

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 3/26/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHARLES EASTWOOD, ) No. 1 CA-CV 11-0554  
) CA-CV 12-0016  
Plaintiff/Appellee, ) (Consolidated)  
)  
v. ) DEPARTMENT D  
)  
ATLAS LOCKSMITH SOLUTIONS, ) Maricopa County  
) Superior Court  
L.L.C.; MILLER LOCK & SAFE, )  
L.L.C.; MILLENNIUM LOCKSMITH, ) No. CV2010-027605  
L.L.C.; COMPLETE LOCKSMITH )  
SERVICES, L.L.C.; APPLE ) **D E C I S I O N**  
CONTRACTING, L.L.C., and ADAM ) **O R D E R**  
AVIGDOR, )  
)  
Defendants/Appellants. )  
\_\_\_\_\_ )

This action came on regularly for oral argument on November 21, 2012 before Presiding Judge Michael J. Brown, Judge Andrew W. Gould, and Judge Donn Kessler. For the following reasons, we conclude Appellants' appeal is moot.

This is an appeal from the superior court's grant of a preliminary injunction in favor of Charles Eastwood. Eastwood initiated the underlying lawsuit to recover monetary damages for Appellants'<sup>1</sup> alleged violation of Arizona Revised Statutes

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<sup>1</sup> Numerous additional defendants were included in this lawsuit, but they are no longer involved in the litigation.

section 44-1221 (2012);<sup>2</sup> he also sought preliminary and permanent injunctions to enjoin Appellants' conduct. The superior court granted the preliminary injunction. However, while the appeal from that decision was pending in our court, the superior court dismissed, without prejudice, the underlying action pursuant to Arizona Rule of Civil Procedure 38.1(d) for Eastwood's lack of prosecution. After the dismissal was brought to the attention of Eastwood's counsel at oral argument before this court, Eastwood moved the superior court to reconsider its dismissal. The court initially granted the motion for reconsideration; however, after recognizing it had not provided the defendants an opportunity to respond to the motion, the court allowed additional briefing. On March 11, 2013, in an unsigned minute entry, the superior court affirmed dismissal of the underlying case.

A preliminary injunction is an equitable remedy. *Ayer v. General Dynamics Corp.*, 128 Ariz. 324, 326, 625 P.2d 913, 915 (App. 1980). As such, it affords temporary, preliminary relief and is designed only to maintain the status quo pending resolution of the underlying claims. See *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990) (recognizing the purpose of a preliminary injunction is to maintain the status

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<sup>2</sup> Absent material revisions after the relevant date, we cite a statute's current version.

quo); *Cracchiolo v. State*, 135 Ariz. 243, 247, 660 P.2d 494, 498 (App. 1983) (recognizing that a preliminary injunction preserves the status quo); *Burton v. Celentano*, 134 Ariz. 594, 595, 658 P.2d 247, 248 (App. 1982) (same); 42 Am. Jur. 2d *Injunctions* § 11 (2013) (stating that preliminary injunctions "are designed simply to preserve the status quo pending resolution of the merits of the case").

Because the superior court has dismissed all of the underlying claims in this case for lack of prosecution, any decision rendered by this court on the merits would be meaningless. See *Baker v. Bray*, 701 F.2d 119, 122 (10th Cir 1983) ("[T]he claim upon which the request for a preliminary injunction was based . . . was dismissed by the district court, and this action certainly mooted the [preliminary injunction]."); see also *Runs After v. U.S.*, 766 F.2d 347, 355 (8th Cir. 1985) (dismissing as moot an appeal from denial of preliminary injunction because underlying claims dismissed); *Ruby v. Pan Am. World Airways, Inc.*, 360 F.2d 691, 691 (2d Cir. 1966) (stating that an appeal from denial of preliminary injunction becomes moot when the underlying claim is dismissed); *Lake Charles Metal Trades Council v. Newport Indus.*, 181 F.2d 820, 821 (5th Cir. 1950) (same). Based on these authorities, we conclude that this appeal must be dismissed as moot. *Bank of New York Mellon v. De Meo*, 227 Ariz. 192, 193-94, ¶ 8, 254 P.3d

1138, 1139-40 (App. 2011) ("A decision becomes moot for purposes of appeal where as a result of a change of circumstances before the appellate decision, action by the reviewing court would have no effect on the parties." (citation omitted)). Accordingly,

**IT IS ORDERED** dismissing this appeal as moot.

**IT IS FURTHER ORDERED** remanding this case to the superior court for further proceedings consistent with this decision order.

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Presiding Judge