NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0964

CHARLES ALBERT MENDY

VERSUS

PAUL BRYANT; BRYANT BUILDING CONSTRUCTION, INC.; BRYANT BUILDING CONSTRUCTION WAREHOUSE, LLC AND BRYMEN DEVELOPMENT, LLC

Judgment Rendered: FEB 21 2018

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 654346

Honorable Donald R. Johnson, Judge

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Charles A. Mendy
New Orleans, LA

Appellee – In Proper Person
Plaintiff – Charles Albert Mendy

Eric D. Torres
New Orleans, LA

Attorney for Appellant
Defendant – Paul Bryant, Bryant Building and Construction, Inc., Bryant Building and Construction Warehouse, LLC

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BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

McClendon, J. concurs in the Result reached by the majority.

WELCH, J.

Paul Bryant; Bryant Building and Construction, Inc. ("Bryant Construction"); and Bryant Building and Construction Warehouse, LLC ("Bryant Warehouse") appeal a judgment in favor of Charles Albert Mendy that, among other things, granted Mr. Mendy's request for the judicial dissolution of Bryant Construction, Bryant Warehouse, and Brymen Development, LLC ("Brymen"); appointed a temporary liquidator to take over the management and supervision of Bryant Construction, Bryant Warehouse, and Brymen; and enjoined Mr. Bryant, Bryant Construction, Bryant Warehouse, and Brymen from disposing of any assets or expending any funds of those entities without consent of the temporary liquidator.[1] For reasons that follow, we reverse in part and vacate in part the judgment of the trial court.

BACKGROUND

The plaintiff, Mr. Mendy, is a "community organizer," "real estate investor," "restauranteur," "entrepreneur," and caterer. The defendants are Mr. Bryant, a contractor licensed by the State of Louisiana; Bryant Construction, a Louisiana corporation formed on July 3, 1997, whose sole officer (or director) and shareholder is (and always has been) Mr. Bryant; Bryant Warehouse, a Louisiana limited liability company formed on November 3, 2016, with Mr. Bryant as its sole member; and Brymen, a Louisiana limited liability company formed on September 7, 2016, with Mr. Bryant and Mr. Mendy as its members.

Mr. Mendy and Mr. Bryant have known each other for several years. In April 2016, they began discussing business arrangements for the development and construction of residential property in the Baton Rouge area. At the time, Mr. Bryant was working for a larger construction corporation, and his contractor's license and his construction company (Bryant Construction) were inactive. In

[1] Brymen has not appealed the judgment of the trial court.

furtherance of Mr. Mendy's and Mr. Bryant's goal of developing and constructing houses, Mr. Mendy and Mr. Bryant formed Brymen, Mr. Bryant's contractor's license was re-issued, and Bryant Construction was re-activated or reinstated. In addition, Mr. Bryant, as president of Bryant Construction, executed a commercial lease for a building (warehouse) out of which Bryant Construction would operate; Mr. Mendy also signed the lease as guarantor. With respect to Brymen, Mr. Mendy was supposed to provide working capital, and Mr. Bryant was supposed to provide contracting expertise through Bryant Construction and source building materials and other supplies. However, Brymen was never funded with working capital, and it never developed or built a single house.

In August 2016, unprecedented flooding occurred in the Baton Rouge area. Mr. Bryant and Bryant Construction became involved in rebuilding houses and sourcing and selling construction materials and other supplies through the warehouse ("the warehousing operations"). Mr. Mendy performed various tasks for Bryant Construction and also began managing the warehousing operations. On November 3, 2016, Mr. Bryant, on the advice of his accountant, formed Bryant Warehouse to separate the warehousing operations from Bryant Construction. However, by that time, the business relationship between Mr. Mendy and Mr. Bryant had fallen apart, and on November 16, 2016, Mr. Mendy had to be forcibly removed from the premises of Bryant Construction and Bryant Warehouse.

On January 10, 2017, Mr. Mendy commenced these proceedings by filing a petition for involuntary dissolution under court supervision and for appointment of a temporary and/or judicial liquidator, writ of mandamus, breach of fiduciary duties, accounting, and unjust enrichment. Essentially, in the petition, Mr. Mendy claimed that he had a 50% ownership interest not only in Brymen, but also in Bryant Construction and Bryant Warehouse. He also claimed that he contributed capital for Bryant Construction and was instrumental in setting up its business

operations. Therefore, Mr. Mendy sought to enjoin Mr. Bryant, Bryant Construction, Bryant Warehouse, and Brymen from disposing of any assets or expending any proceeds of those entities, to judicially dissolve Bryant Construction, Bryant Warehouse, and Brymen, and to have a temporary or judicial liquidator appointed to oversee the dissolution of and to preserve the assets and funds of those entities. Mr. Mendy also made a claim for damages for breach of fiduciary duty and unjust enrichment.

In response to the petition, Mr. Bryant, Bryant Construction, and Bryant Warehouse filed an opposition to the request for injunction, judicial dissolution, and appointment of a liquidator; a peremptory exception raising the objections of no cause of action and no right of action; and a dilatory exception raising the objection of prematurity. Essentially, Mr. Bryant claimed that Mr. Mendy had a 50% ownership interest in Brymen only and that Mr. Mendy had no interest in either Bryant Construction or Bryant Warehouse. Mr. Bryant argued that since Mr. Mendy was not a director or shareholder in Bryant Construction nor a member of Bryant Warehouse, under Louisiana corporate law, he did not have standing or the right to request judicial dissolution of either entity or to have a liquidator appointed to oversee the dissolution of those entities. Mr. Bryant also filed an answer generally denying the allegations of Mr. Mendy's petition and a reconventional demand asserting claims against Mr. Mendy for conversion and detrimental reliance.[2]

After an evidentiary hearing, the trial court rendered and signed a judgment on May 1, 2017, which overruled Mr. Bryant's objections of no cause of action and no right of action;[3] granted Mr. Mendy's request for the judicial dissolution of

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[2] The record before us does not contain any responsive pleadings that were filed by or on behalf of Brymen.

[3] The judgment does not reflect that a ruling was issued on the objection of prematurity; therefore, that objection is deemed overruled. See **Schoolhouse, Inc. v. Fanguy**, 2010-2238 (La.

Bryant Construction, Bryant Warehouse, and Brymen; appointed a temporary liquidator; set the liquidator's hourly rate of pay; ordered the temporary liquidator to take over the management and supervision of Bryant Construction, Bryant Warehouse, and Brymen and provided the liquidator with specific authority to conduct certain matters and prepare certain reports for the corporate entities; ordered Mr. Bryant, Bryant Construction, Bryant Warehouse, and Brymen to provide the liquidator with certain documents and records; enjoined Mr. Bryant, Bryant Construction, Bryant Warehouse and Brymen from disposing of any assets of those entities or expending any of the funds of those entities without the consent of the liquidator;[4] and ordered that the defendants be cast with all costs of the proceedings and reasonable attorney fees.[5] From this judgment, Mr. Bryant, Bryant Construction, and Bryant Warehouse have appealed.

App. 1st Cir. 6/10/11), 69 So.3d 658, 664 (providing that silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is generally deemed a rejection of the claim and the relief sought is presumed to be denied).

[4] We note that the language of the judgment is inconsistent with respect to whether an injunction was issued, as the judgment provides "that a preliminary and/or permanent injunction should **not** issue in this matter;" however, the judgment then "enjoin[ed]" Mr. Bryant, Bryant Construction, Bryant Wharehouse and Brymen from "(1) disposing of any assets of [those corporate entities], or (2) expending any funds of [those corporate entities] without the consent of the [t]emporary [l]iquidator or [j]udicial liquidator or as further ordered of this court." (Emphasis added). The trial court's written reasons reflect that although the court "decline[d] to issue an injunction in this matter as it [was] unnecessary in conjunction with the appointment of the [t]emporary [l]iquidator[,]" it then prohibited [Mr. Bryant, Bryant Construction, Bryant Warehouse, and Brymen] from disposing of any assets or expending any funds of [those corporate] entities without the consent of the [t]emporary [l]iquidator or [j]udicial [l]iquidator, if later appointed by this [c]ourt." Thus, although the trial court stated that it was not granting an injunction, the language of and effect of the judgment clearly restricts the activities of Mr. Bryant, Bryant Construction, Bryant Warehouse, and Brymen.

[5] The record before us does not reflect the legal basis for the trial court's award of "reasonable attorney fees" in favor of Mr. Mendy, but it appears to have been rendered in furtherance of the injunction, dissolution, and appointment of a temporary liquidator for Bryant Construction and Bryant Warehouse. Because those orders of the trial court relative to the injunction, dissolution, and appointment of a liquidator are reversed herein and all provisions that were rendered in furtherance of those orders are vacated herein, we need not address the propriety of this provision in the judgment and whether it is properly before us in this restricted appeal. C.f. **In re Interdiction of Metzler**, 2015-0982 (La. App. 1st Cir. 2/22/16), 189 So.3d 467, 469 (holding that a judgment awarding a party all attorney fees and costs incurred, but not setting forth a specific amount of attorney fees, was not a final, appealable judgment because it lacked precision, definition, and certainty).

On appeal, Mr. Bryant, Bryant Construction, and Bryant Warehouse essentially argue that the trial court erred in granting the injunction against them because Mr. Mendy failed to prove irreparable injury and that it erred in granting the judicial dissolution of and appointment of a liquidator over Bryant Construction and Bryant Warehouse because Mr. Mendy was not entitled to such relief under Louisiana corporate law.[6]

INJUNCTION

The trial court issued a preliminary injunction prohibiting Mr. Bryant, Bryant Construction, and Bryant Warehouse from disposing of any assets of those entities or expending any of the funds of those entities without the consent of the temporary liquidator. A preliminary injunction is an interlocutory procedural device designed to preserve the status quo between the parties pending a trial on the merits. **Acadian Ambulance Service, Inc. v. Parish of East Baton Rouge**, 97-2119 (La. App. 1st Cir. 11/6/98), 722 So.2d 317, 322, writ denied, 98-2995 (La. 12/9/98), 729 So.2d 583. An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law. La. C.C.P. art. 3601(A). Generally, a party seeking the issuance of a preliminary injunction must show that he will suffer irreparable injury, loss, or damage if the injunction does not issue and must show entitlement to the relief sought; this must be done by a *prima facie* showing that the party will prevail on the merits of the case. **Adler v. Williams**, 2016-0103 (La. App. 1st Cir. 9/16/16), 203 So.3d 504, 512-513. "Irreparable injury" is considered to be a loss

[6] We note that an appeal may be taken as a matter of right from an order or judgment relating to a preliminary injunction. See La. C.C.P. art. 3612(B). Furthermore, in the case of a restricted appeal, such as this, an appellant may also challenge interlocutory rulings involving *the same or related issues*. **Roba, Inc. v. Courtney**, 2009-0509 (La. App. 1st Cir. 8/10/10), 47 So.3d 509, 514 n.12; **State ex rel. Div. of Admin., Office of Risk Management v. National Union Fire Ins. Co. of Louisiana**, 2010-0689 (La. App. 1st Cir. 2/11/11), 56 So.3d 1236, 1242 n.6, writ denied, 2011-0849 (La. 6/3/11), 63 So.3d 1023. In this case, by the express terms of the judgment, the issue of the judicial dissolution and appointment of a liquidator is integrally related to the issue of the injunction. As such, the issue of the judicial dissolution and appointment of the liquidator is properly before us in this restricted appeal of a judgment relating to an injunction.

sustained by an injured party, which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard. **Sorrento Companies, Inc. v. Honeywell Intern., Inc.**, 2004-1884 (La. App. 1st Cir. 9/23/05), 916 So.2d 1156, 1163, writ denied, 2005-2326 (La. 3/17/06), 925 So.2d 541. Appellate review of a trial court's ruling as to the issuance of a preliminary injunction will not be disturbed unless a clear abuse of discretion is shown. **Concerned Citizens for Proper Planning, LLC v. Parish of Tangipahoa**, 2004-0270 (La. App. 1st Cir. 3/24/05), 906 So.2d 660, 663.

In this case, the evidence at the hearing focused on the business dealings of Mr. Mendy and Mr. Bryant, the establishment of the corporate entities at issue, and the contributions (or lack thereof) to those entities by Mr. Bryant and Mr. Mendy. According to the evidence, Mr. Mendy is a member of Brymen; he is not a shareholder, officer, or director of Bryant Construction, and he is not a member of Bryant Warehouse. In addition, Mr. Mendy is not a licensed contractor, although he is a licensed mold remediator. Mr. Bryant is a licensed contractor, and he incorporated Bryant Construction in July 1997 and has always been its sole director and shareholder. Since Mr. Bryant has been in the construction business for years, he has extensive contacts in the construction supply business and has previously sold construction supplies through another corporate entity. Following the flooding in the Baton Rouge area, Mr. Bryant resumed selling building and construction supplies and incorporated Bryant Warehouse in November 2016. Mr. Bryant never intended to nor executed any documents establishing that he was sharing his interest in either Bryant Construction or Bryant Warehouse with Mr. Mendy.

Mr. Mendy signed, as "guarantor," the commercial lease for the building out of which Bryant Construction and Bryant Warehouse operated, and he paid the deposit and first month's rent for that building. Mr. Mendy also claimed that he

paid various start-up costs for Bryant Construction, that he incurred various expenses for Bryant Construction, and that he undertook certain tasks on behalf of Bryant Construction and the warehousing operations, such as applying for licenses and insurance, setting up vendor accounts, setting up client accounts, marketing, hiring employees and contractors, transporting and feeding employees, renting and purchasing equipment, and supervising operations. Mr. Mendy testified that this work entitled him to be compensated for the value of his time—*i.e.*, a minimum of $10,000 per month—and to be reimbursed for the start-up costs and expenses that he incurred or paid. Mr. Mendy also stated that he wanted an apology from Mr. Bryant.

Based on our review of the evidence, particularly the testimony of Mr. Mendy, we cannot say that Mr. Mendy was seeking an injunction to preserve the *status quo* of the parties until all of the facts and pleadings could be resolved or that irreparable injury, loss, or damage would result to Mr. Mendy if an injunction were not issued, particularly since Mr. Mendy is not a shareholder, officer, or director of Bryant Construction, or a member of Bryant Warehouse. Notably, all of Mr. Mendy's requests for relief (other than the request for an apology) are economic or pecuniary in nature, and as such, do not constitute irreparable injury. Likewise, Mr. Mendy's desire for an apology from Mr. Bryant does not constitute irreparable injury, loss, or damage that warrants an injunction. Since Mr. Mendy failed to establish that he would suffer irreparable injury without an injunction nor is this a case "specifically provided by law," we find that there was no basis for the trial court to impose an injunction and the trial court clearly abused its discretion in enjoining Mr. Bryant, Bryant Construction, and Bryant Warehouse from disposing of any assets of those entities or expending any of the funds of those entities without the consent of the liquidator. Therefore, that portion of the judgment of the trial court is reversed.

JUDICIAL DISSOLUTION AND APPOINTMENT OF LIQUIDATOR

The trial court also determined that Mr. Mendy was entitled to the involuntary or judicial dissolution of Bryant Construction and Bryant Warehouse and to have a liquidator appointed to assume management and supervision duties of those entities for the dissolution, including conducting an audit of the entities and preparing a profit and loss statement and balance sheet.

Generally, a trial court's decision regarding whether judicial dissolution of a corporate entity is warranted is reviewed under the manifest error/clearly wrong standard of review. See generally **South Louisiana Ethanol L.L.C. v. CHS-SLE Land**, 2014-0127 (La. App. 4th Cir. 2/4/15), 161 So.3d 83, 95-96, writ denied, 2015-0481 (La. 05/15/15), 170 So.3d 967; **In re P.K. Smith Motors, Inc.**, 50,357 (La. App. 2nd Cir. 3/9/16), 188 So.3d 324, 336, writ denied, 2016-0852 (La. 6/17/16), 192 So.3d 771. In this case, however, the trial court's reasons for judgment reflect that it granted Mr. Mendy's request for the judicial dissolution of Bryant Construction, Bryant Warehouse, and Brymen pursuant to La. R.S. 12:143 and that it appointed the liquidator to those entities pursuant to La. R.S. 12:143(E). Notably, La. R.S. 12:143 was repealed in its entirety by 2014 La. Acts, No. 328, § 5, eff. Jan. 1, 2015, and thus, was not in effect when the parties began discussing business arrangements in April 2016, when the parties formed Brymen in September 2016, when the parties relationship deteriorated in November 2016, or when Mr. Mendy filed this suit in January 2017. As such, we find that the trial court, having applied a statute that was no longer in effect at any time pertinent to this case, made an error of law in its ruling. Therefore, the manifest error standard of review is not applicable and this court must render judgment on the record by applying the correct law and determining the essential material facts *de novo*. See **Evans v. Lungrin**, 97-0541, 97-0577 (La. 2/6/98), 708 So.2d 731, 735.

With regard to corporations, dissolution of the corporate entity can be proposed by a director of the corporation for submission to shareholders in accordance with the provisions set forth in La. R.S. 12:1-1402. In addition, under certain circumstances, which are enumerated in La. R.S. 12:1-1430, a corporation may be judicially dissolved in a proceeding brought by the attorney general, by a shareholder or shareholders, by the corporation, or by a creditor of the corporation if the creditor's claim has been reduced to a judgment or there is an admission of the creditor's claim in writing. Furthermore, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more liquidators to wind up and liquidate the business and affairs of the corporation. La. R.S. 12:1-1432(A). The court shall describe the powers and duties of the liquidator in its appointing order, may order the liquidator to file reports with the court, and may order the compensation to be paid to the liquidator. La. R.S. 12:1-1432 (C) and (E).

Limited liability companies may be dissolved and its affairs wound up by a majority vote of the members. See La. R.S. 12:1318(B)(1). In addition,"[o]n application by or for a member [of a limited liability company], any court of competent jurisdiction may decree [its] dissolution ... whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement." La. R.S. 12:1335. See also La. R.S.12:1334 (providing that except as provided in the articles of organization or a written operating agreement, a limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following: the occurrence of events specified in writing in the articles of organization or operating agreement; the consent of its members in accordance with R.S. 12:1318; or entry of a decree of judicial dissolution under R.S. 12:1335).[7] Except as otherwise provided in the

[7] In addition to all other methods of dissolution, if a limited liability company is no longer doing business, owes no debts, and owns no immovable property, it may be dissolved by filing an affidavit with the secretary of state executed by the members or by the organizer, if no

articles of organization or a written operating agreement, upon dissolution of a limited liability company, the members shall wind up the company's affairs; the wind up of the limited liability company's affairs may be conducted by appointment of one or more liquidators. La. R.S. 12:1336. However, the appointment of a liquidator shall not be operative until the specific requirements set forth in La. R.S. 12:1336(A) have been met, *i.e.*, publication of a notice of authorization of the dissolution and filing articles of dissolution with the secretary of state. La. R.S. 12:1336(A)(1) and (2). However, any court of competent jurisdiction may wind up the limited liability company's affairs on application of any member or his legal representative or assignee or of any liquidator. La. R.S. 12:1336(B).

In this case, the record establishes that Bryant Construction is a corporation and that Bryant Warehouse is a limited liability company. However, at the hearing on the request for judicial dissolution and appointment of a liquidator, Mr. Mendy failed to produce any evidence establishing that he was a director, shareholder, or creditor (whose claim has been reduced to judgment) of Bryant Construction or that he was a member of Bryant Warehouse. To the contrary, the evidence established that Mr. Mendy is not and has never been a shareholder or director of Bryant Construction, and he is not and never has been a member of Bryant Warehouse. Accordingly, Mr. Mendy failed to establish that he was entitled to the judicial dissolution of either Bryant Construction or Bryant Warehouse. Likewise, since Mr. Mendy failed to prove that he was entitled to the judicial dissolution of those entities, he was not entitled to have the court appoint a liquidator to assume management and supervision duties of those entities, including conducting an audit of the entities and preparing a profit and loss statement and balance sheet.

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membership interests have been issued, attesting to such facts and requesting that the limited liability company be dissolved. La. R.S. 12:1335.1. The provision is not applicable to this appeal.

Therefore, we reverse those portions of the May 1, 2017 judgment of the trial court granting Mr. Mendy's request for the involuntary or judicial dissolution of Bryant Construction and Bryant Warehouse and appointing a liquidator to take over the management and supervision of Bryant Construction and Bryant Warehouse. In addition, the provisions of the judgment that were rendered in furtherance of those orders, *i.e.*, ordering Mr. Bryant, Bryant Construction, and Bryant Warehouse to provide the liquidator with certain documents and records of Bryant Construction and Bryant Warehouse ordering the liquidator to conduct an audit and prepare a profit and loss statement and a balances sheet, and ordering Mr. Bryant, Bryant Construction, and Bryant Warehouse to pay costs of the proceedings and reasonable attorney, are vacated.

CONCLUSION

For all of the above and foregoing reasons, the May 1, 2017 judgment of the trial court is reversed insofar as it enjoined Mr. Bryant, Bryant Construction, and Bryant Warehouse from disposing of any assets of those entities or expending any of the funds of those entities without the consent of the liquidator. The judgment of the trial court is also reversed insofar as granted the involuntary or judicial dissolution of Bryant Construction and Bryant Warehouse, appointed a liquidator to take over the management and supervision of Bryant Construction and Bryant Warehouse, and provided the liquidator with specific authority to conduct certain matters and prepare certain reports. In addition, the provisions of the May 1, 2017 judgment that were rendered in furtherance of the trial court's order appointing a liquidator, *i.e.*, ordering Mr. Bryant, Bryant Construction, and Bryant Warehouse to provide the liquidator with certain documents and records, ordering the liquidator to conduct and audit and prepare a profit and loss statement and a balance sheet, and ordering that Mr. Bryant, Bryant Construction, and Bryant

Warehouse be cast with all costs of the proceedings and reasonable attorney fees, is vacated. [8]

All costs of these proceedings are assessed to the plaintiff/appellee, Charles Albert Mendy.

REVERSED IN PART; VACATED IN PART.

[8] As previously noted, Brymen has not appealed the judgment of the trial court; therefore, as to Brymen, we leave the judgment of the trial court undisturbed.