,
)	
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion when it ordered plaintiff to “restore the health insurance for defendant Krog in the manner that it was prior to its termination,” as part of its decision to preserve the status quo pending a later hearing. Further, the trial court did not abuse its discretion when it allowed defendants to continue operating HVAC Express. We affirmed the judgment of the trial court.
- ¶ 2 On December 31, 2013, the circuit court of Kane County entered a temporary restraining order (TRO) enjoining defendants, Rodney Krog and HVAC Express, Inc., from, inter alia, utilizing or disclosing proprietary and confidential information that belonged to plaintiff, Innovative Mechanical Group, Inc. In this TRO, the trial court also ordered plaintiff to restore

the health insurance for Krog “in the manner it was prior to its termination.” The TRO was to remain in effect pending a determination on the merits. Plaintiff filed a timely appeal of the trial court’s order, raising two issues. The first is whether the trial court abused its discretion when it required plaintiff to restore Krog’s health insurance in the manner that it was prior to its termination. The second is whether the trial court abused its discretion when it refused to enjoin defendants from performing work for Innovative customers, from soliciting Innovative employees, and from further soliciting Innovative customers. We allowed defendants’ motion to file a late response. We hold that the record presented to this court established a sufficiently basis with which to sustain the trial court’s order. Therefore, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 26, 2013, plaintiff filed a verified complaint for injunctive and other relief. Plaintiff is a corporation owned by its president, Brad Marvin, and its secretary/treasurer, defendant Krog, each with a 50% interest. Since October 2004, plaintiff has been in the business of furnishing, installing, and servicing heating, venting, and air conditioning (HVAC) equipment and related services. Both Marvin and Krog were fiduciaries and were aware of plaintiff’s confidential and trade secret information, including plaintiff’s pricing model and relationships with its customers; plaintiff’s vendors and its pricing arrangements with the vendors; plaintiff’s customer list and contacts; plaintiff’s contracts with its customers; and preferences of its customers.

¶ 5 Ryan Willis was employed by plaintiff from 2005 to September 2013. Willis’s main duty was to perform HVAC-related work at Urban Innovations, which was a customer of plaintiff’s.

¶ 6 In September or October 2012, Krog began operating an existing company called HVAC Express, Inc., which plaintiff alleged also furnishes, installs, and services HVAC equipment and

related services. Plaintiff alleged that Krog solicited Willis to work for HVAC Express. Following Willis's resignation from plaintiff, Willis began working for defendants. Urban Innovations, the customer that Willis had previously serviced for plaintiff, became a customer of HVAC Express. Plaintiff alleged that Krog also solicited one other employee of plaintiff's, Adam Micaletti, to work for HVAC Express. Micaletti was employed by plaintiff from March 2012 to May 2013.

¶ 7 During the time he was a shareholder, director, and officer of plaintiff, Krog purchased materials from plaintiff's vendors on plaintiff's account and used those materials for HVAC Express projects. Also during this time, "Krog received a salary from [plaintiff], received healthcare and other benefits from [plaintiff], utilized [plaintiff's] accounts to pay for Express expenses, used and continues to use [plaintiff's] vehicles, and used [plaintiff's] cell phones."

¶ 8 Beginning in November 2013, Krog announced to plaintiff's customers, suppliers, or vendors that he was no longer with plaintiff. On December 23, 2013, Krog entered plaintiff's office and left with a computer used by Marvin, a digital recording device (DVR), and checks totaling approximately \$414,728, which had been issued to plaintiff by plaintiff's customers. Plaintiff's computer contained confidential information, including bids, contracts, pricing, customers, check registers, and confidential or privileged communications between plaintiff and its attorneys.

¶ 9 In addition to other theories of recovery, plaintiff sought injunctive relief against defendants. The injunctive relief requested included an order to enjoin Krog from operating HVAC Express; to enjoin defendants from competing with plaintiff; and to enjoin defendants from contacting or conducting business with any of plaintiff's customers. Plaintiff requested an order to account for the property taken, including the computer and any copies of the hard drive,

the DVR, and the checks. Plaintiff also requested the trial court order Krog to forfeit his proxy and voting rights; his shares of stock; all wages, “health care benefits” and all other compensations and benefits paid to him during the time he was in breach of his fiduciary duties; and his removal from all positions with plaintiff.

¶ 10 Thereafter, on December 30, 2013, plaintiff filed an emergency motion for a temporary restraining order pursuant to section 11-101 of the Code of Civil Procedure (735 ILCS 5/11-101 (West 2012)) and a supporting memorandum of law. The contents of the motion were substantively similar to the facts and circumstances alleged in plaintiff’s verified complaint for injunctive and other relief. Plaintiff requested the trial court enjoin Krog from operating HVAC Express; enjoin defendants from competing with plaintiff; enjoin defendants from contacting or conducting business with any of plaintiff’s customers; enjoin defendants from soliciting plaintiff’s employees; enjoin defendants from utilizing or disclosing the proprietary and confidential information belonging to plaintiff, which Krog had gained access as a shareholder, director, and officer of plaintiff; and order defendants to return all of plaintiff’s proprietary and confidential information.

¶ 11 The trial court conducted a hearing on December 31, 2013. The trial court heard arguments from the parties. According to defendants, Krog and Marvin had been negotiating a buyout, whereby Marvin would purchase Krog’s 50% interest in plaintiff for approximately \$600,000, and Krog could continue to operate HVAC Express as long as HVAC Express did not solicit customers of plaintiff. Further, according to defendants, Marvin did not pay Krog any of the buyout money, but instead, “Marvin locked Krog out of the shop and discontinued Krog’s family health insurance that was being paid for by [plaintiff], even though Krog remained a 50% shareholder and employee of [plaintiff].”

¶ 12 The trial court subsequently issued a written order. In its order, dated December 31, 2013, the trial court stated that it had “considered the pleadings and the arguments of counsel” and was “otherwise fully advised in the premises.” The trial court set out the general principles of law pertaining to temporary restraining orders and other injunctive relief, and included the factors it had considered in determining whether to issue a TRO. In its analysis section, the trial court found that the pleadings indicated at least a fair question of an ascertainable claim for relief; a likelihood of success relating as to certain actions taken by Defendant Krog; no adequate remedy at law existed; and in the absence of injunctive relief, serious and irreparable harm could occur. The trial court continued, “many questions of fact present themselves which the court does not decide at this stage but the court does find that an emergency does exist and that serious harm to the plaintiff will occur unless injunctive relief is ordered.” The trial court concluded that, “in balancing the hardships and equities certain relief is required as requested by Plaintiff, but in addition, the Court is ordering some relief from Plaintiff to Defendant Krog to preserve the status quo pending a determination on the merits.”

¶ 13 The trial court ordered as follows:

- “1. Rodney Krog and Express, including its officials, representatives, agents, are hereby restrained and enjoined from utilizing or disclosing the proprietary and confidential information that belongs to Innovative to which Rodney Krog gained access as a shareholder, director and/or officer of Innovative;
2. Rodney Krog and Express, including its officials, representatives, agents, are hereby ordered to return all confidential and proprietary information taken by Rodney Krog to Innovative in care of its counsel *** on January 2, 2014;

3. Rodney Krog shall return any and all copies of the HP desktop hard drive, which was used by Brad Marvin, and the checks taken by Rodney Krog in the amount of \$382,040.45 or, if the checks were deposited into an account, Rodney Krog shall return the sum of \$382,040.45 to Plaintiff in care of its counsel *** on January 2, 2014.

4. The funds described in paragraph 3 of this Order shall be distributed only by the joint authorization of Plaintiff[']s president, Brad Marvin and Plaintiff's treasurer, Defendant Krog for lawful obligations of the Plaintiff; such authorization shall not be unreasonably delayed or withheld.

5. The Plaintiff shall restore the health insurance for Defendant Krog in the manner that it was prior to its termination.”

¶ 14 Plaintiff filed a timely appeal of the trial court's order, contending that the trial court abused its discretion (1) when it required plaintiff to restore Krog's health insurance, and (2) when it refused to enjoin defendants from competing with plaintiff by performing work for plaintiff's customers, from soliciting plaintiff's employees, and from further soliciting plaintiff's customers.

¶ 15

II. ANALYSIS

¶ 16 Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010) permits an interlocutory appeal as of right from an order granting a TRO. A TRO is an emergency remedy of extremely brief duration, which may issue only in exceptional circumstances and only until the trial court can hear arguments or evidence, as the circumstances require, on the subject matter of the controversy and otherwise determine what relief is appropriate. *Paddington Corp. v. Foremost Sales, Promotions, Inc.*, 13 Ill. App. 3d 170, 174 (1973). The purpose of a temporary restraining order is to allow the trial court to preserve the status quo until it can hold a hearing to determine

whether it should grant a preliminary injunction. *Delgado v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 481, 483 (2007) (citing *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 542 (1983)). A hearing on a motion for a TRO is a summary proceeding, and even if the defendant files a verified answer, the trial court still proceeds in a summary fashion, hearing only arguments on the motion for the TRO. *Passon v. TCR, Inc.*, 242 Ill. App. 3d 259, 263 (1993) (citing *Lawter International, Inc. v. Carroll*, 107 Ill. App. 3d 938, 939-40 (1982)). Whether to grant or deny a TRO is within the sound discretion of the trial court, and a reviewing court will not disturb the trial court's decision absent an abuse of discretion. *Stocker Hinge Manufacturing Co.*, 94 Ill. 2d at 541.

¶ 17 The party seeking the TRO must establish, by a preponderance of the evidence: (1) a clearly ascertained right in need of protection; (2) no adequate remedy at law; (3) an irreparable harm without the TRO; and (4) a likelihood of success on the merits. *Bradford v. Wynstone Property Owners' Ass'n*, 355 Ill. App. 3d 736, 739 (2005). The party seeking relief is not required to make out its entire case that would entitle it to relief on the merits; rather, it need show only that it raises a fair question about the existence of its right and that the court should preserve the status quo until the case can be decided on the merits. *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 634 (2005) (citing *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985)). In determining whether to issue injunctive relief, courts may also consider whether the benefits of granting injunctive relief exceed the hardship. See *Gavrilos*, 359 Ill. App. 3d at 636-37; see also *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 169 (2002).

¶ 18 In the present case, the trial court determined that plaintiff raised a fair question about the existence of its right to injunctive relief. In doing so, the trial court ordered plaintiff to restore

the health insurance for Krog. Plaintiff takes issue with this order of the trial court, contending that Krog never requested the relief nor proved the elements to be awarded the relief. Plaintiff further argues that it was an abuse of discretion for the trial court to grant relief when it was not to consider any evidence beyond the pleadings. Defendants counter that the trial court simply restored the situation to the status quo, which was a proper exercise of its discretion.

¶ 19 We agree with defendants. In its verified pleading, plaintiff alleged that, during the time Krug was a shareholder, director, and officer of plaintiff, he received a salary, healthcare, and other benefits. At the hearing on plaintiff's motion for a TRO, defendants presented argument reflecting a negotiation between the two parties regarding a buyout, but also that Marvin discontinued Krog's family health insurance that was being paid for by plaintiff, even though he was still a 50% shareholder and employee. The trial court properly considered health insurance when it was considering the overall issue of temporary injunctive relief. See *Passon*, 242 Ill. App. 3d at 263 (1993) (considering the arguments of the parties in determining whether to order injunctive relief). Moreover, the trial court properly restored the health insurance to Krog as part of restoring the status quo. See *Kalbfleisch ex rel. Kalbfleisch v. Columbia Community Unit School No. 4*, 396 Ill. App. 3d 1105, 1117-18 (2009) (noting an oft-employed definition of "status quo" as "the last actual, peaceful, noncontested status that preceded the pending controversy"). Accordingly, we conclude the trial court did not abuse its discretion when it ordered plaintiff to restore the health insurance for Krog.

¶ 20 We also reject plaintiff's second contention regarding the trial court's refusal to enjoin defendants from operating HVAC Express. We note that the trial court did enjoin defendants from using or disclosing any confidential or proprietary information belonging to plaintiff. This was appropriate, given the alleged circumstances of Krog's conduct in removing the equipment

from plaintiff's offices. See *Diamond Savings & Loan Co. v. Royal Glen Condominium Ass'n*, 173 Ill. App. 3d 431, 434-35 (1988) (regarding the necessity to prevent immediate and irreparable harm). The supporting record, which includes plaintiff's verified complaint, reflects the trial court's awareness that defendants had been operating HVAC Express for more than one year before plaintiff initiated the present litigation. At the hearing on plaintiff's motion for a TRO, the trial court heard defendants' argument that Krog and Marvin had been negotiating a buyout, whereby Marvin would purchase Krog's 50% interest in plaintiff, and Krog would continue to operate HVAC Express as long as HVAC Express did not solicit customers of plaintiff. Based on defendants' arguments, the trial court could infer plaintiff's knowledge and acquiescence of HVAC Express's continued operation prior to its filing of the present litigation. In determining that injunctive relief to plaintiff was warranted, the trial court balanced "the hardships and equities." In doing so, the trial court also determined that Krog was entitled to relief. The trial court could have reasonably concluded that allowing HVAC Express to continue operating was a method of preserving the status quo and would not result in immediate and irreparable harm to plaintiff. See *id.* at 435. Insofar as the party challenging the trial court's order bears the burden of establishing the abuse of discretion (see *Gavrilos*, 359 Ill. App. 3d at 637), plaintiff has failed to do so here. The trial court's ruling reflects an equitable and discretionary decision, and we find no abuse of the trial court's discretion. See *Stocker Hinge Manufacturing Co.*, 94 Ill. 2d at 541.

¶ 21

III. CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 23 Affirmed.