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2017 IL App (3d) 170509-U

Order filed August 18, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

In re ESTATE OF THOMAS H. MALPASS,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Deceased)	LaSalle County, Illinois.
)	
(Mason W. Malpass,)	
)	
Petitioner-Appellee,)	
)	
v.)	Appeal No. 3-17-0509
)	Circuit No. 17-P-94
Robert P. Matz, Executor of the Estate of)	
Thomas H. Malpass, Deceased,)	
)	
Respondent,)	
)	
and)	
)	Honorable
John D. Buckner,)	Troy D. Holland,
)	Judge, Presiding.
Intervenor-Appellant).)	
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* A circuit court order granting a temporary restraining order enjoining the sale of the shares of a privately held corporation from a decedent's estate was affirmed because the beneficiary of the estate sufficiently demonstrated the elements necessary for a TRO to preserve the *status quo* until more information on value could be gathered.

¶ 2 The intervenor-appellant, John Buckner, filed an interlocutory appeal from a circuit court order granting a temporary restraining order enjoining Buckner's purchase of the Estate of Thomas H. Malpass's shares of a privately held corporation.

¶ 3 **FACTS**

¶ 4 The deceased, Thomas Malpass, passed away on May 6, 2017. A few months prior to his death, on March 7, 2017, the deceased executed a will, which named his only son, the petitioner, Mason Malpass (hereinafter referred to as Mason, to avoid confusion with the deceased), the sole legatee. The will also named the deceased's friend, Robert P. Matz, as the executor of the will. The will gave Matz a number of powers and discretions that could be exercised without court order, including the right to "sell, convey, or distribute in kind all or some of [the deceased's shares of Tee Group Films, Inc.] as may be in the best interest of the legatee(s) of the estate."

¶ 5 Originally, the deceased was the owner of 100% of the capital stock of Tee Group Films. Six months before he died, on November 18, 2016, the deceased entered into a stock purchase agreement with Buckner, selling Buckner 250 shares, or 25% of the interest, in Tee Group Films for the purchase price of \$300,000. After the deceased's death, Matz, as the executor, entered into a second stock purchase agreement with Buckner for the remaining 750 shares. That agreement was signed in July 2017, and the sale was scheduled to close on July 31, 2017.

¶ 6 Mason filed an emergency petition to stop the sale and an emergency motion for a temporary restraining order (TRO). In the motion for the TRO, Mason sought to enjoin the sale of the estate's 750 shares in Tee Group Films, arguing that Matz did not conduct the necessary

due diligence before signing the purchase agreement to determine whether the sale was in Mason's best interest, as the sole legatee. The circuit court issued the TRO on August 9, 2017, enjoining Buckner's purchase of the Estate's 75% ownership interest in Tee Group Films. The circuit court noted that the purpose of the TRO was to maintain the *status quo* until a hearing could be held on an application for a temporary injunction, and the *status quo* was that 75% of the stock was owned by the Estate and 25% by Buckner.

¶ 7 The circuit court found that Mason had a clear, ascertainable right in that he was the beneficiary under the will. It also found that Mason raised a fair question of likelihood of success on the merits in his claim of breach of fiduciary duty in that Matz allegedly did not exercise his duty of full disclosure to the beneficiary under the will. With respect to irreparable harm, the circuit court found that Mason showed the potential for irreparable harm if the largest asset of the estate was sold below what it was worth, especially in light of the in kind provision in the will. The circuit court found that a remedy at law may be available, but it was not adequate because there were questions regarding the real estate where the corporation was located and issues regarding collectability against the executor. Finally, the circuit court balanced the equities and found that the potential hardship to the sole heir outweighed the potential hardship to Buckner by delaying the sale. Buckner filed an interlocutory appeal pursuant to Illinois Supreme Rule 307(d) (eff. Nov. 1, 2016).

¶ 8 ANALYSIS

¶ 9 Buckner contends that the TRO was wrongfully issued, arguing that Mason has an adequate remedy at law. A TRO is one type of injunctive relief available under Illinois law and requires the same elements of proof as a preliminary injunction. *County of Boone v. Plote Construction, Inc.*, 2017 IL App (2d) 160184, ¶ 27-28. A preliminary injunction may be granted

when the movant establishes: (1) a clear, ascertainable right in need of protection; (2) that it will suffer irreparable harm if the injunction does not issue; (3) no adequate remedy at law; and (4) the likelihood of success on the merits. *City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599, ¶ 17. The circuit court must also balance the equities and consider whether the benefits of granting injunctive relief outweigh any injury from not granting it. *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 10. We review a circuit court's grant of injunctive relief for an abuse of discretion. *City of Kankakee*, 2013 IL App (3d) 120599, ¶ 17.

¶ 10 The purpose of preliminary injunctive relief is not to determine the controverted rights or decide the merits of the case, but rather to preserve the *status quo* until the case can be decided on the merits. *Scheffel Financial Services, Inc.*, 2014 IL App (5th) 130600, ¶ 9. Thus, a petitioner is not held to the same level of proof as is required on the ultimate issue, but rather is only required to make a *prima facie* showing that a fair question exists regarding the claimed right so that he will probably be entitled to the relief requested. *Id.*

¶ 11 There does not seem to be any dispute that Mason has a protectable right because he is the sole heir and legatee under the decedent's will. Buckner argues that Mason is seeking damages for breach of fiduciary duty, so he has an adequate remedy at law, which necessarily means that there is no irreparable harm. "Irreparable harm occurs only where the remedy at law is inadequate, meaning that monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards." *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 947 (2001). However, as the circuit court noted, the existence of a remedy at law, or that fact that a money judgment may be the ultimate relief, does not deprive a court of its power to grant injunctive relief unless the remedy is adequate. *K. F. K. Corp. v. American Continental Homes, Inc.*, 31 Ill. App. 3d 1017, 1021 (1975). To be adequate, "the remedy at law

must be clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." *Id.* Mason has raised at least a fair question of irreparable harm in that there are questions of whether a remedy at law would be adequate under the circumstances. The stock purchase agreement seeks to sell the majority of the stock in Tee Group Films, the largest asset of the decedent's estate, to Buckner, while Mason's breach of fiduciary duty claim is against the executor, Matz. Matz would not be acquiring the assets of the corporation, which raises questions regarding Matz's ability to pay a judgement and a court's ability to set aside the sale to Buckner. See *In re Estate of Talty*, 376 Ill. App. 3d 1082, 1088 (2007) (setting aside the sale of stock by the executor was appropriate remedy for breach his fiduciary duty as executor).

¶ 12 To establish the likelihood of success on the merits for his claim of breach of fiduciary duty against Matz, Mason need only raise a fair question of a breach of that duty. As the circuit court noted, an executor of a will has a fiduciary duty to both the estate and the beneficiaries, which includes a duty of full disclosure to the beneficiaries under the testator's will. See *In re Estate of Talty*, 376 Ill. App. 3d at 1089. Based on the allegations presented to the circuit court, Matz did not have an independent evaluation or appraisal done regarding the value of the Tee Group Films shares, nor did he share financial information with Mason, prior to entering into the stock purchase agreement with Buckner. Since the shares of Tee Group Films represent the largest asset of the decedent's estate, we agree with the circuit court that Mason has demonstrated a likelihood of success on the merits.

¶ 13 The circuit court balanced the equities and determined that the potential hardship to Mason by the sale of the Estate's largest asset at an amount alleged to be significantly below market price outweighed the potential hardship to Buckner. We find no abuse of discretion in

that decision. We conclude that Mason has demonstrated the elements necessary for a TRO, which preserves the *status quo* by maintaining a significant asset of the Estate until more information on value can be gathered. Accordingly, we hold that the circuit court did not abuse its discretion in granting the motion for injunctive relief.

¶ 14 As a final matter, Buckner contends that the circuit court abused its discretion in entering the TRO without requiring a bond from Mason. The circuit court did not require a bond, reserving the issue for more evidence at the preliminary injunction hearing. The waiver of bond upon entering a TRO is ruling that we review for an abuse of discretion. 735 ILCS 5/11-103 (2014); *Save the Prairie Soc. v. Greene Development Group, Inc.*, 338 Ill. App. 3d 800, 803 (2003). Based on the allegations relative to the TRO, there was no abuse of discretion in waiving the bond in this action involving an estate and a corporation when it was alleged that the corporation had sufficient assets.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of LaSalle County is affirmed.

¶ 17 Affirmed.