[Cite as *Quinlivan v. H.E.A.T. Total Facility Solutions, Inc.*, 2010-Ohio-1603.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Joshua Quinlivan	Court of Appeals No. L-10-1058
Appellee	Trial Court No. CI00201001738
v.	
H.E.A.T. Total Facility Solutions, Inc., et al.	**DECISION AND JUDGMENT**
Appellants	Decided: April 8, 2010

* * * * *

Martin T. Galvin, James E. Peters, and David R. Hudson, for appellants.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court sua sponte. On February 26, 2010, defendants/third-party plaintiffs-appellants, H.E.A.T. Total Facility Solutions, Inc. and Ronald Thomas, II, filed their notice of appeal from the trial court's February 23, 2010 judgment granting plaintiff/third-party defendant-appellee's, Joshua Quinlivan, "Motion for Preliminary Injunction." Based upon our review of the record in this matter, the court

finds the judgment being appealed is not a final appealable order and this court lacks jurisdiction to hear this appeal.

{¶ 2} Recently, in *Obringer v. Wheeling & Lake Erie Ry. Co.*, 3d Dist. No. 3-09-08, 2010-Ohio-601, ¶ 17-19, our colleagues in the Third District Court of Appeals examined the analysis to be applied in determining whether a preliminary injunction qualifies as a final appealable order:

{¶ 3} "[P]reliminary injunctions are by nature interlocutory, tentative, and impermanent. *Burns v. Daily* (1996), 114 Ohio App.3d 693, 708; R.C. 2505.02(A)(3). As such, orders issuing or modifying preliminary injunctions are not final and appealable unless (1) '[t]he order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy', and (2) the party appealing from the order 'would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.' R.C. 2505.02(A)(3),(B)(4); *Patio Enclosures, Inc. v. Lanigan*, 9th Dist. No. 21102, 2002-Ohio-6459, ¶ 8. Both requirements must be satisfied for an order to be final and appealable. R.C. 2505.02(A)(3),(B)(4); *Hootman v. Zock*, 11th Dist. No.2007-A-0063, 2007-Ohio-5619, ¶ 13.

{¶ 4} "* * * [T]o satisfy the second requirement of R.C. 2505.02(B)(4), * * * [the appellant] must demonstrate it will be deprived of 'a meaningful or effective remedy' if it cannot appeal now. See R .C. 2505.02(B)(4)(b). Courts have found that "'[i]t is well

established that the granting of a temporary or preliminary injunction, in a suit in which the ultimate relief sought is a permanent injunction, is generally not a final appealable order.'" *Hootman*, 2007-Ohio-5619, at ¶ 15, quoting *Woodbridge Condominium Owners' Assn. v. Friedland*, 11th Dist. No. 2003-L-072, 2004-Ohio-14, ¶ 4.

{¶ 5} "Additionally, courts have found that "'a preliminary injunction which acts to maintain the status quo pending a ruling on the merits is not a final appealable order under R.C. 2505.02.'" *Hootman*, 2007-Ohio-5619, at ¶ 16, quoting *E. Cleveland Firefighters, IAFF Local 500 v. E. Cleveland*, 8th Dist. No. 88273, 2007-Ohio-1447, ¶ 5; *Deyerle v. Perrysburg*, 6th Dist. No. WD-03-063, 2004-Ohio-4273, ¶ 15. Although 'status quo' has apparently not been defined by the General Assembly or by Ohio courts in the context of preliminary injunctions, the Supreme Court of Illinois has held that '[t]he status quo to be preserved by a preliminary injunction is the last, actual, peaceable, uncontested status which preceded the pending controversy.' *Postma v. Jack Brown Buick, Inc.* (1993), 157 Ill.2d 391, 626 N.E.2d 199, 202. The holdings of cases decided in Ohio courts evince a similar precedent for determining the status quo. See *Hootman*, 2007-Ohio-5619, at ¶ 17 (finding that the trial court was maintaining the status quo by ordering parties to remove an obstruction from a drainage ditch pursuant to a preliminary injunction order); *Neamonitis v. Gilmour Academy*, 8th Dist. No. 92452, 2009-Ohio-2023, ¶¶ 11-12 (finding that the trial court was maintaining the status quo by ordering a school, via temporary restraining order, to reinstate a student it had expelled, and then

granting preliminary injunction indefinitely extending the temporary restraining order); but, see, *Neamonitis*, 2009-Ohio-2023, at ¶ 22 (Kilbane, P.J., dissenting)."

{¶ 6} The judgment entering a preliminary injunction in this case is founded upon the trial court's finding that there was sufficient evidence to find the existence of a partnership between the parties. The trial court issued an injunction that included the following injunctive relief: (1) required the parties to cease engaging in any further communications with customers, employees, vendors, etc. from stating the parties have enagaged in illegal or unethical activities; (2) appointed a receiver by agreement of the parties to manage and oversee operations of the alleged partnership; (3) required appellee to manage and work towards completing the partnership's outstanding projects; (4) allowed appellee reasonable access to the partnership property. The trial court also required appellee to post security in the amount of $200,000 before the injunction would take effect.

{¶ 7} Thus, while appellants characterize the injunction as preventing them from conducting their business, the trial court crafted a preliminary injunction designed to maintain the status quo regarding the management of the business and completion of outstanding projects and contracts. The trial court also found the injunction protected the status quo of the contractual and business relations between both the parties and third-parties.

{¶ 8} The injunction entered is also temporary, not permanent in nature. The trial court recited that it retained jurisdiction to modify the order. The trial court also

expressly rejected appellants' request to consolidate the hearing on the preliminary injunction with a trial on the merits, pursuant to Civ.R. 65(B)(2), and found the parties needed to engage in additional discovery in preparing their respective claims for trial. We reject appellants' arguments that the trial court entered an order for permanent-injunctive relief.

{¶ 9} Appellants, presumably knowing the court would review this appeal for jurisdictional purposes, also state in their notice of appeal that the court has jurisdiction to review this case because the trial court "abused its discretion" in issuing the preliminary injunction. Appellants cite *State ex rel Cooc v. Lakis* (1964), 6 Ohio App.2d 238, and *Woodbridge Condominium Owners' Assn.* v. *Freidland,* 8th Dist. No. 2003-L-073, 2004-Ohio-14, ¶ 5, in support of the argument that a preliminary injunction entered by the trial court under "an abuse of discretion" affects a substantial right and is a final appealable order.

{¶ 10} The court rejects this argument for two principle reasons. First, we recognize under modern Ohio appellate law, an abuse of discretion by the trial court does not, in and of itself, render final and appealable an otherwise interlocutory order. See *Klein v. Bendix Westinghouse Auto. Air Brake Co.* (1968), 13 Ohio St.2d 85. See, also, *Martin v. Gen. Motors Acceptance Corp., N. Am.,* 160 Ohio App.3d 19, 2005-Ohio-1349, ¶ 63. Second, we again note the injunction entered by the trial court is not a permanent injunction. The trial court attempted to craft an injunction designed to maintain the status

quo, and appellants have not demonstrated they will be deprived a meaningful or effective remedy if they cannot appeal now.

{¶ 11} This case is dismissed for lack of a final appealable order. Appellants are ordered to pay costs pursuant to App.R. 24.

APPEAL DISMISSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE