

Opinion issued July 26, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00257-CV

**GREEN ACQUISITIONS, INC. D/B/A EVERLASTING GREEN, ALFREDO
RUIZ, AND MARITZA RUIZ, Appellants**

V.

EVERLASTING GREEN, LLC AND LORENZO TAMAYO, Appellees

**On Appeal from the 215th District Court
Harris County, Texas
Trial Court Case No. 2021-26441**

MEMORANDUM OPINION

In this case involving a commercial lease dispute, appellants Green Acquisitions, Inc. d/b/a Everlasting Green, Alfredo Ruiz, and Maritza Ruiz (collectively, “Green Acquisitions”) appeal from the trial court’s interlocutory order

denying their application for a temporary injunction prohibiting appellees Everlasting Green, LLC and Lorenzo Tamayo (collectively, “Everlasting Green”) from interfering with their possession of real property. Green Acquisitions raises three issues on appeal. In its first two issues, it argues that the trial court erred by excluding testimony at the injunction hearing under the parol evidence rule and by misinterpreting the terms of the lease. In its third issue, it argues that the trial court erred by denying the temporary injunction. We affirm.

Background

According to the record before us, Green Acquisitions bought a landscaping business from Everlasting Green. Before acquiring the business, Alfredo worked with Everlasting Green for a period of time to learn how to operate the business. Prior to the sale, Everlasting Green operated the business on two parcels of property near each other in Pasadena—one on Vista Road and the other on Lily Street—although the parties dispute the extent of Everlasting Green’s use of the Lily Street property.¹ The operations of the landscaping business included storing large amounts of inventory, including mulch, sand, manure, and dirt.

¹ It is not clear from the record whether these two parcels are contiguous. At the temporary injunction hearing, the parties’ counsel disputed whether a street separates the two parcels of property. However, no evidence was admitted clarifying the dispute.

The parties entered into two agreements for the sale of the business. Under an asset purchase agreement, Everlasting Green sold Green Acquisitions inventory for use in operating the business, including gravel, mulch, and sand. Under a lease agreement—the terms of which are disputed in the underlying litigation—Green Acquisitions agreed to lease real property from Everlasting Green on which to operate the business. The lease identified the property by street address—4901 Vista Road, Pasadena, Texas—and by amount of square feet—157,753. The asset purchase agreement also referenced this Vista Road property.

After signing the agreements and acquiring the business, Green Acquisitions used the Lily Street property to store inventory for use in operating the business. A dispute soon arose between the parties over Green Acquisitions' use of the Lily Street property. Green Acquisitions alleges that Tamayo began taking inventory from the property without paying for it. When confronted with a request for payment, Tamayo asserted that Green Acquisitions had no right to use the Lily Street property and demanded it vacate the property.

Green Acquisitions sued Everlasting Green asserting claims for breach of contract and fraudulent inducement or, alternatively, for reformation of the lease due to mutual mistake. Green Acquisitions also sought injunctive relief. It requested that the trial court enjoin Everlasting Green from interfering with its possession and use

of the Lily Street property. The trial court entered a temporary restraining order and scheduled a hearing on the temporary injunction application.

Tamayo, Alfredo, and Maritza testified at the hearing. Tamayo testified that Everlasting Green leased property to Green Acquisitions to operate the landscaping business, and the lease identified the property by address and by amount of square feet. Tamayo testified that the lease identified the property as the Vista Road property. He testified that the Lily Street property is not included in the lease and was never part of the deal, and Green Acquisitions knew it was not part of the deal. Tamayo also testified that attorneys for Green Acquisitions drafted the lease. He testified that he sold inventory to Green Acquisitions to use in the operation of the business, and some of the inventory was located on the Lily Street property when he sold it. But he testified that Green Acquisitions refused to remove the inventory from the property. He said the inventory should have been moved a long time ago, and that it could be moved to the Vista Road property identified in the lease.

Alfredo testified that Green Acquisitions stored inventory on the Lily Street property, although he was unaware that it had a separate address. Alfredo said the inventory consisted of hundreds of yards of mulch, sand, manure, and dirt that had to be restocked daily by eighteen-wheeler trucks. Alfredo also testified that the dispute over the property arose when Green Acquisitions attempted to charge

Tamayo for inventory that he took from the Lily Street property, which allegedly upset Tamayo. Tamayo apparently paid for the materials a few days later.

Maritza testified that Green Acquisitions stored most of its inventory on the Lily Street property, and it would not be able to run the landscaping business “efficiently and effectively” without use of the property. She also testified that the Lily Street property carries a lot of traffic, mostly from eighteen wheelers delivering nearly twenty loads of inventory daily. She denied that the inventory could be moved elsewhere.

On cross-examination, Maritza testified generally about her belief that the lease included the Lily Street property because Everlasting Green had used it to operate the landscaping business before selling the business. She acknowledged that the lease identified the property by square footage, but Green Acquisitions did not hire a surveyor before signing the lease. She also conceded that Green Acquisitions continued storing inventory on the Lily Street property even after Everlasting Green demanded it vacate the property because she believed the property was included in the lease, and she did not know where to put the inventory.

During its closing statement, Green Acquisitions primarily relied on its allegations of fraud against Everlasting Green. Green Acquisitions argued that allowing it to continue using the property would maintain the status quo. In response, Everlasting Green argued that Green Acquisitions improperly relied on subjective

intent in construing the lease rather than the express terms of the lease. Everlasting Green pointed to a provision in the lease expressly disclaiming reliance on the parties' statements and representations. It also argued that the lease identified the property by street address and square footage, which it contended was "objectively determinable" when the lease was executed.

At the end of the hearing, the trial court orally denied the temporary injunction. The court subsequently entered a written order denying the temporary injunction. The order included findings that Green Acquisitions "failed to present sufficient evidence" to support a temporary injunction, and the application "lacks merit." This appeal followed.²

Denial of Temporary Injunction

In three issues, Green Acquisitions argues that the trial court abused its discretion by excluding evidence under the parol evidence rule and by denying its application for a temporary injunction. Because the third issue is dispositive of this appeal, we take the issues out of order and consider the third issue first.

² After perfecting this appeal, Green Acquisitions filed two motions in the trial court: a request for findings of fact and conclusions of law and a motion to stay the trial proceedings pending resolution of this interlocutory appeal. The record does not indicate that the trial court ruled on either motion. Although Green Acquisitions mentions this procedural history in its appellate briefing, it does not raise any issue concerning the trial court's ruling or failure to rule on either motion.

A. Standard of Review and Governing Law

The purpose of a temporary injunction is “to preserve the status quo of the litigation’s subject matter pending a trial on the merits.” *Clint Indep. Sch. Dist. v. Marquez*, 487 S.W.3d 538, 555 (Tex. 2016) (quoting *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). The “status quo” is the “last, actual, peaceable, non-contested status which preceded the pending controversy.” *Id.* (quoting *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (orig. proceeding)). A “temporary injunction is an extraordinary remedy and does not issue as a matter of right.” *Patel v. St. Luke’s Sugar Land P’ship, L.L.P.*, 445 S.W.3d 413, 419 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (quoting *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993) (per curiam)).

To obtain a temporary injunction, an applicant must establish three elements: (1) a cause of action against the defendants; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru*, 84 S.W.3d at 204; *Patel*, 445 S.W.3d at 419. “An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204. The applicant need not establish that he will prevail at trial; rather, “the only question before the trial court is whether the applicant is entitled to preservation of the status

quo of the subject matter of the suit pending trial on the merits.” *Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978); *Patel*, 445 S.W.3d at 419.

Appellate courts review a trial court’s ruling on an application for a temporary injunction for a clear abuse of discretion.³ *Henry v. Cox*, 520 S.W.3d 28, 33 (Tex. 2017); *Patel*, 445 S.W.3d at 419. Our review is limited to the validity of the order; we do not consider or determine the underlying merits. *Henry*, 520 S.W.3d at 33–34; *Patel*, 445 S.W.3d at 420. We review the evidence before the trial court in the light most favorable to its ruling, drawing all legitimate inferences from the evidence, and deferring to the trial court’s resolution of conflicting evidence. *Patel*, 445 S.W.3d at 419–20. We will only overturn an order if it is “so arbitrary that it exceeds the bounds of reasonable discretion.” *Henry*, 520 S.W.3d at 34 (quoting *Butnaru*, 84 S.W.3d at 204) (alterations omitted). There is no abuse of discretion if the trial court’s ruling is reasonably supported by some evidence even if the ruling is based on conflicting evidence. *Id.*; *Patel*, 445 S.W.3d at 419.

³ Appellate courts have jurisdiction to review a trial court’s interlocutory order granting or refusing a temporary injunction. See TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4).

B. Elements of Temporary Injunction

In its third issue, Green Acquisitions contends that the trial court erred by denying its application for a temporary injunction because it established all the elements required to obtain a temporary injunction.

In their appellate briefs, the parties focus the majority of their arguments on whether Green Acquisitions established the first and second elements necessary to obtain temporary injunctive relief: a cause of action against Everlasting Green and a probable right to the relief sought. *See Butnaru*, 84 S.W.3d at 204. In doing so, the parties delve deep into the merits of Green Acquisitions' causes of action for breach of the lease and fraud. For example, Green Acquisitions argues that it relied on Tamayo's misrepresentations that the Lily Street property was included in the lease. For its part, Everlasting Green denies any such representations and argues that the lease includes a provision waiving reliance on any representations. These arguments primarily bear on the merits of Green Acquisitions' causes of action, not on whether Green Acquisitions is entitled to preservation of the status quo pending trial. *See Henry*, 520 S.W.3d at 33–34 (stating that scope of review of temporary injunction order is limited to validity of order without reviewing or deciding underlying merits).

Although reviewing courts may determine whether a party established a probable right to the relief sought without determining the merits, we need not walk such a fine line in parsing the parties' arguments in this case. *See Abbott v. Anti-*

Defamation League Austin, Sw., & Texoma Regions, 610 S.W.3d 911, 917 (Tex. 2020) (per curiam) (“When reviewing a temporary injunction, however, we need not resolve the ultimate merits of the plaintiff’s claims in order to determine whether they established a probable right to relief.”). Assuming without deciding that Green Acquisitions established the first two elements required to obtain injunctive relief, it has not established a probable, imminent, and irreparable harm. *See Butnaru*, 84 S.W.3d at 204; *Camp Mystic, Inc. v. Eastland*, 399 S.W.3d 266, 273 (Tex. App.—San Antonio 2012, no pet.) (assuming without deciding that party established probable right to relief because party did not establish remaining element of imminent and irreparable injury required to obtain temporary injunction).

Green Acquisitions argues that it faces a probable, imminent, irreparable injury without possession of the Lily Street property to operate the business because its injury could not be adequately compensated in damages or its damages could not be accurately measured. *See Butnaru*, 84 S.W.3d at 204 (stating that injury is irreparable if damages cannot adequately compensate injured party or if damages are unmeasurable by any certain pecuniary standard). Green Acquisitions relies solely on Maritza’s testimony that the business “is not operational” without use of the Lily Street property, there is no other place to move the inventory that is being stored on the Lily Street property, and most of the business operations consist of

traffic and eighteen-wheeler deliveries on the Lily Street property. Green Acquisitions contends that this testimony is uncontroverted.

But while this testimony perhaps indicates that Green Acquisitions would be harmed without the use of the Lily Street property, it does not establish an irreparable injury that cannot be adequately compensated in damages. *See id.* At the hearing, Green Acquisitions' counsel asked Maritza if she could ascertain the damages that Green Acquisitions would incur if it could not use the Lily Street property, and Maritza responded that "we won't make it. It's just—no." This testimony is conclusory and does not explain why damages could not be accurately measured or could not adequately compensate Green Acquisitions' alleged injury. Green Acquisitions does not rely on any other record evidence establishing an irreparable injury for which there is no adequate remedy at law. *See id.* at 211 (stating that, "generally, a court will not enforce contractual rights by injunction, because a party can rarely establish an irreparable injury and an inadequate legal remedy when damages for breach of contract are available").

Furthermore, we disagree with Green Acquisitions that Maritza's testimony is not controverted. Tamayo denied that Everlasting Green used all of both properties to operate the landscaping business prior to selling it. He also testified that the inventory could be moved from the Lily Street property to the Vista Road property, the latter of which consists of more than 157,000 square feet. Tamayo also testified

that the Lily Street property was not part of the deal, and he told Green Acquisitions to remove the inventory but it refused.

A legitimate inference from Tamayo's testimony is that Green Acquisitions can move its inventory to the Vista Road property and operate the business with minimal, if any, disruption to the business. *See Patel*, 445 S.W.3d at 419–20 (stating that appellate court draws all legitimate inferences from evidence in review of temporary injunction ruling). This evidence conflicts with Maritza's testimony that Green Acquisitions could not move the inventory from the Lily Street property or operate its business without the use of the disputed property. *See Henry*, 520 S.W.3d at 34 (stating that trial court does not abuse its discretion if some evidence reasonably supports ruling, even if ruling is based on conflicting evidence). After considering the evidence in the light most favorable to the trial court's ruling and deferring to the court's resolution of this conflicting evidence, we conclude that Green Acquisitions did not establish a probable, imminent, irreparable injury for which there is no adequate remedy at law. *See Butnaru*, 84 S.W.3d at 204; *Patel*, 445 S.W.3d at 419–20.

Finally, we note our disagreement with Green Acquisitions' characterization of the status quo as its possession of the Lily Street property for use in the operation of the landscaping business. The status quo is the last, actual, peaceable, non-contested status which preceded the pending controversy. *See Marquez*, 487 S.W.3d

at 555. The dispute in this case is whether Everlasting Green conveyed any right of possession of the Lily Street property to Green Acquisitions under the lease, or alternatively, whether such a right should have been conveyed based on Everlasting Green's representations to Green Acquisitions. Green Acquisitions' only claim to the Lily Street property derives from the lease or from Everlasting Green's representations about the lease prior to executing it. Green Acquisitions claims no right to the property prior to executing the lease. Immediately before signing the lease, it is undisputed that Everlasting Green had the exclusive right of possession of the Lily Street property, and Green Acquisitions had no right of possession of the property. Thus, the last, actual, peaceable, non-contested status of the property—or the status quo—is Everlasting Green's exclusive possession of the property. *See id.*

We overrule Green Acquisitions' third issue.⁴

⁴ In its first two issues, Green Acquisitions challenges several evidentiary rulings and the trial court's construction of the lease terms. These arguments concern the element of probable right to relief, which we have already assumed without deciding that Green Acquisitions satisfied. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (stating elements applicant must prove to obtain temporary injunctive relief). These arguments do not, however, concern the element of whether Green Acquisitions established a probable, imminent, irreparable injury for which there is no adequate remedy at law. *See id.* Therefore, resolution of these first two issues would not alter our decision, and we need not consider them. *See TEX. R. APP. P. 47.1.*

Conclusion

We affirm the trial court's interlocutory order denying Green Acquisitions' application for a temporary injunction.

April L. Farris
Justice

Panel consists of Chief Justice Radack and Justices Countiss and Farris.