

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).

NO. 4-10-0928

Filed 6/29/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TRI-OIL, L.L.C.,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
and)	Sangamon County
JANET M. SIEGEL-ROGERS, as Trustee of the JANET)	No. 09L230
M. SIEGEL-ROGERS REVOCABLE TRUST; and)	
ROBERT H. SIEGEL and ROBERTA A. SIEGEL, as)	
Trustee of the SIEGEL FAMILY REVOCABLE TRUST,)	
Plaintiffs,)	
v.)	
TRIDENT RESOURCES CORPORATION,)	
Defendant-Appellant,)	
and)	
TRI-PHOENIX FUND, L.C., UNKNOWN)	Honorable
OWNERS, and NONRECORD CLAIMANTS,)	Peter C. Cavanagh,
Defendants.)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.

Justices Steigmann and Appleton concurred in the judgment.

ORDER

Held: (1) We dismiss for lack of appellate jurisdiction the portion of Trident's appeal seeking review of the trial court's denial of Trident's combined motion to dismiss because the denial was not a final appealable order.

(2) The trial court did not abuse its discretion by enjoining Trident from, *inter alia*, (a) injecting saltwater into a well located on land owned and leased by plaintiffs and (b) removing oil production and storage equipment from that land.

In November 2010, the trial court entered a preliminary injunction against defendant, Trident Resources Corporation (Trident), enjoining it from, *inter alia*, (1) injecting saltwater into a well located on land owned by plaintiffs, Janet M. Siegel-Rogers, as Trustee of

the Janet M. Siegel-Rogers Revocable Trust; and Robert H. Siegel and Roberta A. Siegel, as Trustee of the Siegel Family Revocable Trust (Siegel Trusts), and leased by plaintiff, Tri-Oil, L.L.C. (Tri-Oil), and (2) removing oil production and storage equipment from that land.

Trident appeals from the trial court's order pursuant to Illinois Supreme Court Rule 307(a)(1), (eff. Feb. 26, 2010) arguing, the court erred by (1) failing to dismiss Tri-Oil's complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615, 2-619 (West 2010)), (2) issuing the preliminary injunction, and (3) issuing an overly broad preliminary injunction. We dismiss in part and affirm the portions of the appeal properly before this court.

I. BACKGROUND

On June 26, 1980, Trident's predecessor, John Carey Oil Company (Carey Oil), leased the land referred to by the parties as the Chance property. The Chance property comprises approximately 240 acres. There are 4 wells located on the north 80 acres of the Chance property, *i.e.*, 3 oil wells and 1 saltwater disposal well. The 4 wells are situated on 10 acre well sites. In 1981 and 1982, the State of Illinois Department of Mines and Minerals (Department) granted Trident four permits for the existing wells on the Chance lease and Trident began producing oil on the Chance property. Trident concedes it ceased oil production on the Chance premises in 2001.

On September 22, 1980, Carey Oil also leased land adjoining the Chance property known as the Folonie property. The Folonie property is adjacent to and contiguous with the Chance property. Three wells are located on the Folonie property. In 1982, Trident was issued three permits for wells on Folonie. At the time of the hearing on Tri-Oil's complaint, two of the

three wells were in operation and producing oil. There is no saltwater disposal well located on Folonie. It is undisputed Trident has been injecting saltwater--a waste byproduct of its oil production on the Folonie property--into a saltwater injection well located on the Chance property.

In November 2008, Tri-Oil entered into a "top lease" agreement with the owners of the Chance property to develop and produce oil and gas on the premises. A top lease is "a lease granted on property already subject to a mineral lease, and taking effect only if the existing lease expires or terminates." Black's Law Dictionary 900 (7th ed. 1999).

In November 2008, Tri-Oil sent a cease and desist letter to Trident to prevent them from (1) entering the Chance premises, (2) using the saltwater disposal well on the Chance premises, and (3) removing equipment from the Chance premises. However, Trident did not comply with the request.

On September 2, 2009, Tri-Oil filed an emergency motion for a temporary restraining order for injunctive relief, which the trial court granted.

On September 9, 2009, Tri-Oil filed a four-count complaint against Trident.

Count I alleged an action to quiet title based upon the termination of Trident's lease and abandonment of its oil production equipment. Tri-Oil also requested an order declaring it to be the lawful lessee of the Chance premises free of any claim by Trident and awarding it all the abandoned production equipment.

Count II alleged Trident was trespassing by continuing to use the saltwater injection well located on the Chance property after its lease had terminated because of the lack of oil production since 2001.

Count III alleged a preliminary injunction was necessary to prevent Trident's continued trespass to inject saltwater into the injection well because of the contractual liability Tri-Oil possessed for damage from saltwater spills occurring on the Chance property and the fact Trident did not have sufficient insurance or finances to cover spills on the terminated lease. Tri-Oil also argued Trident should be enjoined from removing any abandoned oil production equipment until the trial court determined whether Trident has any legal right to it. Tri-Oil's lease included the assignment of all the oil production equipment the former lessee, *i.e.*, Trident, placed on the Chance property. Tri-Oil maintained Trident abandoned that property because Trident did not remove the equipment within a reasonable amount of time following the termination of the lease pursuant to its terms.

Count IV alleged the conversion of abandoned equipment Trident had already removed from the Chance property.

On October 13, 2009, Trident filed a combined motion to dismiss Tri-Oil's complaint under sections 2-615 and 2-619 of the Procedure Code. The trial court denied the motion to dismiss on April 28, 2010.

On July 7, 2010, the court began hearings on the preliminary injunction. Tri-Oil presented testimony from its expert witness, Robert Herr. Herr testified the last time the Chance lease produced any oil was in 2001. He also testified over the past 10 years, Folonie's oil production has been erratic, having years with no oil sales at all. Herr explained saltwater is a waste byproduct of oil production with no marketable value. According to Herr's testimony, there are two acceptable methods of disposing of saltwater in the oil industry; either transporting it away by a trucking service to a site with an injection well, or operating an injection well on or

near the site. He testified the injection of saltwater can increase the pressure at the injection well site and cause oil to move and migrate to regions of lower pressure near the producing wells.

Herr testified there was an injection well on the Chance property but not one on the Folonie property. Herr opined based upon the layout of the two properties and the location of the injection well, the injection of saltwater in the Chance injection well was forcing oil from a region of high pressure on the Chance property to an area of low pressure on the Folonie property. Herr testified Trident's saltwater injection was causing oil to migrate from Chance to Folonie. Herr estimated anywhere between 25 to 40% of the oil that will ultimately be produced on the Folonie property will have come from the Chance property. Herr testified oil does not regenerate and once it is gone, it is gone forever.

Trident then called its expert witness, Joseph Hahn. Hahn testified he did not believe any oil was moving between the Chance and Folonie properties as a result of Trident's saltwater injections. According to Hahn's testimony, the injected saltwater flows directly back to Folonie because any oil that existed between the leases would have been washed out long ago. Hahn contended there was no recognized scientific basis for Herr's 25 to 40% figure. However, Hahn testified on cross-examination he had not done any calculations or conducted any tests to measure the degree of pressure between the Folonie and Chance properties.

Further, when asked on cross-examination if taking saltwater from Folonie and injecting it into the well on the Chance property created a higher pressure on the Chance lease, Hahn responded affirmatively. When asked if it was more likely than not there was some amount of oil being swept from Chance to Folonie because of the injections, Hahn responded, "the oil that's being produced by the Folonie wells is what I deem washed oil, following along

from the Chance saltwater disposal well to the Folonie producing wells. That's where the oil is coming from, not from the Chance lease." At the conclusion of the testimony, the trial court continued the hearing on the injunction.

On August 30, 2010, Tri-Oil and the Siegel Trusts filed plaintiffs' first amended complaint. The complaint consisted of 17 counts. Tri-Oil amended count I, adding a request for a declaration that its rights as a lessee were superior to Trident's rights. In count II, Siegel Trusts requested, *inter alia*, a declaration that Trident's rights had expired and the lease between it and Tri-Oil was in full effect. In count VI, Tri-Oil alleged an action to quiet title based upon the termination of Trident's lease and abandonment of its oil production equipment. Siegel also alleged an action to quiet title in count VII.

In addition, both plaintiffs alleged Trident was trespassing by, *inter alia*, continuing to use the saltwater injection well located on the Chance property after its lease had terminated. (Tri-Oil's counts VIII, IX; Siegel's counts XIII, XIV). Further, both plaintiffs requested a preliminary injunction to enjoin Trident from the injection of saltwater and removal of oil production and storage equipment from the Chance property during the pendency of this case. (Siegel's count XV; Tri-Oil's count X).

On October 13, 2010, the trial court resumed the hearing on the preliminary injunction. At that hearing, Tri-Oil called Steve Hardin, the manager of Trident, as an adverse witness. Hardin testified the standard oil and gas lease used by Trident provides if oil production ceases for a period of 60 days the lease terminates by its own terms. During the course of Hardin's testimony, Tri-Oil offered into evidence, without objection, a copy of Trident's lease for the Folonie property. Hardin testified Trident's lease for the Chance property contained a similar

termination provision. However, he would not say whether Trident's Chance lease had terminated based upon the cessation of oil production. Instead, Hardin maintained such a determination was a legal question and subject to the reestablishment of production. However, Hardin testified it was his understanding there had been no oil production by Trident on the Chance property since 2001.

Hardin also testified regarding Trident's financial condition. According to Hardin's testimony, hauling the saltwater away instead of injecting it into the Chance well would not be economically feasible for Trident due to the low production levels on the Folonie lease. Hardin testified the average daily oil production on the Folonie property is approximately 4 barrels or \$300 per day in gross revenue. Hardin did not know Trident's net earnings after paying the landowner its royalty fee. Hardin also testified Trident's insurance carrier denied coverage for the damage claims brought by Tri-Oil. Hardin also testified that Carey Oil, the predecessor of Trident, had filed for bankruptcy protection in 1989.

In addition, Hardin testified Trident has multiple wells spanning multiple leases in the Department's plugging and restoration fund program (PRF Fund) (see 225 ILCS 725/19.6 (West 2010)). According to Hardin, the Department identifies wells that have not been producing and inspects them for regulation violations. The Department then allows a certain period of time for the company to remedy the violations. If the owner does not remedy the violation the wells may go into the PRF fund and the State becomes responsible for plugging the wells. The Administrative Code provides a well's permittee is responsible for reimbursing the PRF Fund for the costs associated with plugging the permittee's well. See Ill. Adm. Code tit. 62 §240.1640(a) (2010). Hardin testified plugging a well costs approximately \$4,000 per well. Tri-Oil then

introduced into evidence Plaintiff's Exhibit No. 7, a printout of the Department's PRF Fund spreadsheet from June 2010. The printout showed multiple examples of Trident's wells in the PRF Fund. Tri-Oil offered the evidence to show Trident's inability to pay a damage award stemming from the upcoming trial on the merits.

Tri-Oil also called Daniel Lanterman, an interest owning member of Tri-Oil to testify. Lanterman explained a "top lease" is a term of art in the oil industry for a situation where a prior lease goes idle and terminates. He testified a self-executing termination occurs where the prior lease does not have any production. The new lease is called a top lease because the more recent lease is filed in the recorder's office on top of the previous lease.

Lanterman testified he reviewed Trident's lease, which included a 60-day cessation clause. According to Lanterman's testimony, the temporary cessation of oil production will not necessarily terminate an oil lease. However, when the lack of production goes past temporary, in this case 60 days, the lease automatically terminates. Lanterman testified under the Trident lease, if a well ceased producing, Trident had 60 days to either restore oil production or start some work designed to restore production. Lanterman explained, "If on the 59th day you start some work, like drilling a well, which may take a couple of weeks, *** then you're okay." However, if drilling started on that well and then stopped for 60 days and the well did not work in a continuous and unbroken fashion, then the lease is lost.

Lanterman also testified if the equipment is not removed from a leased premises within a reasonable amount of time following the abandonment of that lease, the equipment becomes the property of the land owner. Tri-Oil introduced Plaintiff's Exhibit No. 9, Tri-Oil's lease for the Chance property into evidence. Lanterman, an attorney, testified he made certain

Tri-Oil's lease agreement with Siegel Trusts assigned all the oil producing equipment to Tri-Oil. According to Lanterman, the assignment specifically states it is a transfer of the lease and the equipment on the leases to Tri-Oil. Lanterman testified because of that assignment language, Tri-Oil claimed the title and right of ownership to abandoned equipment in its complaint.

Lanterman further testified he personally observed Trident employees coming onto the Chance lease and injecting saltwater waste onto the Chance property since November 2008. While Lanterman had not personally observed the removal of oil producing equipment by Trident personnel, he observed pump jacks present one day but missing the next day.

At the October 15, 2010, hearing, Trident called Hardin who testified it would be possible to setup a saltwater disposal well on the Folonie lease. However, he explained Trident would need to take the equipment currently on the Chance property to do it. Otherwise, Trident would need to purchase new equipment, including a new saltwater disposal pump. According to Hardin, Trident's costs would be greatly reduced if Trident were permitted to take the saltwater injection well equipment from the Chance property.

Hardin also testified Trident had, from the 1990's through 2008, expended time and money to make the Chance wells productive again. Trident tried to get Chance Number 5 running again but it was never brought back into production. According to Hardin,

"[Trident's] production on the Chance lease had been so dismal that it's really not worth an extreme effort, if you will, when you have other properties that may benefit from the expenditure of that money rather than the Chance lease. *** I think the Chance Number 1 was put back into production for a period of time, and noth-

ing was produced, so it was shut down, and exactly what that time period is I can't tell you."

While during the October 13, 2010, hearing, Hardin testified there had been no oil production by Trident on the Chance property since 2001, during the October 15, 2010, hearing he testified oil from Chance had been produced under the ground but had not been captured and sold since 2001.

At the conclusion of the hearing the trial court found the following:

"[W]ith regard to this hearing for preliminary injunction, I listened carefully, considered all the case law and pleadings presented and the arguments of the parties. I do find that Tri-Oil clearly has an ascertainable right which must be protected. They have a contract right with regard to the top soil lease. The status quo of the situation currently is that there's this injecting of the waste of salt water onto Chance from Folonie wells.

There is the issue of trespass of whether or not there's any monetary damages due to the trespass. Trespass is an issue with regard to whether or not a clearly ascertainable right must be protected, and there is a trespass occurring.

There's also a top lease that has been proved to the Court. That's legally valid, and therefore, I find this to be a clearly ascertainable right which must be protected.

Next, Tri-Oil will be irrevocably injured in the absence of

protection, injunctive relief. I find so, because there's immediate relief to Tri-Oil's rights and continued trespass in the Chance lease, this removal of equipment and the injection of saltwater would permanently and irrevocably cause damage to the Chance leases [(sic)]. I also agree that there could be and would be no adequate remedy at law for Tri-Oil's injuries. Money damages would not be appropriate. It would not be appropriate to reverse any harm [caused] to the property subject to the lease.

For the enjoyment of the use of what I find to be a valid lease, damages at law I find to be inadequate. Loss of future profit and sales are reasonably certain to occur, and it's difficult to quantify or calculate with any reasonable degree of certainty.

Lastly, I find that the likelihood of success on the merits does weigh in favor of Tri-Oil. The language of the lease, the evidence presented to me here in this court leads me to believe that there's a great likelihood of success on the merits, having carefully reviewed this evidence. With that, I am entering this preliminary injunction."

The trial court then stayed its order until November 1, 2010, to provide Trident an opportunity to arrange an alternative means for the disposal of the saltwater in order to better keep its status quo intact instead of ordering Trident to stop injections immediately.

Following a November 1, 2010, hearing, the trial court entered Tri-Oil's motion

for a preliminary injunction. The court preliminarily enjoined Trident from (1) injecting saltwater and storing oil on the Chance property, (2) removing any of the oil production equipment from the Chance property, and (3) destroying or altering two pump jacks Trident had already removed from the Chance property.

On November 23, 2010, pursuant to Illinois Supreme Court Rule 307(a)(1), Trident filed a notice of interlocutory appeal from the trial court's grant of the preliminary injunction.

This appeal followed.

II. ANALYSIS

On appeal, Trident argues (1) Tri-Oil's complaint should have been dismissed pursuant to sections 2-615 and 2-619 of the Procedure Code, and (2) the trial court erred in granting the preliminary injunction.

A. Jurisdiction

Although the parties do not question our jurisdiction, we have an independent duty to confirm we have jurisdiction over Trident's appeal before we proceed to a consideration of the merits. *Franson v. Micelli*, 172 Ill. 2d 352, 355, 666 N.E.2d 1188, 1189 (1996).

Generally, only final judgments or orders are appealable as of right. *Rogers v. Tyson Foods, Inc.*, 385 Ill. App. 3d 287, 288, 895 N.E.2d 97, 98 (2008). An exception exists however, where the judgment or order falls within one of the exceptions enumerated by Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010). *Rogers*, 385 Ill. App. 3d at 288, 895 N.E.2d at 98.

In this case, Trident argues the trial court erred in its April 28, 2010, order denying Trident's combined section 2-615 and 2-619 motion to dismiss Tri-Oil's complaint.

However, a trial court's denial of a motion to dismiss is not a final and appealable order under Rule 307. *Mund v. Brown*, 393 Ill. App. 3d 994, 996, 913 N.E.2d 1225, 1228 (2009). Instead, it is merely an interlocutory order, which does not provide the reviewing court with appellate jurisdiction. *Mund*, 393 Ill. App. 3d at 996, 913 N.E.2d at 1228.

Moreover, according to Trident's November 23, 2010, "Notice of Interlocutory Appeal," Trident is appealing *only* the trial court's November 4, 2010, order granting the injunction and *not* the court's April 28, 2010, denial of Trident's motion to dismiss. Accordingly, we dismiss this appeal for lack of appellate jurisdiction insomuch as Trident appeals from the trial court's dismissal of its combined section 2-615 and 2-619 motion to dismiss Tri-Oil's complaint. See *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 468, 563 N.E.2d 459, 464-65 (1990).

As stated, however, Trident has also appealed the trial court's November 4, 2010, order granting the preliminary injunction pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). Under Rule 307(a)(1), a party may appeal as a matter of right an interlocutory order of the trial court "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Accordingly, we consider this portion of Trident's appeal.

B. Preliminary Injunction

Trident argues the trial court erred in granting the preliminary injunction. Specifically, Trident contends (1) Tri-Oil failed to satisfy the necessary elements for injunctive relief, (2) the injunction was improper because it altered the status quo between the parties, and (3) a balancing of the equities involved favors the denial of the injunction. Trident also argues the injunction was overly broad. Specifically, Trident maintains the court erred in enjoining

Trident from removing the saltwater pump and oil production equipment from the Chance property.

1. *Scope of Review*

An appeal under Illinois Supreme Court Rule 307(a)(1) may not be used "as a vehicle to determine the merits of a plaintiff's case." *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 399, 626 N.E.2d 199, 203 (1993). Instead, the only question for this court is whether a sufficient showing was made to the trial court to sustain the injunction. *Postma*, 157 Ill. 2d at 399, 626 N.E.2d at 203. At the preliminary-injunction stage of the proceedings, the trial court makes no determination of controverted facts on the merits of a case. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 156, 601 N.E.2d 720, 727 (1992). Thus, a reviewing court examines "only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights." *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177, 781 N.E.2d 223, 230 (2002); see *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62, 866 N.E.2d 85, 91 (2006) (employing the fair-question standard).

2. *Standard of Review*

This court reviews a trial court's grant of a preliminary injunction for an abuse of discretion. *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 268, 880 N.E.2d 188, 195 (2007). "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634, 841 N.E.2d 1065, 1082 (2006).

To obtain a preliminary injunction, the moving party must show "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3)

no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty*, 225 Ill. 2d at 62, 866 N.E.2d at 91.

3. *Clearly Ascertainable Right*

Trident argues Tri-Oil lacks a clearly ascertainable right in need of protection. Specifically, Trident argues Tri-Oil, as a top lessee, does not have standing to maintain an action for trespass and therefore cannot have a protectable right.

"Oil and gas leases granting the right to search for and take oil and gas are freehold estates in the land." *Test Drilling Service Co. v. Hanor Co.*, 322 F. Supp. 2d 965, 970 (C.D., Ill. 2004) (quoting *Jilek v. Chicago, Wilmington & Franklin Coal Co.*, 382 Ill. 241, 246, 47 N.E.2d 96, 98 (1943)). "The fact that the landlord might also have a right of action is not conclusive that the tenant has none." *Carter v. Cairo, Vincennes & Chicago Co.*, 240 Ill. 152, 157, 88 N.E. 493, 495 (1909). "Equity has jurisdiction to prevent waste and irreparable injury at the suit of an assignee of an oil and gas lease against an adverse lessee." *Gillespie v. Fulton Oil & Gas Co.*, 236 Ill. 188, 206, 86 N.E. 219, 226 (1908); see also *Carter Oil CO. v. Owen*, 27 F. Supp. 74, 77 (E.D., Ill. 1939).

Under the terms of its lease, Tri-Oil has the right to explore, capture, and produce oil on the Chance property. The trial court found Tri-Oil had a common law right to be free from trespass. Undisputed testimony indicated Trident has been trespassing onto the Chance lease to inject saltwater into the well. The court heard testimony that continued saltwater injection on the Chance lease could adversely affect the production of oil on the Chance lease. Like Trident's Chance lease, Tri-Oil's Chance lease is conditioned on Tri-Oil's production of oil. It is undisputed, and Trident concedes in its brief on appeal, that June 2001 was the last time oil produced

from the Chance wells was sold. Both Hardin's and Lanterman's testimony indicated Trident's lease terminates if oil production ceases. Moreover, on appeal, Trident *concedes* the evidence presented shows a reasonable likelihood Trident's lease for the Chance premises could in fact be terminated.

Without ruling on the ultimate issue of the status of Tri-Oil's lease rights in relation to Trident's, we find Tri-Oil has raised a fair question regarding its rights. Thus, the trial court did not abuse its discretion in finding Tri-Oil possesses a clearly ascertainable right in need of protection.

4. Irreparable Injury

Trident argues Tri-Oil failed to establish irreparable harm would occur if the injunction were not granted. Specifically, Trident contends (1) oil migration is not a recognized harm in Illinois, and (2) there is no evidence to show any oil is moving between the leases.

Trident, citing federal case law, argues the common-law rules of capture dictate title in oil is achieved only when it is produced and not in the ground, and as a result, there can be no harm in this case. See *Drilling Service*, 322 F. Supp. 2d at 971. However, this is not a case where Trident has simply set up a well on the adjacent property and tapped into a common reserve running underneath both leases. Instead, in this case, Tri-Oil presented testimony Trident's saltwater injections caused oil to flow from the Chance property to the Folonie property. See *Kendra Oil & Gas, Inc. v. Homco, Ltd.*, 879 F.2d 240, 244 (7th Cir. 1989) (finding damages as a result of an oil well spacing violation by the defendant because the activity harmed the oil production on the plaintiff's adjoining lease).

Trident argues no evidence was presented to show any oil is moving between the

properties. However, Tri-Oil's expert witness testified oil had migrated from the Chance property to the Folonie property. Trident's expert witness testified that while the injections were increasing the pressure on Chance and decreasing pressure on Folonie, the injections of saltwater benefit Tri-Oil. Both parties' experts testified oil is not a renewable resource. While there were competing opinions from expert witnesses, the trial court found Tri-Oil's witness more credible. It is the responsibility of the trier of fact to assess the credibility of witnesses and to resolve conflicts in their testimony. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). The credibility of witnesses is an issue of fact "exclusively within the province of the trier of fact." *People v. Wittenmyer*, 151 Ill. 2d 175, 191, 601 N.E.2d 735, 743 (1992). Thus, we will not substitute our judgment for that of the trial court in this area. *Ortiz*, 196 Ill. 2d at 259, 752 N.E.2d at 425.

Trident argues no irreparable harm exists because any damages are easily quantifiable. However, considering the potential negative impact continued saltwater injection could have on oil production on the Chance property, and testimony indicating anywhere between 25 and 40% of Folonie's oil has come from Chance, we cannot say the trial court's finding of irreparable injury was manifestly erroneous. Thus, the trial court did not err in finding Tri-Oil would suffer irreparable harm if the injunction was not granted.

5. Adequate Remedy at Law

Trident argues the trial court abused its discretion in finding there was no adequate remedy at law for the alleged oil migration and saltwater injection. Specifically, Trident contends money damages are adequate and available to compensate Tri-Oil.

In this case, Hardin testified Trident's insurance carrier had denied coverage for

any of Tri-Oil's legal claims. Hardin also testified trucking the saltwater away instead of injecting it into the Chance well would not be economically feasible because of the production levels on the Folonie lease. Hardin testified the average daily oil production by Trident on the Folonie property is approximately 4 barrels or \$300 per day in gross revenue. Tri-Oil also introduced evidence concerning the number of wells Trident had in the State's PRF Fund as further evidence of Trident's questionable financial condition.

We find Tri-Oil has raised a fair question regarding Trident's financial condition and the availability of money damages. As a result, the trial court did not abuse its discretion in determining Tri-Oil lacked an adequate remedy at law.

6. Likelihood of Success on the Merits

Trident argues the trial court abused its discretion when it found Tri-Oil had a likelihood of success on the merits. Specifically, Trident contends Tri-Oil had no chance of success on the merits for the trespass claim, upon which Trident argues the entire injunction is predicated.

We note Trident concedes the evidence shows a reasonable likelihood Trident's lease for the Chance premises could in fact be terminated. However, it maintains termination of that lease does not establish the likelihood Tri-Oil will succeed on its equipment abandonment or trespass claims.

Trident argues Tri-Oil will not succeed on its abandonment or trespass claims because Hardin's testimony established (1) Trident had expended a great deal of money to restore production to the Chance lease, (2) one of the wells was restarted, and (3) Trident did not abandon its equipment because it was using Chance's saltwater well.

However, an ultimate issue in this case concerns Trident's oil production on the Chance premises. According to the evidence presented, the terms of the Trident lease required production for the Chance lease to continue. Testimony also established the cessation of oil production under the terms of the lease operates to terminate the lease. On appeal, Trident concedes it has not sold oil from the Chance wells since June 2001.

Further, while Hardin testified one of the Chance wells was restarted, he also testified it was later shut down without any oil having been produced. To this point, Trident has not presented any conclusive evidence to show it had reinitiated oil *production* on the Chance property. Tri-Oil has argued property on a terminated lease is deemed abandoned and property of the landowner if not removed within a reasonable amount of time. See *Spies v. DeMayo*, 396 Ill. 255, 275, 72 N.E.2d 316, 325-26 (1947) ("Equipment abandoned with an oil lease becomes the lessor's property"). Tri-Oil also presented testimony it contracted with the Chance property's landowner, Siegel Trusts, for an assignment of any abandoned equipment on the Chance property. Thus, if the trial court ultimately determines Trident's lease terminated because oil production ceased, the likelihood exists Tri-Oil--through its contract with Siegel Trusts--would be entitled to any abandoned equipment.

Considering Trident's concession and the evidence presented at the hearings in this case, we find Tri-Oil has raised a fair question regarding its ultimate success on the merits. Thus, the trial court did not abuse its discretion when it found Tri-Oil had a likelihood of success on the merits.

7. Status Quo

Trident argues the injunction did not preserve the status quo. Tri-Oil, however,

argues the existing status quo amounted to an illegal trespass.

Generally, a trial court should issue a preliminary injunction to preserve the status quo of the parties instead of altering it. *People v. Van Tran Electric Corp.*, 152 Ill. App. 3d 175, 183, 503 N.E.2d 1179, 1184 (1987). However, in certain circumstances, altering the status quo may be appropriate. See *Keystone Chevrolet Co. v. Kirk*, 69 Ill. 2d 483, 486, 372 N.E.2d 651, 652-53 (1978).

In this case, the status quo was an alleged trespass onto property owned by Siegel Trusts and leased by Tri-Oil. Hardin testified Trident could set up an injection well on the Folonie lease at less cost if it took the saltwater pump and equipment from the Chance lease. Testimony also indicated two pump jacks were previously removed from the Chance property. An injunction would prevent Trident from removing the equipment at issue in this case. The trial court did not abuse its discretion.

8. Balance of Equities

Trident argues any balancing of hardships or equities would favor denial of the injunction. Specifically, Trident contends the expense of being forced to alter its operations far exceeds Tri-Oil's speculative and unlikely harm.

"In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction." *Schweickart v. Powers*, 245 Ill. App. 3d 281, 291, 613 N.E.2d 403, 410-11 (1993). However, weighing the equities is unnecessary where, as here, the alleged act is tortious. *Barrett v. Lawrence*, 110 Ill. App. 3d 587, 593, 442 N.E.2d 599, 603 (1982).

C. Breadth of the Injunction

Trident argues the trial court's injunctive order is overly broad because it enjoined the removal of the saltwater pump and oil production equipment. Specifically, Trident contends (1) Tri-Oil has no ascertainable right in relation to the removal of the equipment, (2) Tri-Oil has not established irreparable harm would result if the removal of the equipment was not enjoined, (3) there exists an adequate remedy at law if the equipment removal is not enjoined, (4) Tri-Oil has no chance of success on the merits, (5) the injunction did not preserve the status quo, and (6) equities favor allowing Trident to remove its equipment.

The trial court enjoined Trident from, *inter alia*, the following:

"Removal of any equipment including steel and fiberglass tanks, the tank batteries, saltwater injection pump(s), motors(s), switch[(es)], flow lines, tubing, rods, casing, well pumps or other oil producing or storage equipment from the chance lease."

As previously stated, however, one of the ultimate issues in this case is whether Trident terminated its lease by abandoning oil production on the Chance premises. "Cessation of operations for a considerable period of time, if unexplained, may be sufficient to warrant a declaration as a matter of law that an oil lease has been abandoned." *Spies*, 396 Ill. at 275, 72 N.E.2d at 325-26. A lessee who abandons its lease and fails to remove its property within a reasonable time also abandons that property. *Spies*, 396 Ill. at 275, 72 N.E.2d at 325-26. Such property becomes the property of the owner of the land. *Spies*, 396 Ill. at 275, 72 N.E.2d at 325-26. Here, Tri-Oil presented testimony from Lanterman showing Tri-Oil had a contractual legal interest in the oil production equipment on the Chance property by assignment from the

landowner.

According to Hardin's testimony, hauling the saltwater away instead of injecting it into the Chance well would not be economically feasible for Trident due to the low production levels on the Folonie lease. Trident needed to dispose of saltwater to produce oil on the Folonie lease. Hardin testified Trident would prefer to remove the equipment from the Chance property rather than purchase new equipment. Lanterman and Hardin's testimony also suggested Trident had previously removed oil production equipment from the Chance property in the past. Thus, there exists a likelihood that absent the injunction, Trident would remove the equipment.

Tri-Oil would be harmed by the removal of the equipment because Tri-Oil requires it for its own oil production on the Chance property under the terms of its lease. The evidence presented indicates money damages would not be available in the event Tri-Oil succeeds on the merits of its complaint because of Trident's questionable financial situation and the fact its insurance carrier refused to provide coverage for an adverse judgment in this case.

Additionally, for the reasons already stated in this order, (1) a likelihood of plaintiffs' success on the merits exists, (2) no need exists to stay the status quo when the status quo involves an ongoing trespass, and (3) weighing the equities is unnecessary where the alleged act is tortious.

Considering the evidence presented at the hearings, we cannot conclude the trial court acted arbitrarily when it enjoined Trident from removing the equipment from the Chance property.

III. CONCLUSION

For the foregoing reasons, we dismiss this appeal in part and affirm the trial

court's judgment.

Appeal dismissed in part; judgment affirmed.