

No. 1-09-2434

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION  
March 28, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DONALD R. MICHONSKI and MARTIN K. MICHONSKI,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 05 CH 8985
	)	
	)	
KENNETH G. MICHONSKI, JAMES W. MICHONSKI, KENNETH J. MICHONSKI, and LYNN STEPANOVIC,	)	Honorable
	)	LeRoy K. Martin, Jr.
Defendants-Appellees.	)	Judge Presiding.

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PRESIDING JUSTICE HALL delivered the judgment of the court.  
Justices Lampkin and Rochford concurred in the judgment.

**O R D E R**

*HELD:* The trial court did not err by concluding that the imposition of a constructive trust and the grant of injunctive relief were unwarranted where plaintiffs' second amended

complaint failed to adequately plead that their alleged injuries were not compensable by money damages.

This action arises out of an ongoing dispute between shareholders of Major Wire, Inc. (Major-Wire), a closely held corporation specializing in wire processing. All shares of Major-Wire are distributed equally among four brothers, plaintiffs Donald R. Michonski and Martin K. Michonski, and defendants Kenneth G. Michonski and James W. Michonski.

Kenneth G. Michonski is the president, chief executive officer, and a director of Major-Wire. James W. Michonski was vice president and a director of Major-Wire.<sup>1</sup> Kenneth G. Michonski's son, defendant Kenneth J. Michonski, is general manager of the corporation. Defendant, Lynn Stepanovic, is the daughter of Kenneth G. Michonski. Ms. Stepanovic is the corporation's purchasing manager.

As part of this ongoing litigation, plaintiffs filed a second amended complaint against defendants which included a prayer for relief seeking a constructive trust over defendants' personal real estate and real-estate improvements that plaintiffs contend were allegedly purchased by defendants using funds they

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<sup>1</sup> James W. Michonski is deceased. Mary B. Michonski, James' widow, was substituted in as a party, not individually but as independent executor of James' estate.

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misappropriated from the corporation. Plaintiffs also sought an injunction prohibiting defendants from transferring or encumbering this real estate. In addition to filing the second amended complaint, plaintiffs also caused *lis pendens* notices to be recorded against certain real estate.

Defendants filed a motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)), asking the trial court to strike those sections of plaintiffs' prayer for relief which sought a constructive trust and injunctive relief. Defendants contended that plaintiffs' second amended complaint failed to state a cause of action entitling them to the equitable relief of a constructive trust or injunction since they had an adequate remedy at law through money damages.

After hearing argument, the trial court agreed with defendants and granted their motion to dismiss, finding that in the event plaintiffs prevailed on their claims, then they would have an adequate remedy at law through money damages. The trial court also entered an order cancelling the *lis pendens* notices that had been recorded against defendants' personal real estate.

The trial court subsequently denied plaintiffs' motion to reconsider. We affirm.

ANALYSIS

In this interlocutory appeal, plaintiffs ask us to reverse the trial court's order granting defendants' motion to dismiss brought pursuant to section 2-615 of the Code. A section 2-615 motion to dismiss attacks the legal sufficiency of a complaint. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499, 911 N.E.2d 369 (2009).

The question presented by a section 2-615 motion is whether the allegations of the complaint, when taken as true and viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Turner*, 233 Ill. 2d at 499. Review is *de novo*. *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 392, 882 N.E.2d 1011 (2008).

The primary issue here is whether the allegations in plaintiffs' second amended complaint are sufficient to invoke the equitable relief of a constructive trust. We do not believe the allegations are sufficient to state a cause of action for a constructive trust so as to survive a section 2-615 motion to dismiss.

"A constructive trust is an equitable remedy imposed by a court to prevent the unjust enrichment of a party through actual fraud or breach of a fiduciary relationship." *In re Liquidation of Security Casualty Co.*, 127 Ill. 2d 434, 447, 537 N.E.2d 775

(1989). "A constructive trust is created when a court declares the party in possession of wrongfully acquired property the constructive trustee of that property because it would be inequitable for that party to retain possession of it. The sole duty of the constructive trustee is to transfer title and possession of the wrongfully acquired property to the beneficiary." *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 299, 735 N.E.2d 560 (2000).

It is well established that equitable relief is not available where there is an adequate remedy at law. *Fulton-Carroll Center, Inc. v. Industrial Council of Northwest Chicago, Inc.*, 256 Ill. App. 3d 821, 824, 628 N.E.2d 1121 (1993); *Newton v. Aitken*, 260 Ill. App. 3d 717, 720, 633 N.E.2d 213 (1994). "A legal remedy is adequate when it is clear, complete and is as practical and efficient in achieving the prompt administration of justice as is the equitable remedy." *Northrop Corporation v. AIL Systems, Inc.*, 218 Ill. App. 3d 951, 954, 578 N.E.2d 1208 (1991).

If a party's injury can be adequately compensated through money damages, then it has an adequate remedy at law. *Lumbermen's Mutual Casualty Co. v. Sykes*, 384 Ill. App. 3d 207, 230-31, 890 N.E.2d 1086 (2008). The party seeking equitable relief has the burden of proving the inadequacy of a legal remedy. See *Kerasotes v. Estate of Kerasotes*, 238 Ill. App. 3d 1020, 1030-31, 605

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N.E.2d 643 (1992).

In the instant case, plaintiffs argue that money damages are inadequate to fully compensate them because the profits that defendants gained from purchasing and improving real estate with the misappropriated funds are difficult, if not impossible to determine. Plaintiffs contend that the failure to grant a constructive trust would allow defendants to retain the profits gained by the appreciation of their real estate purchased and improved with misappropriated corporate funds and would cause defendants to enjoy a windfall profit for their breach of fiduciary duty. We must disagree.

We believe that the imposition of a constructive trust is unwarranted in this case because plaintiffs have failed to prove that their alleged injuries are not compensable by money damages. Although the calculation of loss profits stemming from the alleged misappropriation of corporate funds inherently involves some speculation, it is not enough to establish the inadequacy of a legal remedy. See, e.g., *Loveridge v. Pendleton Woolen Mills, Inc.*, 788 F.2d 914, 917-18 (2nd Cir. 1986) (if lost profit provable, it would be compensable in money damages); *Heathcote Associates v. Chittenden Trust Co.*, 958 F. Supp. 182, 186 (D. Vt. (1997) (although calculating loss of future income and rent inherently involved some speculation, this was not enough to

establish inadequacy of a legal remedy).

Moreover, a review of plaintiffs' second amended complaint reveals that it is essentially a request to secure money damages. Plaintiffs' prayer for relief includes: a request for restitution and/or damages in favor of plaintiffs on behalf of the corporation and its stockholders and an award of punitive and exemplary damages as appropriate, plus prejudgment interest; a request for an accounting to ascertain the amount of moneys improperly paid to defendants out of corporate funds and that defendants be ordered to pay the corporation whatever sums are found to be due to the corporation; imposition of a constructive trust upon real estate owned by defendants to the extent of damages caused by each of defendants; and a request for an injunction to restrain defendants from conveying or encumbering their personal real estate until full restitution has been made.

Plaintiffs' second amended complaint is fundamentally a request to secure money damages. "Equity does not entertain complaints the fundamental object of which is to secure monetary damages." *LaSalle National Bank v. Refrigerated Transport Co.*, 165 Ill. App. 3d 899, 901, 520 N.E.2d 768 (1987).

The trial court did not err by concluding that the imposition of a constructive trust was unwarranted in this case where plaintiffs failed to prove that their alleged injuries were

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not compensable by money damages. Plaintiffs' request for injunctive relief was properly dismissed for the same reason. "[E]quity prohibits injunctive relief if the plaintiff has an adequate remedy at law." *LaSalle National Bank v. County of Cook*, 57 Ill. 2d 318, 322, 312 N.E.2d 252 (1974). The same principles which prohibit granting a constructive trust in this case likewise prohibit granting injunctive relief.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirm.