

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00440-CV

YONG DONG CHEN, Appellant

V.

XIU RONG CHEN, Appellee

On Appeal from the 356th District Court
Hardin County, Texas
Trial Cause No. 51020

MEMORANDUM OPINION

Yong Dong Chen leased the Chef Chen Restaurant and property to Xiu Rong Chen.¹ Yong later sued Xiu for default and sought a temporary injunction against Xiu. Xiu counter-petitioned and sought a temporary injunction against Yong. The trial court held a hearing on the motions and, in a letter order, the trial court granted injunctive relief in favor of both parties. In this interlocutory appeal, Yong contends that (1) the temporary injunction order fails to comply with the Rules of Civil Procedure, (2) Xiu

¹ Yong's petition and the restaurant lease identify him as "Yongdong Chen," but the notice of appeal identifies him as "Yong Dong Chen." We refer to appellant as "Yong."

failed to prove her entitlement to injunctive relief, and (3) Yong’s request for injunctive relief should have been granted in full. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4) (West 2008). We reverse the trial court’s order and remand this case to the trial court for further proceedings.

Sufficiency of the Temporary Injunction Order

In issue one, Yong argues that the trial court’s temporary injunction order fails to comply with the Texas Rules of Civil Procedure 683 and 684.²

An order granting a temporary injunction shall (1) “set forth the reasons for its issuance;” (2) “be specific in terms;” (3) “describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained;” (4) be “binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise[;]” and (5) “include an order setting the cause for trial on the merits with respect to the ultimate relief sought.” Tex. R. Civ. P. 683. An order granting a temporary injunction “shall fix the amount of security to be given by the applicant.” Tex. R. Civ. P. 684. Rules 683 and 684 are mandatory and must be strictly followed. *Qwest Communications Corp. v. AT&T*

² In issue one, Yong also contends that the trial court’s order improperly enjoins him from pursuing a forcible-detainer action against Xiu. For the reasons discussed below, we need not address this argument. *See* Tex. R. App. P. 47.1; *see also Tamina Props., LLC v. Texoga Techs. Corp.*, No. 09-08-00542-CV, 2009 Tex. App. LEXIS 4241, at **1-2 (Tex. App.—Beaumont June 11, 2009, no pet.)(mem. op.).

Corp., 24 S.W.3d 334, 337 (Tex. 2000). A temporary injunction order that does not comply with these procedural rules is “subject to being declared void and dissolved.” *Id.*

In its temporary injunction order, the trial court enjoined Xiu from “remov[ing] the kitchen equipment, furniture, and fixtures from the premises” and required Xiu to “produce a 2009 Federal Tax Return by December 2, 2010[.]” The trial court ordered Yong to “stay away from the premises” and “not in any way interrupt, interfere with, or harm [Xiu’s] business[.]” In its order, the trial court declined to vacate a prior contempt order against Yong and declined to require Xiu to deposit \$5,200.00 per month into the court registry.

However, the trial court’s temporary injunction order neither sets bond nor states the reasons for issuance. Accordingly, Yong contends that the order fails to comply with Rules 683 and 684. Xiu responds that the trial court’s prior temporary restraining orders (“TROs”) required both parties to post bond and stated the reasons for issuance. According to Xiu, the TRO bonds “remain in full force and effect” and the reasons for the temporary injunction may be inferred from the TROs.

“A bond for a temporary restraining order does not continue on and act as security for a temporary injunction unless expressly authorized by the trial court.” *Bay Fin. Sav. Bank, FSB v. Brown*, 142 S.W.3d 586, 591 (Tex. App.—Texarkana 2004, no pet.) (holding temporary injunction order void for noncompliance with Rule 683 and 684 when the order neither fixed bond nor “state[d] that the bond previously filed for the temporary

restraining order continued as the bond for the temporary injunction” and did not set the cause for trial on the merits); *see Ex parte Coffee*, 328 S.W.2d 283, 291 (Tex. 1959). Moreover, the temporary injunction order itself must state the reasons for issuance. *See State v. Cook United, Inc.*, 464 S.W.2d 105, 106 (Tex. 1971) (“Under Rule 683 the reason for the granting of a temporary injunction must be stated in the order.”); *Tamina Props., LLC v. Texoga Techs. Corp.*, No. 09-08-00542-CV, 2009 Tex. App. LEXIS 4241, at **8-9 n.2 (Tex. App.—Beaumont June 11, 2009, no pet.)(mem. op.) (separately filed findings do not satisfy the requirement that the temporary injunction order itself state the reasons for issuance); *Moreno v. Baker Tools, Inc.*, 808 S.W.2d 208, 211 (Tex. App.—Houston [1st Dist.] 1991, no writ) (declining to infer reasons from the pleadings, evidence, and oral pronouncements); *Courtlandt Place Historical Found. v. Doerner*, 768 S.W.2d 924, 925 (Tex. App.—Houston [1st Dist.] 1989, no writ) (“Pleadings and testimony do not satisfy the requirement that the temporary injunction order must state the reasons for its issuance.”).

In this case, the trial court’s temporary injunction order neither sets bond nor states that the TRO bonds remain in effect for purposes of the temporary injunction. *See Coffee*, 328 S.W.2d at 291; *see also Brown*, 142 S.W.3d at 591. Nor does the order state any reasons for issuance. *See Cook United*, 464 S.W.2d at 106; *see also Tamina*, 2009 Tex. App. LEXIS 4241, at **8-9 n.2; *Moreno*, 808 S.W.2d at 211; *Doerner*, 768 S.W.2d at 926. Under these circumstances, the trial court’s order fails to comply with Rules 683

and 684 and is void. *See Qwest*, 24 S.W.3d at 337; *see also Tamina*, 2009 Tex. App. LEXIS 4241, at **8-9 n.2; *Brown*, 142 S.W.3d at 591; *Doerner*, 768 S.W.2d at 926. We sustain issue one and need not address Yong's remaining arguments. *See Tex. R. App. P. 47.1*; *see also Tamina*, 2009 Tex. App. LEXIS 4241, at **1-2.

Because the trial court's temporary injunction order is void, we reverse the trial court's order, dissolve the temporary injunction, and remand this case to the trial court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

STEVE McKEITHEN
Chief Justice

Submitted on December 29, 2010
Opinion Delivered February 10, 2011

Before McKeithen, C.J., Gaultney and Kreger, JJ.