

Temporary Injunctive Relief In Texas

By

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Introduction

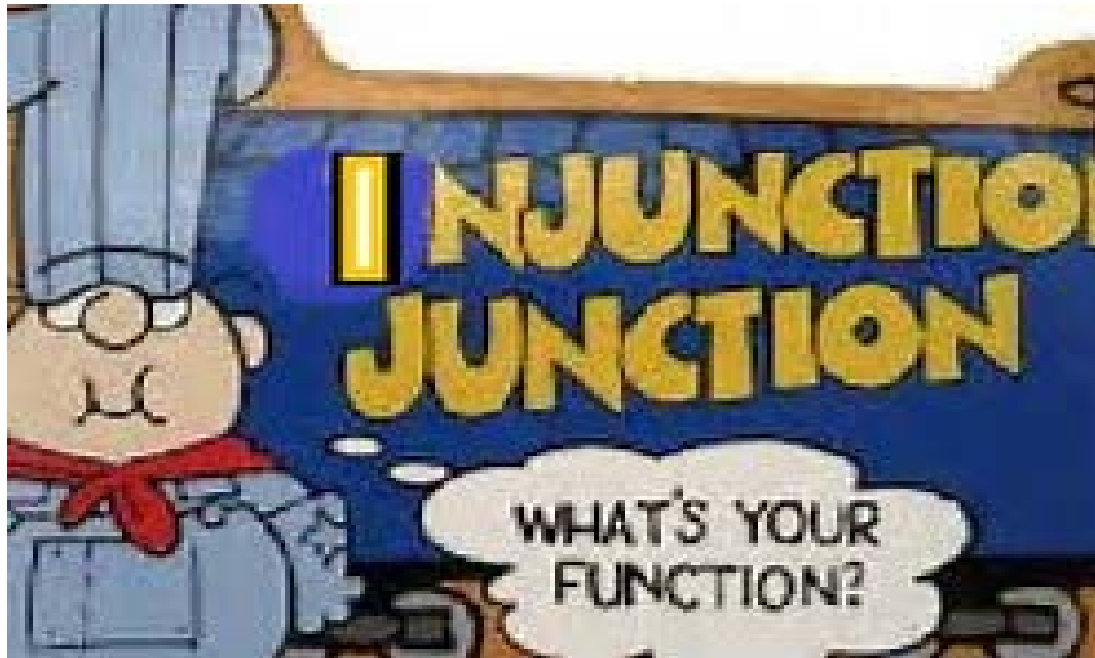
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Introduction

- Without immediate injunctive relief, valuable property rights can be lost forever – but must follow procedure.
- On the other hand, defendants have their own right to act as they choose and will need to be armed with the law of injunctions to defend against the plaintiff's request for injunctive relief.

Purpose of Injunctive Relief



Purpose of Injunctive Relief

- A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be had on a temporary injunction.
- The purpose of a temporary injunction is to preserve the status quo pending a full trial on the merits.
- The status quo is the last actual peaceable, noncontested status that preceded the controversy.
- Status quo may be a state of action.

Elements For Injunctive Relief



Elements For Injunctive Relief

- Equitable elements: cause of action, probable right to recover; probable, imminent, and irreparable harm; and no adequate remedy at law
- Texas Civil Practice And Remedies Code Section 65.011
- Must follow correct procedure – sworn application, correct allegations, bond, specific order, service, etc.

Preliminary Issues For Injunctive Relief

- Burden of proof on applicant whether plaintiff or defendant
- Careful: Election of remedies
- Jurisdiction, venue, and party issues



Temporary Restraining Order



Temporary Restraining Order

- The application must state:
 - Grounds for the injunctive relief,
 - Specific facts that support claims,
 - Request injunctive relief,
 - Need of injunctive relief *ex parte*,
 - Applicant is willing to post bond,
 - Specific relief sought, and
 - Must be verified or otherwise supported by affidavits.

Temporary Restraining Order

- To seek TRO:
 - 1) File application – pay fees;
 - 2) Go to court assigned to case;
 - 3) If court not available, go to one that is available;
 - 4) Have hearing;
 - 5) Court either denies or grants relief;

Temporary Restraining Order

- 6) Court signs order with or without changes and enters amount for bond and ti hearing date;
- 7) Execute bond;
- 8) Pay fee for writ;
- 9) Have clerk's office take care of citation, writ, and getting items to sheriff for service.

Temporary Restraining Order

- Order must have required elements
- TRO may be extended one 14-day period by court – in writing
- TRO may be further extended by agreement of parties
- Agreement will not waive objection to personal jurisdiction

Temporary Injunction



Pleadings To Support Temporary Injunction

- Temporary injunction maintains status quo until the time of trial.
- Pleading requirements for a TI are the same as for a TRO except there does not need to be an *ex parte* provision.
- Rule 682 states: “No writ of injunction shall be granted unless the applicant therefore shall present his petition to the judge verified by his affidavit and *containing a plain and intelligible statement of grounds for such relief.*”

Pleadings To Support Temporary Injunction

- Must have an underlying cause of action.
- Some courts have not been hyper-technical in determining whether a party has fair notice of the relief requested in a ti proceeding.
- However, some courts have held that, “[an] applicant must specify the precise relief sought and that a court is without jurisdiction to grant relief beyond and in addition to that particularly specified.”

Pleadings To Support Temporary Injunction

- To be safe, a plaintiff should request broad injunctive relief in its petition, the court can always narrow the request and award less than that requested.
- In *Sharma v. Vinmar International Ltd.*, the court affirmed a trial court's temporary injunction that awarded narrower relief than that requested in the application.
- Should an attorney verify the petition?

Probable, Imminent, and Irreparable Injury In The Interim.

- The Burden Is Normally On The Applicant To Establish That Absent Temporary Injunctive Relief That It Will Sustain A Probable, Imminent, and Irreparable Injury.
- Focus Is On Relief In The Interim – Not After Final Determination On The Merits.

Equitable Elements For Injunctive Relief



Probable Right of Recovery

- To show a probable right of recovery, an applicant need not establish that it will finally prevail in the litigation, rather, it must only present some evidence that, under the applicable rules of law, tends to support its cause of action.
- It need only show that a bona fide issue exists as to its right to ultimate relief.
- If the evidence fails to furnish any reasonable basis for concluding that the applicant has a probable right of recovery, the granting of the temporary injunction is an abuse of discretion

Probable, Imminent, and Irreparable Injury In The Interim

- To be entitled to a temporary injunction, the applicant must plead a cause of action and show a probable right to recover on that cause of action and a probable, imminent, and irreparable injury in the interim.
- “Imminent” means that the injury is relatively certain to occur rather than being remote and speculative.
- Possibility of injury is not enough.

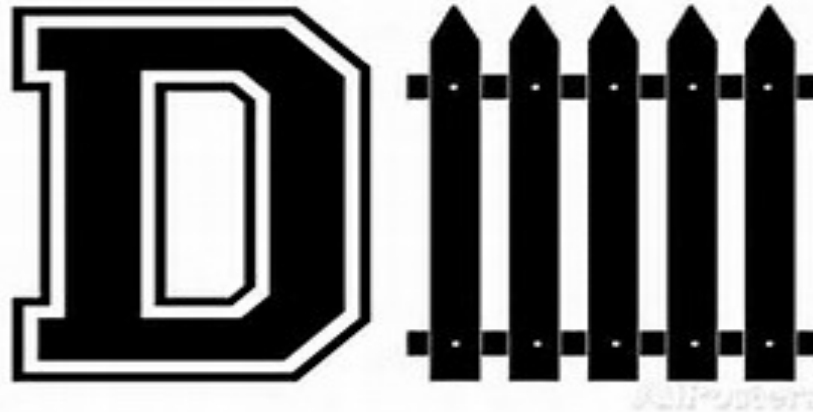
Probable, Imminent, and Irreparable Injury In The Interim

- There is no adequate remedy at law if the damages cannot be calculated or the damages cannot be measured by a certain pecuniary standard.
- Evidence that the defendant does not have sufficient assets to cover the amount of damages that the plaintiff will incur will support a finding that an applicant has no adequate remedy at law.

Probable, Imminent, and Irreparable Injury In The Interim

- If there is evidence that the defendant will secret away funds and attempt to avoid payment, a trial court has discretion to award injunctive relief.
- Courts have held that provisions for injunctive relief in agreements are evidence that there is no adequate remedy at law, and that they will support a trial court's temporary injunction.
- It is important to review the plaintiff's causes of action and the substantive law for same to determine if there are any exceptions to the normal requirement of no adequate remedy at law.

Equitable Defenses To Injunctive Relief



Equitable Defenses To Injunctive Relief

- Laches—Since an injunction is an equitable remedy, the complaining party must have acted promptly to enforce its right.
- Unclean Hands—(a) The litigation must arise out of, or be connected to, the improper conduct on which the defense is based; and (b) the defendant must be injured by a wrong that is done to him personally rather than to some third party.
- Estoppel is also available.

Equitable Defenses To Injunctive Relief

- Courts require a party seeking relief in equity to offer or plead willingness to do equity.
- The law does nothing in vain.
- If the act sought to be enjoined has occurred prior to the granting of a temporary injunction, the issue has become moot and a court should deny the request for a temporary injunction.
- Appellate implications.

Discovery In Anticipation of TI Hearing



Discovery In Anticipation of TI Hearing

- Motion to expedite discovery
- Request for production, request for disclosure, and interrogatories
- Depositions after written discovery
- Obtain computer and personal electronic devices for search by expert
- Obtain order from court on the above

Temporary Injunction Hearing



Temporary Injunction Hearing

- Defendant must be given notice
- Texas Rule of Civil Procedure 680 requires evidence at the hearing on irreparable injury and probable recovery
- Even if the defendant does not appear, there must still be a hearing and evidence is required
- Evidence rulings
- Can court admit affidavit evidence?
- Trial court can impose reasonable limits on the parties' presentation of evidence in the hearing but cannot deny a party a right to be heard.

Temporary Injunction Hearing

- Whether defendants violated a temporary restraining order is not relevant to whether a trial court enter the temporary injunction.
- Spoliation may assist a plaintiff, but little law in Texas on this issue.

Temporary Injunction Order

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DATE FILED September 11, 2012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
*****X

CHRISTOPHER BEHRE, DANIEL SILBERG,
JENNIFER BOLEN, NADIA CHERRY, ALEXA
O'BRIEN, ED SAIY OF HASE, YAC MARGALLA,
MOM. SAIGITA DOMADOTTIR M.F.,
DianaLeff,
-0-
MIAMI ORAMA, individually and as
representative of the UNITED STATES OF
AMERICA; LEON VASHTAL, individually
and in his capacity as the Assistant
and representative of the DEPARTMENT
OF DEFENSE; JOHN MCCAIN, JOHN BOEHNER,
GARY SHIM, NANCY PELLOS, MITCH
MCOSMELL, ERIC CAWTON as
representatives of the UNITED STATES
OF AMERICA,
Defendants.
*****X

KATHERINE B. FORREST, District Judge

On May 14, 2012, this Court preliminarily enjoined enforcement of § 10112 of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-188, 124 Stat. 1290 (Dec. 21, 2010) ("the NDAA"). See *Hedges v. Obama*, No. 11 Civ. 784, 2012 WL 170124 (S.D.N.Y. May 14, 2012) (order granting preliminarily injunction) (the "May 14 Opinion"). On June 4, 2012, in response to a footnote contained in the Government's

* "The Government" as used herein refers to those defendants in this action that are properly before the Court. See *Hedges*, 2012 WL 170124, at *12.

Temporary Injunction Order

- A temporary injunction must:
 - (1) State the reasons for the injunction's issuance by defining the injury and describing why it is irreparable;
 - (2) Define the acts sought to be enjoined in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him; and
 - (3) Set the cause for trial on the merits and fix the amount of the bond.
- Be careful that order is not overly broad.
- Be careful that order is not conclusory.
- Waiver of form errors?

Motion to Dissolve



Motion to Dissolve

- The purpose of a motion to dissolve an injunction is “to provide a means to show changed circumstances or changes in the law that require modification or dissolution of the injunction; the purpose is not to give an unsuccessful party an opportunity to relitigate the propriety of the original grant.”
- A trial court generally has no duty to dissolve an injunction unless fundamental error has occurred or conditions have changed
- A “change in circumstances” refers to a change in conditions occurring since the granting of the temporary injunction

Motion to Dissolve

- The law applicable to the dissolution of a temporary injunction does not allow a party to relitigate the initial grant of an injunction
- Example: even where trial court granted partial summary judgment for defendant, court could not dissolve injunction because no changed circumstances

Appellate Review



Appellate Review

- No appeal of TRO
- Right to interlocutory appeal of temporary injunction, but not permanent injunction
- Texas Supreme Court's jurisdiction
- Mandamus is possible for either TRO or temporary injunction
- Request findings of fact and conclusions of law

Appeal of Temporary Injunctions

- Notice of Appeal
- Record
- Briefing schedule
- Challenge all grounds
- Can only appeal TI issues
- Appeal does not stay trial, and trial court can issue other orders
- Avoid mootness: seek stay of order or supersedeas relief

Appeal of Temporary Injunction Orders

- Because an appeal of an order granting a temporary injunction is an appeal from an interlocutory order, the merits of the applicant's case are not presented for appellate review
- “An interlocutory appeal should not be used to obtain an advance ruling on the issues, and we may not give full consideration to the merits of the underlying lawsuit.”
- Whether to grant or deny a temporary injunction is within the trial court's sound discretion.

Impact Of Appeal

- If affirmed, injunction becomes court of appeals' injunction as well.
- Law of the case?
- Res judicata or collateral estoppel?
- Risk vs. Reward



Conclusion



Conclusion

- When an attorney has a client walk in the door that seeks to either prosecute or defend against injunctive relief, there is not much time to research and think about the various issues that come up.
- The author hopes that the paper and presentation is an assistance in that busy time.