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FIFTH DIVISION
March 23, 2018

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BURGOYNE, L.L.C., an Illinois Limited Liability Company,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 17 CH 06199
)	
CHICAGO TERMINAL RAILROAD COMPANY,)	
an Illinois Corporation, and IOWA PACIFIC)	
HOLDINGS, L.L.C., an Illinois Limited Liability)	
Company,)	The Honorable
)	Pamela McLean Meyerson,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

- ¶1 *HELD:* The circuit court did not abuse its discretion in granting a stay order.
- ¶2 Plaintiff, Burgoyne, L.L.C., appeals the circuit court’s order granting a stay of the underlying proceedings in favor of defendants, Chicago Terminal Railroad Company (Chicago Terminal) and Iowa Pacific Holdings, L.L.C. (Iowa Pacific). Plaintiff contends defendant failed to demonstrate a stay was necessary under the circumstances. Plaintiff insists the resolution of

the issue here, namely, contract interpretation, is not preempted by the federal railroad statute and, therefore, does not relate to another action under consideration by the United States Surface Transportation Board. Based on the following, we affirm.

¶3

FACTS

¶4 In 2000, plaintiff acquired undeveloped property on the near-north side of Chicago from CMC Corporation (CMC). The property is located in the Goose Island district southwest of Kingsbury Street, north of North Avenue, and east of the north branch of the Chicago River. A single mainline railroad track extends across a portion of plaintiff's property. Previously, on November 20, 1987, CMC granted the Soo Line Railroad Company (Soo Line) an easement for use of the track for railroad purposes via a corrective deed. The corrective deed provided, in relevant part:

“The Soo Easement shall automatically cease and determine (either fully or partially with respect to a specific portion of the Easement Parcel, as may be appropriate) at such time as the Easement Parcel (or portion thereof) is no longer used in the active operation of the Railroad and CMC Real Estate or its successors or assigns has notified Soo Line thereof in writing. For purposes of determining whether the Easement Parcel is being used in the active operation of the Railroad, the mere storing of railroad cars, equipment or other material upon the Easement Parcel shall not be deemed to constitute use of the parcel for Railroad purposes. Further, without limiting other means of determining when the Soo Easement shall terminate, the Easement Parcel shall be deemed no longer used in the active operation of the Railroad upon the cessation of use of the Easement Parcel for a period of twelve (12) consecutive months or prior removal or relocation of the track and the related facilities.

At such time as the Soo Easement (or portion thereof) is terminated or extinguished and Soo has been notified in writing by CMC Real Estate or its successors or assigns pursuant to the provisions of the preceding paragraph, Soo shall, at its sole cost, promptly remove all track and other railroad equipment which is the property of Soo from the Easement Parcel (or applicable portion thereof). In the event Soo has not removed its track and equipment from the Easement Parcel (or applicable portion thereof) within one hundred twenty (120) days following the termination of the Soo Easement (or portion thereof), CMC Real Estate may, at its option, treat the track and property as abandoned by Soo in place and may remove them, but CMC Real Estate shall have no liability to Soo for removal of said materials. Upon CMC Real Estate's request, Soo will execute any documentation to evidence the termination (or partial termination, as may be appropriate) of the Soo Easement when the Easement Parcel (or portion thereof) is no longer used in the active operations of the Railroad."

The corrective deed was part of a railroad reorganization supervised by the United States District Court for the Northern District of Illinois. The title transfer was approved by the federal bankruptcy court. *In The Matter of: Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 77 B 8999 (N.D. Ill. 1987).

¶15 In December 2006, Iowa Pacific, Chicago Terminal's parent company, acquired certain rail lines from Soo Line, including the line extending through a portion of plaintiff's property. Chicago Terminal is a rail carrier with authority by the United States Surface Transportation Board (USSTB) to operate a railroad line originating at Union Pacific's North Avenue Yard and proceeding east and south to a terminus near Chicago Avenue and Halsted Street in the Goose

Island district. The distance of approximately 2.875 miles extends through and approximately 4500 feet beyond plaintiff's property.

¶6 On August 22, 2016, plaintiff sent a letter to Iowa Pacific notifying it that the railroad easement across the subject property had "automatically ceased" pursuant to the terms of the corrective deed as a result of non-use for a period of at least 12 months. Plaintiff demanded that defendants remove the train tracks from the property. Defendants refused. Plaintiff then built a metal fence around the subject property and across the rail tracks.

¶7 On November 15, 2016, Chicago Terminal filed a complaint against plaintiff in the U.S. District Court for the Northern District of Illinois alleging the fence erected by plaintiff prevented it from accessing the 4,500 feet of railroad track that extended beyond plaintiff's property. Chicago Terminal cited sections 10501, 10903, 11101, and 11121 of the Interstate Commerce Commission Termination Act (Federal Act) (49 U.S.C. § 10501, § 10903, § 11101, and § 11121 (2015)) for support. Chicago Terminal also raised a claim under the Illinois Consumer Fraud and Deceptive Practices Act (815 ILCS § 501/1 *et seq.* (West 2016)) and a state law claim for declaratory judgment. On March 22, 2017, the Northern District Court dismissed Chicago Terminal's complaint, finding the federal statutes cited did not grant a private right of action by a rail carrier against a private property owner. *Chicago Terminal Railroad Company v. Burgoyne, LLC*, No. 16 C 10606 (N.D. Ill. March 22, 2017). The Northern District did not address preemption under section 10501(b) of the Federal Act and declined to exercise supplemental jurisdiction over the state law claims.

¶8 The parties agree that, following dismissal of the federal case, Chicago Terminal removed plaintiff's fence, and plaintiff repaired and reinstalled the fence on several occasions.

¶9 On April 28, 2017, plaintiff commenced this action by filing a four-count complaint seeking injunctive and other relief (specific performance, breach of deed, and property damage). In that complaint, plaintiff alleged defendants had not provided rail service or conducted train operations since at least August 2015. On April 28, 2017, plaintiff also filed an emergency motion for a temporary restraining order requesting that defendants be enjoined from entering plaintiff's property. On May 2, 2017, plaintiff's emergency motion for a temporary restraining order was denied without prejudice.

¶10 Then, on May 8, 2017, defendants filed their own emergency motion for a temporary restraining order against plaintiff requesting that plaintiff be restrained and enjoined from causing any damage or blockage of the railroad track on the subject property. In addition, on May 8, 2017, defendants filed an answer, affirmative defenses, and counterclaims. In their affirmative defenses, defendants listed eleven bases for dismissing plaintiff's complaint, including insufficiency of the complaint and potential bases outside of the complaint. In their counterclaims, defendants sought injunctive relief and brought claims for specific performance, breach of the deed, property damage, and tortious interference with prospective business relationships. In relevant part, defendants alleged that, from November 9, 2015, through the time of plaintiff's complaint, defendants had been engaged in multiple attempts to repair a swing bridge that allowed trains traversing the rail line extending through plaintiff's property to cross the Chicago River. Defendants, therefore, argued that the property had been in "use" for purposes of the easement during the time in dispute.

¶11 On May 10, 2017, the circuit court granted defendants' motion for a temporary restraining order against plaintiff, instructing plaintiff that it was "not to remove, damage or alter the tracks on the subject property until the hearing on the preliminary injunction."

¶12 On May 15, 2017, defendants filed a motion for preliminary injunction requesting that the court order plaintiff to remove the fences installed over the rail track and permanently enjoin plaintiff from removing or damaging the track. Defendants also filed a motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)), arguing the circuit court lacked jurisdiction to adjudicate plaintiff's claims. More specifically, citing sections 10501(b) and 10903 of the Federal Act (49 U.S.C. §§ 10501(b), 10903 (2015)), defendants stated that the USSTB retained primary jurisdiction over the rail line on plaintiff's property because the USSTB had not allowed for either an abandonment or discontinuation of rail service. Defendants, however, maintained that, pursuant to section 10501(b) of the Federal Act (49 U.S.C. § 10501(b) (2015)), the court had concurrent jurisdiction with the USSTB to determine matters of preemption. Plaintiff responded to defendants' motion to dismiss by arguing that the complaint involved property rights under Illinois law, not abandonment, which was a state law issue not preempted by federal law. On August 2, 2017, the parties appeared before the circuit court for a hearing on the motion to dismiss. The matter was continued until September 21, 2017, for a status on the ruling.

¶13 In the meantime, however, on September 19, 2017, defense counsel sent the circuit court a letter advising it that Alloy Property Company, L.L.C. (Alloy Property), the developer of property north of plaintiff's property, had composed a letter of intent to file a petition with the USSTB seeking an adverse abandonment application.¹ Defense counsel's letter stated "[t]he adverse abandonment application would include the abandonment of Defendants' rail line that traverses over the parcel of property at issue in our case." Defense counsel requested that the court stay its proceedings pending the outcome of the Alloy Property adverse abandonment

¹ Alloy Property filed its application of adverse abandonment on October 12, 2017, with the USSTB.

action because a ruling in that matter could render the underlying claims moot.² Plaintiff responded by letter on the same date of defense counsel's letter, arguing that the Alloy Property matter was "wholly unrelated" and that staying the proceedings in this case would not resolve the underlying issues.

¶14 On September 21, 2017, the circuit court entered an order staying its ruling on defendants' section 2-619 motion to dismiss pending a decision by the USSTB on the Alloy Property matter. In so doing, the circuit court reasoned:

"The defendant argues that this Court doesn't have subject matter jurisdiction because the case is preempted by 49 U.S.C. 10501(b), which provides that the jurisdiction of the Surface Transportation Board, or [US]STB, over abandonment of railroad tracks is exclusive and that the remedies under the statute with respect to regulation of rail transportation are exclusive and preempt the remedies provided under federal or state law.

Plaintiff argues this case is not about abandonment of tracks, that this case is about contract interpretation. In its complaint, plaintiff seeks a finding that it owns the property at issue unburdened by any easement or property right under a corrective deed between the parties predecessors, which was approved by the bankruptcy court, and plaintiff also seeks other relief, including an order requiring defendant to remove the tracks.

Plaintiff wants this Court to decide what are the parties' rights under that corrective deed, did the easement for defendant's trains to operate over plaintiff's property automatically cease and determine under the terms of the corrective deed with

²Pursuant to section 10903(a)(1) of the Federal Act, a rail carrier may not abandon or discontinue service on any rail line without authorization from the USSTB. 49 U.S.C. § 10903(a)(1) (2015).

[sic] tracks no longer used in active operation of the railroad? Was there a cessation of use for 12 consecutive months under the corrective deed?

Plaintiff argues that those issues are not the same as the issues of abandonment and operates [sic] that to have a railroad line, a railroad has to have both a property right, which is a contract issue in which the plaintiff is asking me to decide in this case, and a license, which is something that the [US]STB decides.

That is correct, you need both of those things and, yet, looking at the relief that plaintiff is seeking, plaintiff wants an order requiring defendant to remove the tracks and says that defendant has breached the contract by refusing to dismantle the rails.

Any decision by the [US]STB on abandonment would not resolve the state law claims, which is what plaintiff has argued, and that decision wouldn't reach the contract issues because they are different from the abandonment issues, but my holding is that this Court can't decide the contract issues. Are the tracks no longer used in the active operation of the railroad? If not, what is the proper remedy until there is a decision on whether the defendant is allowed to abandon this line?

Plaintiff has asked the Court among other things for an order to—for defendant to pull up the tracks and if I decided that, I would be in a position of regulating rail transportation, which I can't do under Section 10501(b).”

¶15 This appeal followed.

¶16 We, note that, at oral argument before this court, defendants attempted to introduce additional information regarding the status of the Alloy Property action. Defendants subsequently filed a letter attaching information related to the Alloy Property action. However, because the purported information was not properly before this court, we will not consider it.

¶17

ANALYSIS

¶18 Plaintiff contends the circuit court abused its discretion in staying the underlying case pending the USSTB's resolution of the unrelated Alloy Property action.

¶19 This case appears before us as an interlocutory appeal as a matter of right from an order granting a stay of proceedings under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

A stay order seeks to preserve the status quo existing as of the date of its entry and does not address the merits of the underlying dispute. *Estate of Bass ex rel. Bass v. Katten*, 375 Ill. App. 3d 62, 68 (2007). The party seeking a stay must make a sufficient showing that the stay is justified. *TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 372 (2009). A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it. *Phillips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill. App. 3d 895, 901-02 (1998). In determining whether to grant or deny a requested stay, a circuit court engages "in a balancing process as to the rights of the parties, in which all elements bearing on the equitable nature of the relief sought should be considered." *Stacke v. Bates*, 138 Ill. 2d 295, 308-09 (1990) (declining to "follow a ritualistic formula which specifies the elements a court may consider in passing on a motion to stay, and which limits the court's consideration to those elements"). A circuit court may consider factors such as the orderly administration of justice and judicial economy. *Phillips Electronics*, 295 Ill. App. 3d at 901-02.

¶20 Our court's review of an interlocutory appeal is limited to the order from which a party appeals. *GK Development, Inc. v. Iowa Malls Financing Corp.*, 2015 IL App (1st) 151843, ¶ 15. In other words, the scope of this court's review of an interlocutory appeal from an order granting a motion to stay the proceedings is "limited to a determination as to whether the trial court abused its discretion in granting the stay." *Goodwin v. McHenry County Sheriff's Officer Merit*

Comm'n, 306 Ill. App. 3d 251, 257 (1999). In doing so, we must determine whether the circuit court “acted arbitrarily without employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted. [Citations.]” *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1994). As a result, a reviewing court considers only the sufficiency of the evidence to sustain the circuit court’s determination granting or denying the relief sought, rather than deciding any “controverted rights” or merits of the case. *Katten*, 375 Ill. App. 3d at 67-68.

¶21 Plaintiff argues the circuit court failed to adequately consider the applicable factors for issuing a stay. More specifically, plaintiff asserts the circuit court considered defendants’ informal stay request two months after their motion to dismiss had been argued, but failed to consider any resulting hardship on plaintiff. According to plaintiff, it was an abuse of the court’s discretion to indefinitely stay the underlying proceedings based on an unrelated matter that had yet to be filed without considering whether the balance of equitable factors weighed in favor of granting the stay. Plaintiff further argues that the results of the purported Alloy Property application for adverse abandonment would not resolve the claims asserted in its complaint, namely, its request for a preliminary injunction regarding defendants’ misuse of the rail line by storing cars on plaintiff’s property in violation of the corrective deed, whether the easement expired, whether and when defendants breached the parties’ contract, and whether there are resulting damages. Indeed, plaintiff maintains that the issues raised in its complaint involve the interpretation of Illinois law, not the regulation of rail transportation, and, therefore, are not preempted by federal law and the USSTB. Accordingly, plaintiff insists its claims can be resolved first by the circuit court under state law and then the court can direct defendants to apply to the USSTB for a certificate of abandonment of the subject tracks.

¶22 In response, defendants argue the circuit court did not abuse its discretion in issuing the stay order where they presented “substantial evidence” that the USSTB’s authority is a jurisdictional prerequisite to any action that would terminate Chicago Terminal’s ability to operate rail service across plaintiff’s property. According to defendants, the matter did not require separate briefing by the parties where the court previously had engaged in a balancing-of-the-harms analysis in conjunction with the parties’ TRO motions and was aware of the potential harm to the parties in preserving the status quo. Defendants additionally argue the Federal Act’s preemption applies to voluntary agreements, such as the corrective deed at issue here, when the effect of enforcing such agreements causes unreasonable interference with a rail carrier’s ability to provide rail service over a rail line that is part of the national rail network. Defendants, however, maintain that the resolution of the Alloy Property matter could render the preemption issue moot if the USSTB grants abandonment authority.

¶23 As stated, our review of the circuit court’s order granting a stay of the underlying proceedings is limited to whether there was sufficient evidence to issue the stay. *Katten*, 375 Ill. App. 3d at 67-68. We, therefore, must determine if resolution of the Alloy Property proceeding would influence the underlying matter. In other words, would the USSTB’s decision regarding the adverse abandonment of the rail line in Alloy Property have a sufficient effect on the underlying proceedings to justify the stay? We conclude the answer is yes. Plaintiff does not dispute that the rail line at issue in Alloy Property includes the track traversing through its property. Accordingly, if the USSTB determines that defendants have abandoned the subject rail line pursuant to section 10903(a)(1) of the Federal Act (49 U.S.C. § 10903(a)(1) (2015)) then USSTB no longer has jurisdiction and state law controls the disposition of the underlying dispute. *Hayfield N. R.R. v. Chicago & N.W. Transportation Co.*, 467 U.S. 622, 632-33 (1984).

However, if the USSTB concludes defendants have not abandoned the subject rail line then the circuit court must proceed to address the question of its jurisdiction in terms of whether plaintiff's claims are preempted by section 10501(b) of the Federal Act (49 U.S.C. § 10501(b) (2015)).

¶24 Because the circuit court could be required to consider federal preemption, we believe the question of whether it abused its discretion in granting the stay requires an understanding of the law of preemption. We, therefore, address the merits of the underlying dispute only to the extent that it sheds light on the circuit court's decision to grant the requested stay.

¶25 Preemption is borne out of the Supremacy Clause of the United States Constitution, which states that the Constitution, the laws of the United States, and all Treaties "shall be the supreme Law of the Land." U.S. Const. Art. VI cl. 2. The Supremacy Clause instructs that "state laws that 'interfere with, or are contrary to the laws of [C]ongress, made in pursuance to the constitution' are invalid." *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991). In 1995, Congress enacted the Federal Act and created the USSTB to administer the Federal Act. 49 U.S.C. §§ 10101, 10102(1). Section 10501(b) of the Federal Act provides exclusive jurisdiction over the regulation of railroad transportation wherein it states:

"The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers;
and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b) (2015).

The Seventh Circuit Court of Appeals noted “Congress’s intent in the [Federal] Act to preempt state and local regulation of railroad transportation has been recognized as broad and sweeping.” *Union Pacific Railroad Co. v. Chicago Transit Authority*, 647 F.3d 675, 678 (7th Cir. 2011).

¶26 There are two ways a state or local action could be preempted by section 10501(b) of the Federal Act: (1) a categorical, express, or *per se* preemption; or (2) an as-applied or implied preemption. *Wedemeyer v. CSX Transportation, Inc.*, 850 F.3d 889, 894 (7th Cir. 2017); *PCS Phosphate Co., Inc. v. Norfolk Southern Corp.*, 559 F.3d 212, 220 (4th Cir. 2009) (“[h]aving concluded that enforcement of the relocation agreements is not expressly preempted, we move on to whether it is impliedly preempted”). A categorical or express preemption occurs when a state or local action is preempted on its face no matter the context or rationale. *Wedemeyer*, 850 F.3d at 894-895. The express preemption clause is limited to “regulation.” *PCS Phosphate Co., Inc.*, 559 F.3d at 218. “Regulation” is not defined in the Federal Act, but courts have interpreted it as “ ‘Congress narrowly tailored the [Federal Act] preemption provision to displace only “regulation,” *i.e.*, those state laws that may reasonably be said to have the effect of “managing” or “governing” rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.’ [Citation.]” *Id.*

¶27 In contrast, an action may be as-applied or impliedly preempted “based on the degree of interference that it has on railroad transportation—that is, if the action would have the effect of preventing or unreasonably interfering with railroad transportation.” *Wedemeyer*, 850 F.3d at 895. The Fourth Circuit Court of Appeals has instructed:

“Voluntary agreements between private parties *** are not presumptively regulatory acts, and we are doubtful that most private contracts constitute the sort of ‘regulation’ expressly preempted by the statute. If contracts were by definition ‘regulation,’ then enforcement of every contract with ‘rail transportation’ as its subject would be preempted as a state law remedy ‘with respect to regulation of rail transportation.’ [Citation.] Given the statutory definition of ‘transportation,’ this would include all voluntary agreements about ‘equipment of any kind related to the movement of passengers or property, or both by rail.’ [Citation.] If enforcement of these agreements were preempted, the contracting parties’ only recourse would be the ‘exclusive’ [Federal Act] remedies. But the [Federal Act] does not include a general contract remedy. Such a broad reading of the preemption clause would make it virtually impossible to conduct business, and Congress surely would have spoken more clearly, and not used the word ‘regulation,’ if it intended that result.” (Footnotes omitted.) *Id.* at 218-19.

¶28 The preemption analysis in this case requires an as-applied or implied analysis where the dispute at issue involves the corrective deed, which was a voluntary agreement entered into by the parties’ predecessors. See *id.* at 220 (private contracts are not presumptively regulatory). Accordingly, the question is whether plaintiff’s requested enforcement action prevents or unreasonably interferes with rail transportation. See *id.* at 220-21. Such an analysis requires a factual assessment of the effect of removing the rail line tracks from plaintiff’s property. *Id.* at

221. There is a general consensus that the existence of a voluntary agreement gives rise to an assumption that the railroad already evaluated the effect of the promise and conceded it could be performed without adversely impacting its common carrier obligations; however, the mere existence of a voluntary agreement does not guarantee interstate commerce will not be unreasonably burdened by the performance of the agreed promise. *PCS Phosphate Co., Inc.*, 559 F.3d at 220-21. Because plaintiff's requested relief would require an as-applied or implied preemption analysis in the event the USSTB determined the rail line on the subject property did not qualify as abandoned pursuant to 10903(a)(1) of the Federal Act (49 U.S.C. § 10903(a)(1) (2015)), we find the circuit court did not abuse its discretion in staying the underlying proceedings until the Alloy Property matter is resolved.

¶29 In sum, we conclude the circuit court did not abuse its discretion in staying the underlying proceedings. The USSTB's decision in the Alloy Property adverse abandonment case directly impacts the proceedings in this case. With regard to plaintiff's argument that the circuit court failed to consider the harm imposed on it by granting the stay, we find the court was fully cognizant of the dispute and the potential impact of granting the stay. Moreover, contrary to plaintiff's insinuation that it was surprised by defendants' September 19, 2017, letter requesting a stay of the proceedings based on the Alloy Property case, the record reveals that plaintiff was well aware of Alloy Property's intent to seek an adverse abandonment ruling from the USSTB. The circuit court acted within its broad authority to control the disposition of cases before it.

¶30 CONCLUSION

¶31 We affirm the judgment of the circuit court granting a stay of the underlying proceedings.

¶32 Affirmed.