NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 0749

JORGE CARDONA & BLANCA MEJIA

VERSUS

ADAN RIVERA & LISSETTE RIVERA

Judgment Rendered: November 9, 2011

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number C597060

The Honorable Timothy E. Kelley, Judge Presiding

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Jorge Cardona & Bianca Mejia

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

WHIPPLE, J.

This matter is before us on appeal by defendant, Adan Rivera, from a judgment of the trial court in favor of plaintiffs, Jorge Cardona and Bianca Mejia. For the following reasons, we amend the judgment and, as amended, affirm.

FACTS AND PROCEDURAL HISTORY

Jorge Cardona worked for Adan Rivera for approximately fifteen years installing sod, flower beds, drainage and sprinkler systems, and lighting through Rivera's landscaping business, Mr. Sod. During that time, in approximately June of 2008, Cardona and Rivera entered an agreement whereby Cardona and Mejia moved into a house owned by Adan Rivera and Lissette Rivera on Azrock Avenue in Baton Rouge, in exchange for payment of $1,000.00 per month to Rivera until Cardona paid Rivera the total value of the equity in the home.[1]

On the evening of October 10, 2010, the security alarm sounded at Mr. Sod's business office and Cardona was called by Lissette Rivera to unlock the gate and office with his keys, so that Lissette Rivera and East Baton Rouge Parish Sheriff's deputies who had responded to the call to inspect the office and premises. Adan Rivera, however, became convinced that Lissette Rivera, who was his estranged wife at the time, and Cardona had staged a "break-in" and burglarized the office; therefore, he immediately terminated Cardona's employment with Mr. Sod.[2] Soon thereafter, Cardona began working for another landscaping business in Baton Rouge. On November 1, 2010, at approximately 5:45 a.m. Rivera and another man appeared at the Azrock Avenue home and attempted to convince Cardona and Mejia to sign a promissory note for the

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[1]The specific terms of this agreement are disputed and are the underlying basis of the appeal. Rivera contends that the parties entered into a "lease-purchase" agreement and that Cardona still owes him a balance on the equity, while Cardona contends that he has paid Rivera the total equity he owed Rivera and that he now owns the home.

[2]At this time, Adan and Lissette Rivera had a suit for divorce and community property partition pending in the Family Court of East Baton Rouge Parish.

amount Rivera contended that they owed him for the house, plus personal loans Cardona and Mejia allegedly received from Rivera. Cardona and Mejia refused to sign the documents, and the instant litigation ensued.

On November 30, 2010, Cardona and Blanca Mejia filed a petition for breach of contract, damages, declaratory judgment, temporary restraining order, and injunctive relief, naming Adan Rivera and Lissette Rivera as defendants therein. In their petition, plaintiffs contended that in June of 2008, Rivera took advantage of Cardona, who spoke no English and was unfamiliar with the laws of the State of Louisiana, by proposing a scheme to sell the Azrock home to Cardona and Mejia, who had no credit history and who could not qualify for a formal loan. The $180,000.00 sale with an assumption of mortgage, whereby plaintiffs would pay a down payment of $38,000.00, waspayable in regular monthly installments of $1,000.00 to Rivera, and plaintiffs would assume and pay the $142,000.00 remaining balance on the Riveras' mortgage note to Chase Bank by paying the monthly notes of approximately $1,100.00.

In support of plaintiffs' contention that they had lawfully purchased the Azrock home pursuant to a valid oral agreement with Rivera, plaintiffs contended that in Adan Rivera's sworn deposition testimony of October 20, 2010, given in connection with his divorce proceedings with Lissette Rivera, Rivera admitted under oath that he had structured the sale to plaintiffs with an assumption of mortgage on the Azrock property. Specifically, he admitted he set up the sale in such a way that it would ensure the continued employment of Cardona, so that if Cardona ever tried to leave his employ, Cardona would have a problem paying for the house and Cardona would not be able to secure a formal loan. Plaintiffs contended that pursuant to the oral agreement of sale that Rivera testified to under oath, Rivera made a valid oral transfer of the immovable property to plaintiffs, who subsequently took occupancy of the home. Thus, plaintiffs contended that

Rivera had recognized the transfer under oath, thereby satisfying the criteria of LSA-C.C. art. 1839.[3] Plaintiffs further contended that they have remained in occupancy of the home and have made all monthly payments pursuant to their agreement with Rivera.

In the petition, plaintiffs further sought damages for Rivera's November 1, 2010, early morning disturbance at their home, and his attempt to summarily evict them from the Azrock property, as well as Rivera's attempts to have plaintiffs discharged from their subsequent employment by threatening to report their employers to U.S Immigration and Customs Enforcement. Plaintiffs further sought damages for alleged defamatory, false, and malicious complaints made by Rivera about Cardona to the Louisiana Department of Agriculture concerning the status of his landscape license, and to the East Baton Rouge Parish Sheriff's Office concerning the October 10, 2010 alleged burglary of the Mr. Sod office.

Finally, plaintiffs sought a preliminary restraining order prohibiting Rivera or his agents from harassing them, attempting to have them terminated from their jobs, evicting them, or otherwise threatening or molesting them until a permanent injunction could be issued in due course. Plaintiffs also sought specific performance, declaratory judgment, injunctive relief, and damages against Rivera for his breach of contract, malicious conduct, defamatory acts, intentional infliction of emotional distress, attempted interference with their relational interests, and deprivation of rights guaranteed by the U. S. Constitution.

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[3]Louisiana Civil Code article 1839, entitled "Transfer of immovable property," provides as follows:

> A transfer of immovable property must be made by authentic act or by act under private signature. **Nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath.**
>
> An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the property is located. [Emphasis added.]

On December 14, 2010, Rivera responded by filing an answer generally denying plaintiffs' allegations as well as setting forth declinatory exceptions of lis pendens and lack of jurisdiction, and peremptory exceptions of no cause and no right of action.

On December 16, 2010, the matter of the preliminary injunction was set for hearing before the trial court. Prior to the presentation of testimony on the preliminary injunction, the trial court denied Rivera's peremptory exceptions of no right and no cause of action. At the conclusion of the hearing, the trial court rendered oral reasons denying Rivera's exception of lis pendens, granting the preliminary restraining order, and setting a bond on the injunction in the amount of one thousand dollars ($1,000.00). A written judgment was signed by the trial court on January 18, 2011.

Rivera now appeals contending that the trial court erred: (1) in finding that Cardona owns the home located at 10230 Azrock Avenue in Baton Rouge; and (2) in issuing a temporary restraining order and preliminary injunction to prevent Adan Rivera from evicting Cardona and Mejia from the home.

DISCUSSION

At the outset, we note that the transcript of the hearing below reveals that the trial court correctly identified the matter that was set as a rule for **preliminary** injunction. Moreover, at the conclusion of the December 16, 2010 hearing, the trial court stated that the "purpose" of the hearing was for the issuance of a preliminary injunction. The trial court further concluded that it was "going to grant the preliminary injunction in the form and substance of the temporary restraining order" and set a "bond on the preliminary injunction in an amount of one thousand dollars." Further, in their briefs to this court on appeal, both parties contend that the trial court issued a temporary restraining order and preliminary injunction. However, the judgment submitted to and signed by the trial court on

January 18, 2011, states that the matter before the court was a rule for **permanent** injunction, ordered that a permanent injunction be issued, and set the bond on the injunction at $1,000.00.

A **preliminary** injunction is essentially an interlocutory order issued in summary proceedings incidental to the main demand for permanent injunctive relief. Bally's Louisiana, Inc. v. Louisiana Gaming Control Board, 99-2617 (La. App. 1st Cir. 1/31/01), 807 So. 2d 257, 263. It is designed to and serves the purpose of preventing irreparable harm by preserving the status quo between the parties pending a determination on the merits of the controversy. Bally's Louisiana, Inc. v. Louisiana Gaming Control Board, 807 So. 2d at 263. The principal demand for a **permanent** injunction can only be definitively disposed of after a full trial under ordinary process, even though the hearing on the summary proceedings to obtain the preliminary injunction might have addressed issues on the merits. McCurley v. Burton, 2003-1001 (La. App. 1st Cir. 4/21/04), 879 So. 2d 186, 189. In the absence of an express agreement between the parties, the court lacks the authority to convert a preliminary injunction to a permanent injunction. McCurley v. Burton, 879 So. 2d at 189. Moreover, there is no requirement that a bond be set for the issuance of a permanent injunction. LSA-C.C.P. art. 3610.

In the instant case, there is no indication in the record that the parties stipulated to allowing the hearing on the preliminary injunction to serve as one for a permanent injunction. In fact, the trial court notes in its oral reasons for judgment, "while this is not the ruling on the injunction itself, because there will be a final trial on the merits of that, as of this time, there's been sufficient evidence to show...." Indeed, by all indications in the transcript and briefs, the trial court and parties are under the impression that a preliminary injunction was set and heard before the trial court, and subsequently issued by the trial court.

Thus, in the interest of judicial economy and to save the litigants additional costs and time, the judgment of the trial court is hereby reformed to grant a preliminary judgment to reflect the procedural posture of the proceedings that transpired. See McCurley v. Burton, 879 So. 2d at 189; New Orleans Federal Savings and Loan Association v. Lee, 425 So. 2d 947, 949 (La. App. 5th Cir. 1983).

Standard of Review for Preliminary Injunction

Louisiana Code of Civil Procedure article 3612 (B) provides that "[a]n appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction." A party aggrieved by a judgment either granting or denying a preliminary injunction is entitled to an appeal. Giauque v. Clean Harbors Plaquemine, L.L.C., 2005-0799 (La. App. 1st Cir. 6/9/06), 938 So. 2d 135, 140, writs denied, 2006-1720, 2006-1818 (La. 1/12/07), 948 So. 2d 150, 151.

We are however mindful that appellate review of a trial court's issuance of a preliminary injunction is limited. The issuance of a preliminary injunction addresses itself to the sound discretion of the trial court and will not be disturbed on review unless a clear abuse of discretion has been shown. Concerned Citizens for Proper Planning, LLC v. Parish of Tangipahoa, 2004-0270, 2004-0249 (La. App. 1st Cir. 3/24/05), 906 So. 2d 660, 663.

The writ of injunction, a harsh, drastic, and extraordinary remedy, should only issue in those instances where the moving party is threatened with irreparable loss or injury, and is without an adequate remedy at law. LSA-C.C.P. art. 3601; Giauque v. Clean Harbors Plaquemine, L.L.C., 938 So. 2d at 140. Irreparable injury has been interpreted to mean a loss that cannot be adequately compensated in money damages or measured by a pecuniary standard. Star Enterprise v. State Through the Department of Revenue and Taxation, 95-1980, 95-1981, 95-1982 (La. App. 1st Cir. 6/28/96), 676 So. 2d

827, 834, writ denied, 96-1983 (La. 3/14/97), 689 So. 2d 1383. A preliminary injunction is essentially an interlocutory order issued in summary proceedings incidental to the main demand for permanent injunctive relief. The courts have generally held that a preliminary injunction is designed to preserve the status quo pending a trial of the issues on the merits of the case. Silliman Private School Corporation v. Shareholder Group, 2000-0065 (La. App. 1st Cir. 2/16/01), 789 So. 2d 20, 23, writ denied, 2001-0594 (La. 3/30/01), 788 So. 2d 1194.

Generally, a party seeking the issuance of a preliminary injunction must show that he will suffer irreparable injury if the injunction does not issue and must show entitlement to the relief sought; this must be done by a prima facie showing that the party will prevail on the merits of the case. Concerned Citizens for Proper Planning, LLC v. Parish of Tangipahoa, 906 So. 2d at 664. A showing of irreparable injury is not necessary when the act sought to be enjoined is unlawful, or a deprivation of a constitutional right is involved. Giauque v. Clean Harbors Plaquemine, L.L.C., 938 So. 2d at 140.

Louisiana Code of Civil Procedure article 3612 provides that while a party is not entitled to an appeal from an order relating to a temporary restraining order, an appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction. Nevertheless, an order or judgment issued in this manner shall not be suspended during the pendency of an appeal unless the court in its discretion orders a stay of further proceedings until such time as the appeal has been decided. LSA-C.C.P. art. 3612.

ASSIGNMENT OF ERROR NUMBER ONE

In Rivera's first assignment of error, he contends that the trial court erred in finding that Cardona owns the home located at 10230 Azrock Avenue. We note, however, that although the judgment on appeal herein prohibits Rivera

from "harassing plaintiffs, attempting to have them terminated from their jobs, evicting them from 10230 Azrock Avenue, Baton Rouge, La., or otherwise molesting plaintiffs," the judgment does not expressly order or otherwise declare that Cardona or Mejia owns the Azrock home.

Nonetheless, to the extent that Rivera argues same on appeal, we note that in finding that plaintiffs would be irreparably harmed if evicted from the home, the trial court stated in its oral reasons that its findings were premised on the evidence that was presented to him, and then specifically noted that there was "sufficient showing" on the preliminary injunction based on this evidence, as follows:

> Based upon the evidence that's presented to me, and while this is not the ruling on the injunction itself, because there will be a final trial on the merits of that, as of this time, there's been sufficient evidence to show me that there was in fact a contract of sale and a transfer of title between the parties. While it was not in writing so as to affect third parties, it certainly is a binding agreement between the two parties, as a sale between the two parties. Based upon that, the plaintiff has rights in that property of being able to have peaceful enjoyment of the property without disturbance from the defendant. Were the defendant to go forward with any eviction proceedings and the like that ... had been threatened, then he would be irreparably harmed because he would be without his home and his home place. So irreparable injury has been shown.

Thus, although the trial court determined that the plaintiffs made a prima facie showing that they could prevail at a trial on the merits on their claim that they own the Azrock property and home sufficient to render the grant of a preliminary injunction, the trial court did not preclude either party from the opportunity to address this issue at a full trial on the merits of the permanent injunction.

Accordingly, we find no merit to this assignment of error.

ASSIGNMENT OF ERROR NUMBER TWO

In Rivera's second assignment of error, he contends that the trial court erred in issuing a temporary restraining order and preliminary injunction to prevent Rivera from evicting Cardona and Mejia from the home.

In seeking injunctive relief, plaintiffs contended that they would suffer irreparable injury if evicted from the home. In support of their contention that they are entitled to this relief, because Rivera transferred ownership of the property to them in accordance with LSA-C.C. art. 1839, plaintiffs introduced the deposition testimony of Rivera, given in connection with his community property proceedings, wherein he admitted under oath that he sold the property to plaintiffs, as follows:

> **Q. And the [Azrok] property was appraised in January of 2008 for [$]182,500?**
>
> A. That's when we sold the property to my laborer, Jorge Cardona.
>
> **Q. Tell me about that transaction. I noticed also on I believe it was your financial statement where you listed that he was actually the owner of this property?**
>
> A. That's a bad situation because the house is in our name. He gave me the equity, whatever that was at the time paying me monthly. He already paid for it. But it's in our name. But actually, he pays the note to me every month. He's paying it to me, and I pay it to the bank. So, actually he owns that property, sir, he and his wife.
>
> **Q. Okay.**
>
> A. So, there has to be a document that we can just put him as the owner because that property cannot be touched because it's his.
>
> **Q. Why wasn't there just a sale done, a normal sale done?**
>
> A. He doesn't qualify. He has got no money.
>
> **Q. He couldn't finance it?**
>
> A. We tried several times. There's – there's just no money.

Q. So, let me make sure I understand this. When you entered into this transaction with Mr. Cardona – and when approximately was this?

A. Two, three years – let me see. Hold on. When was the appraisal done? I would say about 2007.

Q. All right. So, at some point in 2007, this was again a handshake type of agreement between you and Mr. Cardona?

A. Well, he works for me, and that was the way to keep him on the job.

Q. Okay.

A. You know, you're not going anywhere, you're staying with Mr. Sod. If you want to go somewhere else, you got to sell the house, put it in your name, or we sell the house.

Q. You said that was a way to keep him with Mr. Sod?

A. Uh-huh (affirmative response). I can't do the work. I'm 57, or 58 this month. I cannot do the work. And I have spent 15 years with the guy showing him how to do lighting and irrigation and everything, operate the equipment and everything. I just can't do the work myself anymore.

Q. So, when you entered into this transaction with Mr. Cardona, it was a way for you to have an ongoing relationship with him and thereby help secure the fact that he is going to continue to work with you?

A. Exactly.

Q. Because if he tried to leave your employment, he would have a problem with his house?

A. Exactly. He's going to have to go and get a loan, and get me – get me off the property. I mean, the name on the property.

Q. So, let me make sure I got this. He has already paid you whenever you entered into this transaction the equity that you felt you were entitled to? That has already been paid to you?

A. Already been paid to me.

* * * * *

Q. Okay. And you and Mr. Cardona don't have any written document evidencing the fact that he has paid you all of this equity?

A. No. We used to have it, and when – when he paid for it, I used to keep a little – she used to, his wife used to give me $1,000 a month, and it just after some months, $20,000 went on, and that was it.

Q. So, the total amount that you received was $42,000? I'm looking at the equity column.

A. I've got to check on that because we are talking about the appraisal here against – no, this is the equity of the house (indicating). That is not what he gave me, huh-uh (negative response), no. It was more like 30,000. I think the house was sold to him for 170. That was the appraisal which we bought it for, 170. I think that's what it was. We bought it for 170, and sold it to him for 170, and then he gave me the equity of the month. This is the equity on the house now, according to the appraisal. That's not the money I have that he gave me. No way.

Q. You think it's closer to 30,000?

A. Yes.

Plaintiffs contend that in accordance with his sworn testimony, pursuant to LSA-C.C. art. 1839, Rivera made a valid transfer of the property to them. Although Rivera contends in his brief on appeal that he transferred the property through a "lease-purchase" agreement, in his testimony at the hearing of the preliminary injunction, Rivera stated that he did not know what type of agreement it was, but then claimed that Cardona was to buy the house from him by paying him the equity and then obtaining his own financing.

On review of the record and the preliminary injunction issued herein, given the evidence presented by plaintiffs supporting their entitlement to the relief sought, we find no abuse of the trial court's discretion in its determination that plaintiffs made the requisite prima facie showing that they will prevail on the merits sufficient to warrant the grant of a preliminary injunction in their favor.

Accordingly, we also find no merit to this assignment of error.

CONCLUSION

For the above and foregoing reasons, the January 18, 2011 judgment of the trial court is amended to reflect the granting a preliminary injunction in favor of

plaintiffs and, as amended, is hereby affirmed. Costs of this appeal are assessed to defendant/appellant, Adan Rivera.

AFFIRMED AND, AS AMENDED, AFFIRMED.