

FILED

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**CLERK OF THE APPELLATE
COURT, 4TH DISTRICT**

NO. 4-10-0447

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|---------------------------------------|---|------------------|
| STANTON W. GROTENHUIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Clark County |
| MARK R. SAVOREE and KAREN S. SAVOREE, |) | No. 10CH17 |
| Defendants-Appellants. |) | |
| |) | Honorable |
| |) | David W. Lewis, |
| |) | Judge Presiding. |

ORDER

On April 27, 2010, plaintiff, Stanton W. Grotenhuis (Stan), filed a complaint against defendants, Mark and Karen Savoree (collectively the Savorees), seeking to set aside fraudulent transfers. Stan also filed motions for a temporary restraining order and preliminary injunction, both of which sought to prohibit the Savorees from disposing or transferring their interests in any property until the trial court ruled on the merits of the case. That same day, the court entered ex parte a temporary restraining order, prohibiting the Savorees from transferring their interests in any property. After a May 2010 hearing, the court granted a preliminary injunction, prohibiting the Savorees from disposing of their interests in three specified amounts of money.

The Savorees appeal the trial court's granting of the preliminary injunction, asserting Stan failed to prove (1) a clearly ascertainable right in need of protection, (2) the lack of an adequate remedy at law, and (3) the likelihood of success

on the merits. We affirm.

I. BACKGROUND

Stan's April 2010 complaint alleged the following. On March 10, 2008, Casey State Bank obtained a \$689,068.41 judgment against Mark, which was later vacated, but the cause of action remained pending. On March 26, 2008, Casey State Bank assigned to Stan its notes and guaranties related to Mark. On May 7, 2008, Mark transferred the remaining funds in the following accounts at the State Bank of Chrisman (Chrisman Bank): (1) account No. 77577 (\$395,273.74); (2) account No. 77569 (\$323,966.29); (3) account No. 88587 (\$15,794.15); (4) account No. 88579 (\$16,638.74); (5) account No. 88560 (\$53,352.76); and (6) account No. 78751 (\$1,138,420.44). On the same day, five new accounts were established for Karen's benefit, and Mark transferred the funds in his six aforementioned accounts into Karen's five new accounts. On June 5, 2008, Mark transferred the remaining funds in his RBC Wealth Management account No. 306-61896 to Karen's RBC Wealth Management account No. 302-98305. On September 1, 2009, Stan obtained a \$2,749,553.04 judgment against Mark. *Grotenhuis v. Savoree*, No. 08-L-4 (Cir. Ct. Clark Co.). The Savorees appealed that judgment. On appeal, this court affirmed the amount of the judgment against Mark, except for the award of attorney fees. *Grotenhuis v. Savoree*, No. 4-10-0092, slip order at 29-31 (October 14, 2010) (unpublished order under Supreme Court Rule 23). We also instructed the trial court to apply the proceeds of a \$1 million certificate of deposit (CD) to Mark's

judgment. Grotenhuis, No. 4-10-0092, slip order at 26.

In their answer, the Savorees admitted the transfers. As to Chrisman Bank account Nos. 77577, 88587, 88579, and 88560, they denied there was a lack of consideration for the transfers, noting Mark owed Karen, his wife, substantial amounts of money as a result of leases and promissory notes given to Karen by Mark. Regarding Chrisman Bank account No. 77569, Mark denied having an interest in that account and stated his name was only on the account as a convenience for paying bills for Karen's rental properties. Of the total amount transferred from Chrisman Bank account No. 78751, the Savorees asserted \$283,500 belonged to Karen. Lastly, as to RBC Wealth Management account No. 306-61896, the Savorees stated half of the transfer amount belonged to Karen.

On May 14, 2010, the trial court held a hearing on Stan's request for a preliminary injunction. The parties both presented numerous documents. Mark was the only witness to testify at the hearing.

Mark testified the lawsuit in case No. 08-L-4 arose from the sale of several car dealerships to Kevin Beyrer that took place on March 1, 2007. Beyrer borrowed money from Casey State Bank to purchase the dealerships, and Mark guaranteed two of those loans. One guaranty was a \$1.5 million personal guaranty, and the other was secured by a \$1 million CD that Mark and Karen owned as joint tenants. Also, at the time of the sale, Wolfe Street Management leased the Sullivan Ford dealership

premises to Beyrer and Sullivan Ford, Inc. The lease agreement provided for monthly rent of \$7,500 and was for a period beginning March 1, 2007, and ending February 28, 2012. That same day, Karen leased the Terre Haute Ford dealership premises to Beyrer and Terre Haute Ford, Inc., for the same period. The monthly rent for the Terre Haute dealership was \$31,500.

In January 2008, Casey State Bank notified the Savorees the dealerships were in financial trouble, and it was trying to restructure Beyrer's notes. While the Savorees declined to cosign Beyrer's new notes, Casey State Bank did redo the notes. After learning of the dealerships' financial troubles, Mark had a discussion with his attorney, Richard James. Karen had mortgage payments on the properties, and James informed Mark he needed to guaranty Karen would have funds to make the mortgage payments and pay the taxes. On February 1, 2008, Mark executed an unconditional lease guaranty for both of the aforementioned leases. Mark guaranteed full performance of the lease, including the total payments for the full term of the lease, taxes, and maintenance. Additionally, the Sullivan Ford dealership lease stated Karen was the sole stockholder of Wolfe Street Management.

On March 1, 2008, Mark gave Karen a \$482,655 promissory note for the total amount of the lease payments for the Sullivan Ford dealership. On April 1, 2008, Mark gave Karen a \$1,921,840 promissory note for the total amount of the lease payments for the Terre Haute Ford dealership. Also, on April 1, 2008, Mark executed a \$500,000 promissory note to his wife because Casey

State Bank would not release the Savorees' \$1 million CD that was held in joint tenancy and Mark wanted to guaranty Karen would get her half of the CD. On September 18, 2008, Mark gave Karen a \$100,000 promissory note because Karen had loaned him \$100,000 to buy all of the equipment, furniture, and fixtures of the dealerships from Stan. On July 7, 2009, Mark executed another promissory note to Karen, which was for \$545,902.27. Mark did not recall the purpose of that note. On December 31, 2009, Mark again executed a promissory note to Karen in the amount \$90,600, which was for the payment of Mark's attorney fees. Mark executed all of the notes and guaranties on the advice of counsel. At the beginning of 2008, Mark did not owe any debts to Karen. However, Mark did testify he had, over the years, borrowed money from Karen. James always drafted a note, and Mark always paid off the note.

The six transfers from Mark's Chrisman Bank accounts to Karen's new Chrisman Bank accounts took place on May 7, 2008. Chrisman Bank account No. 77577 listed the names of Mark R. Savoree and Jasper Street Properties and had a total of \$395,273.74 when it was transferred to Karen. Jasper Street Properties owned the Edward Jones office in Paris, Illinois. Mark managed the property for Karen. Mark testified his exhibit No. 16 is a handwritten receipt for this transfer. The receipt states the money was applied to the Terre Haute Ford guaranty.

Chrisman Bank account No. 77569 listed Mark doing business as Wolfe Street Management and had a balance of

\$323,966.29 when it was transferred to Karen. Mark explained he was the sole shareholder of Wolfe Street Management until he transferred it to Karen on June 5, 2006. The corporation only owned the Sullivan Ford dealership property. Mark was the president, secretary, and treasurer of the corporation, and he paid the bills, collected the rent, and paid the taxes. The property was currently empty and listed for sale with a real-estate agent. The Savorees did not present a receipt for this transfer at the hearing.

Chrisman Bank account No. 88587 listed Mark and Savoree Properties-Paris and had a balance of \$15,794.15 at the time it was transferred to Karen. The Savorees' exhibit No. 17 is a handwritten receipt for this transfer, and the receipt states the money was applied to the Terre Haute Ford lease and loan. Savoree Properties-Paris consisted of 10 to 15 rental properties. Karen purchased the "fixer-upper specials," and Mark and Karen then fixed up the properties and rented them to people. Mark managed the properties and did a lot of the repair work.

Chrisman Bank account No. 88579 listed Mark and Savoree Properties-Charleston and had a balance of \$16,638.74 when it was transferred to Karen's account. Savoree Properties-Charleston consisted of three duplexes that Karen owned with her parents in Charleston, Illinois. Mark managed the properties. The Savorees' exhibit No. 18 is a handwritten receipt for this transfer, and the receipt states the money was again applied to the Terre Haute Ford lease and loan.

Chrisman Bank account No. 88560 listed Mark and Savoree Farms and had a balance of \$53,352.76 when it was transferred to Karen's account. Karen owned Savoree Farms, which is a 200-acre farm in Edgar County. Karen cash rented the ground to a couple of tenants. Mark collected the lease payments, redid the leases every two years, dealt with the chemicals, and mowed the fence rows every two weeks. The Savorees also did not present a receipt for this transfer at the hearing.

The last Chrisman Bank account was account No. 78751, which was Mark's investment account and had a transfer balance of \$1,138,420.44. Mark testified \$283,500 of the money was Karen's. The Savorees' exhibit No. 19 is a handwritten receipt for this transfer. The receipt shows a payment of \$854,920.44 to Karen to be applied to the Terre Haute Ford lease and April 1, 2008, promissory note.

On June 5, 2008, Mark transferred the account balance of his RBC Wealth Management account No. 306-61896 to Karen's account. The account statement listed only his name and had a balance of \$963,459.56 when it was transferred to Karen. Mark testified half of the money was Karen's. The Savorees' exhibit No. 11 was a document for the opening of an RBC Dain Rauscher account, which listed only Mark's name on the account title but was signed by both Mark and Karen. Additionally, the Savorees' exhibit No. 20 is a handwritten receipt for this transfer. The receipt shows a \$481,729.78 payment to Karen but does not state the debt to which the money was applied.

Mark admitted making the aforementioned transfers to Karen but stated he was either returning money that belonged to her or making payments on promissory notes. He denied making the transfers "with an actual intent to hinder, delay[,] and defraud [Stan]." He explained that, at the time of the transfers, no judgment or litigation existed. According to Mark, a threat of litigation did not exist as Casey State Bank did not demand payment on the personal guaranty until June 2008. Moreover, more than the amount of the vacated judgment was sitting in his account. Mark further denied having control over the funds he transferred to Karen and stated he did not have signature ability on those accounts.

Mark also testified he had paid \$1.9 million to Stan and did not have anything else. He was unable to pay the remaining balance on the judgment in case No. 08-L-4.

On May 21, 2010, the trial court entered a written order, granting Stan a preliminary injunction. The preliminary injunction is effective until the court makes a final ruling on the case and prohibits the Savorees from disposing or otherwise transferring their interests in \$2.2 million, to consist of their interest in the following accounts unless otherwise agreed to by the parties: (1) \$53,352.76 transferred from Chrisman Bank account No. 88560 to account No. 59889; (2) \$1,138,420.44 transferred from Chrisman Bank account No. 78751 to account No. 89990; and (3) \$1,097,785 transferred from RBC Wealth Management account No. 306-61896 to account No. 302-98305.

On June 16, 2010, the Savorees filed an interlocutory appeal from the trial court's May 21, 2010, order in compliance with Supreme Court Rules 303 (Official Reports Advance Sheet No. 15 (July 16, 2008), R. 303, eff. May 30, 2008) and 307(a) (Official Reports Advance Sheet No. 6 (March 24, 2010), R. 307(a), eff. February 26, 2010). Thus, this court has jurisdiction under Rule 307(a)(1) (Official Reports Advance Sheet No. 6 (March 24, 2010), R. 307(a)(1), eff. February 26, 2010).

II. ANALYSIS

Here, the Savorees challenge the trial court's grant of a preliminary injunction, prohibiting them from disposing or transferring three specified monetary amounts. A preliminary injunction's purpose is to preserve the status quo until a final decision on the merits. Rochester Buckhart Action Group v. Young, 379 Ill. App. 3d 1030, 1033, 887 N.E.2d 49, 52 (2008). For a plaintiff to obtain a preliminary injunction, he or she must show the following: "(1) a clearly ascertainable right that needs protection; (2) irreparable harm without the protection of an injunction; (3) no adequate remedy at law for plaintiff's injury; and (4) a substantial likelihood of success on the merits in the underlying action." Rochester, 379 Ill. App. 3d at 1033-34, 887 N.E.2d at 52, quoting Franz v. Calaco Development Corp., 322 Ill. App. 3d 941, 946, 751 N.E.2d 1250, 1255 (2001). In their appellant brief, the Savorees challenge all of the above elements except for the irreparable-harm element. Thus, we will not address irreparable harm. See 210 Ill. 2d R. 341(h)(7)

(stating issues not raised in the appellant's brief are forfeited).

In determining whether to grant or deny a preliminary injunction, the trial court has substantial discretion, and this court will not disturb that determination on appeal absent an abuse of discretion. Sunbelt Rentals, Inc. v. Ehlers, 394 Ill. App. 3d 421, 426, 915 N.E.2d 862, 866 (2009). "A trial court abuses its discretion only when no reasonable person would take the view it adopted." People ex rel. Madigan v. Leavell, 388 Ill. App. 3d 283, 293, 905 N.E.2d 849, 858 (2009). A trial court also abuses its discretion when it relies on a factual finding that is against the manifest weight of the evidence, i.e., where "'the opposite conclusion is clearly evident.'" Liebert Corp. v. Mazur, 357 Ill. App. 3d 265, 276, 827 N.E.2d 909, 921 (2005), quoting In re Arthur H., 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004).

A. Clearly Ascertainable Right

The Savorees first argue Stan failed to establish a clearly ascertainable right in need of protection because the judgment Stan seeks to protect is on appeal and thus not final. As Stan notes, the Savorees do not cite any authority in support of their argument. Accordingly, the Savorees have forfeited this issue. See Downey v. Dunnington, 384 Ill. App. 3d 350, 384, 895 N.E.2d 271, 299 (2008) (noting the failure to cite relevant authority results in the argument's forfeiture).

B. Lack of an Adequate Remedy

The Savorees next argue Stan failed to prove he lacked an adequate remedy at law because Stan only sought monetary relief.

For an adequate remedy at law to deprive equity of its power to grant injunctive relief, "the remedy 'must be clear, complete, and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.'"

Bio-Medical Laboratories, Inc. v. Trainor, 68 Ill. 2d 540, 549, 370 N.E.2d 223, 227 (1977), quoting K.F.K. Corp. v. American Continental Homes, Inc., 31 Ill. App. 3d 1017, 1021, 335 N.E.2d 156, 159 (1975). Generally, when money damages can adequately compensate a party's injury, an adequate remedy at law exists, and injunctive relief is unwarranted. Lumbermen's Mutual Casualty Co. v. Sykes, 384 Ill. App. 3d 207, 230-231, 890 N.E.2d 1086, 1106 (2008). However, Illinois courts have indicated a defendant's insolvency or inability to pay may render monetary damages an inadequate remedy at law. See Allstate Amusement Co. of Illinois, Inc. v. Pasinato, 96 Ill. App. 3d 306, 309, 421 N.E.2d 374, 376 (1981) (noting no basis existed for finding monetary damages would be inadequate where the complaint did not state facts indicating one of the defendants would be insolvent or unable to pay a money-damages award); see also Hall v. Orlikowski Construction Co., 24 Ill. App. 3d 60, 63, 321 N.E.2d 23, 26 (1974); Rao Electrical Equipment Co. v. Macdonald Engineering Co., 124 Ill. App. 2d 158, 172-73, 260 N.E.2d 294, 301 (1970). Additionally, in Southern Fire Brick & Clay Co. v.

Garden City Sand Co., 223 Ill. 616, 628, 79 N.E. 313, 318 (1906), our supreme court found the plaintiff lacked an adequate remedy as to one of the defendants because the record was full of evidence of the defendant's financial irresponsibility. In fact, the defendant claimed he failed to carry out his part of the contract due to his financial inability to do so. The supreme court noted that, if that was true, the defendant "certainly was in no condition to respond in damages to appellees in an action at law." Southern Fire, 223 Ill. at 628, 79 N.E. at 318.

In support of their argument, the Savorees cite Franz, 322 Ill. App. 3d at 948, 751 N.E.2d at 1257, where the Second District reversed the trial court's grant of an injunction because the plaintiff had an adequate remedy at law. The court concluded the plaintiff's breach-of-contract and breach-of-fiduciary-duty claims were capable of being measured and corrected by a money-damages award. The Franz court further noted the halting of the sale of further lots "effectively placed a lien on the real estate in the form of a prejudgment attachment." Franz, 322 Ill. App. 3d at 948, 751 N.E.2d at 1257. However, Franz did not deal with an existing monetary judgment and an insolvent defendant.

As stated, Mark claims he is insolvent and cannot pay the judgment in case No. 08-L-4. While Karen was solvent at the hearing on the preliminary injunction, the nature of the transfers raises serious concerns about her being solvent when the trial court enters a final judgment in this case. Specifically,

after the Savorees learned of the dealerships' financial troubles, they sought legal advice, and Mark began executing lease guaranties and promissory notes to Karen. After the bank had filed the lawsuit in case No. 08-L-4, Mark made the transfers to Karen that are at issue in this case. Mark testified the transfers were payments on the guaranties and promissory notes. Mark again sought legal advice before making the transfers. Additionally, the transfers were supposedly from accounts related to Karen's businesses and properties, but the accounts were in Mark's name. Moreover, Mark has a great deal of involvement in Karen's businesses and properties. The aforementioned facts suggest the Savorees' inability to pay a judgment in this case.

Accordingly, the trial court's finding Stan lacked an adequate remedy of law was not against the manifest weight of the evidence.

C. Likelihood of Success on the Merits

The Savorees last argue Stan failed to establish his likelihood of success on the merits. To prove a likelihood of success on the merits, the moving party does not have to "make out a case that would necessarily require relief at the final hearing." Keefe-Shea Joint Venture v. City of Evanston, 332 Ill. App. 3d 163, 174, 773 N.E.2d 1155, 1164 (2002). Rather, it "need only raise a 'fair question as to the existence of the rights claimed, [and] lead the court to believe that it will probably be entitled to the relief sought if the proof sustains the allegations.'" [Citation.]" Keefe-Shea, 332 Ill. App. 3d at 174, 773

be existing or contemplated indebtedness against the transferor; and (3) it must appear that the transferor did not retain sufficient property to pay his indebtedness.'" Regan v. Ivanelli, 246 Ill. App. 3d 798, 804, 617 N.E.2d 808, 814 (1993), quoting Gendron v. Chicago & North Western Transportation Co., 139 Ill. 2d 422, 438, 564 N.E.2d 1207, 1215 (1990).

Since fraud is presumed under section 6(a) of the Transfer Act, the transferor's actual intent is irrelevant. Once the three elements have been proved, the presumption of fraud becomes conclusive unless rebutted. Regan, 246 Ill. App. 3d at 804, 617 N.E.2d at 814.

The Savorees contend Stan failed to prove fraud in law because Mark's transfers to Karen were for the payment of legitimate debts and done on the advice of counsel. Stan asserts no evidence of adequate consideration for the transfers existed. In response, the Savorees cited the numerous exhibits that documented the debts that were signed on the advice of their counsel. Specifically, they point out the \$500,000 promissory note that Mark signed to guaranty Karen received her half of the CD pledged as collateral to secure a loan related to Beyrer's purchase of the dealerships. Neither party looks at each transaction individually but, rather, addresses them as a group. Thus, we also do so. Additionally, we note the transactions took places in May

and June 2008, and thus whether the three promissory notes executed after June 2008 had consideration is irrelevant.

Mark testified the \$482,655 and \$1,921,840 promissory notes were for the amount of money he owed Karen as a result of his two February 2008 lease guaranties. Like with any other contract, a guaranty must be supported by consideration. Tower Investors, LLC v. 111 East Chestnut Consultants, Inc., 371 Ill. App. 3d 1019, 1028, 864 N.E.2d 927, 937 (2007). However, "the consideration flowing to the guarantor does not have to render a personal benefit to the guarantor." Tower Investors, 371 Ill. App. 3d at 1028, 864 N.E.2d at 937. The guarantor will have received sufficient consideration if his or her promise was based on consideration to benefit a third person. Usually, "the consideration supporting the underlying obligation will also support the guaranty," and thus no separate consideration for the guarantor is required. Tower Investors, 371 Ill. App. 3d at 1028, 864 N.E.2d at 937. However, when the guarantor executes the guaranty after the underlying obligation has been formalized, new consideration is necessary to support the guaranty. Tower Investors, 371 Ill. App. 3d at 1028, 864 N.E.2d at 937.

Here, Mark executed his lease guaranties almost a year after the original leases were signed. None of the evidence at the hearing showed Mark or the lessees received a benefit from his guaranties. Also, no evidence of modification of the original lease terms was presented. See Tower Investors, 371 Ill. App. 3d at 1029, 864 N.E.2d at 938 (noting some exchange of new

consideration between the parties that modified the terms of the original loan agreement was necessary to make the guaranty enforceable). In fact, Mark's testimony indicates the guaranties were gratuitous as he stated his counsel advised him to execute the guaranty so Karen, his wife and lessor, could make the mortgage and tax payments on the leased property if the lessees defaulted. Accordingly, no consideration existed for the guaranties, and thus they were unenforceable. Since the guaranties were unenforceable, Mark did not owe Karen any money, and thus the promissory notes based on the guaranties lacked consideration.

As to the \$500,000 promissory note, the Savorees do not cite any authority that Karen was legally entitled to half of the CD. Our supreme court has pointed out "[a] joint bank account is not the same as a joint tenancy in real property, and is subject to the provisions of the contract between the bank and its depositors." Pescetto v. Colonial Trust & Savings Bank, 111 Ill. 2d 314, 317, 489 N.E.2d 1365, 1366 (1986). Thus, if the agreement so provides, "a party to a joint bank account may pledge unilaterally the interests of all of the joint depositors." In re Estate of Vogel, 291 Ill. App. 3d 1044, 1048, 684 N.E.2d 1035, 1038 (1997). The party may also "withdraw and dispense with all of the funds from that account, and neither he nor his estate is liable to the other joint depositors for the withdrawn funds." Vogel, 291 Ill. App. 3d at 1048, 684 N.E.2d at 1038.

In this case, the Savorees only presented the front

side of their CD, which stated the bank would "treat any one of you as owner for purposes of endorsement, payment of principal and interest, presentation (demanding payment of amounts due), transfer[,] and notice to or from you. Each of you appoints the other as your agent, for the purposes described above." Thus, Mark had access to all of the CD's funds and could do whatever he pleased with the entire amount without Karen's approval, including pledging the entire CD as collateral. When the bank took the CD, Karen was not legally entitled to half of the funds or even any contributions she made. See Vogel, 291 Ill. App. 3d at 1049, 684 N.E.2d at 1039 (noting that, when one joint tenant withdrew the money from the joint account, the other joint tenant did not acquire an undivided interest in the money he contributed to the account, but rather, his rights terminated and the withdrawing tenant became the sole owner of the money). Accordingly, Mark did not receive any consideration for the \$500,000 promissory note as he had rights to the entire CD and did not owe Karen half of the money.

Thus, we disagree with the Savorees' argument the transactions at issue had adequate consideration. A finding Stan demonstrated a fair question as to existence of his rights to relief under a fraud-in-law claim is not against the manifest weight of the evidence, and therefore our addressing Stan's fraud-in-fact claim is unwarranted. Accordingly, we conclude the trial court's finding a likelihood of success on the merits is not against the manifest weight of the evidence.

Since the trial court's findings on the preliminary-injunction elements that were challenged by the Savorees were not erroneous, we hold the trial court did not abuse its discretion by granting the preliminary injunction against the Savorees.

III. CONCLUSION

For the reasons stated, we affirm the trial court's grant of the preliminary injunction.

Affirmed.

TURNER, J., with KNECHT and APPLETON, JJ., concurring.