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**ASIF SAID, Appellant v. AZHAR SAID AND PHOENICIAN IMPORTS, INC.,
Appellees**

NOS. 01-06-00763-CV, 01-07-00261-CV

COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON

2007 Tex. App. LEXIS 3453

May 3, 2007, Opinion Issued

SUBSEQUENT HISTORY: Rehearing denied by, Rehearing, en banc, denied by Asif Said v. Azhar Said, 2008 Tex. App. LEXIS 9742 (Tex. App. Houston 1st Dist., Dec. 30, 2008)

PRIOR HISTORY: [*1] On Appeal from the 234th District Court, Harris County, Texas. Trial Court Cause No. 2006-34130.

JUDGES: Panel consists of Justices Nuchia, Keyes, and Higley.

OPINION BY: Sam Nuchia

OPINION

MEMORANDUM OPINION

These are two interlocutory appeals from the trial court's August 10, 2006 orders granting a temporary injunction and denying another. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (Vernon Supp. 2006). Appellant Asif Said sued his brother, appellee Azhar Said, over the ownership of appellee Phoenician Imports, Inc. Asif Said also sued 11 related businesses that are not parties to the temporary injunction and thus not parties to these appeals.¹ The trial court granted a temporary injunction that ordered Asif to return any funds and property belonging to Phoenician Imports and ordered Asif not to enter the store. The temporary injunction order set the bond at \$ 25,000.00. By a separate order, the trial court denied Asif's motion for a temporary injunction.

¹ The other parties are Abbasid, Inc.; Afas Ltda. de CV; Aza Limitada; Azsa Imporadores Orientales Ltda. de CV; Chinasia, Inc.; Heliotech, Inc.; Maria Investments, Inc.; Merrysaman, Inc.; Rigin, Inc.; Taasco Private, Ltd.; and Venopac, SA.

[*2] **Background**

At the temporary injunction hearing, evidence was introduced by both brothers that purported to show that each brother was taking money from the company without the other's knowledge. Azhar, the older brother, claimed that he is the sole owner of the company and that Asif was nothing more than an employee. Asif claimed that both he and Azhar were co-owners. Asif lives in Houston and managed the company's Houston carpet store, while Azhar lives in Miami, Florida and supervises all of the company's assets, including the 11 other companies that are named as defendants in the underlying suit. After Asif questioned some financial transactions taken by Azhar, Asif filed the underlying suit for a declaratory judgment that he (Asif) is a co-owner of the company. Three weeks later, Azhar "fired" Asif, and Azhar obtained a temporary restraining order barring Asif from the Houston store.

Azhar's Temporary Injunction

(Appellate Case Number 01-06-00763-CV)

A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending trial. *Butmaru v. Ford Motor Co.*, 84 S.W.3d 198, 204, 45 Tex. Sup. Ct. J. 916 (Tex. 2002). To obtain a temporary [*3] injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.* On appeal, this Court is limited to reviewing whether the trial court abused its discretion concerning the preservation of the status quo. *Davis v. Huey*, 571 S.W.2d 859, 861-62, 22 Tex. Sup. Ct. J. 8 (Tex. 1978). This Court may not substitute its judgment for the trial court's judgment unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion. *Butmaru*, 84 S.W.3d at 204.

In his first issue, Asif claims that the trial court has not preserved the status quo, which he argues would preserve his managerial control over Phoenician Imports and actual possession of the company's Houston store. Instead, Asif argues, the temporary injunction impermissibly changed the status quo. *See, e.g., State Dep't of Highways & Pub. Transp. v. Elkins Lake Mun. Util. Dist.*, 593 S.W.2d 401, 402 (Tex. Civ. App.--Houston [14th Dist.] 1980, no writ). The status quo is "the last, actual, peaceable, noncontested [*4] status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651, 48 Tex. Sup. Ct. J. 94 (Tex. 2004). Although we do not agree with Asif that preserving the status quo requires the trial court to return managerial control over Phoenician Imports and actual possession of the company's Houston store, we agree that the temporary injunction has not preserved the status quo generally.

In order for the trial court to be able to fashion a temporary injunction that will accomplish the goal of preserving the status quo in the real world, we must take a broad and pragmatic view of what actually is the status quo. Here, the status quo is an ongoing business from which both Asif and Azhar derive an income and in which both claim ownership. The ownership issue, of course, will be decided when this case is tried on the merits. Until then, preserving the status quo requires, at a minimum, that the business be allowed to continue as a viable concern and that both brothers be allowed to derive their incomes from it as before.

Asif and Azhar each allege that the other was taking money from the company without his knowledge. If we were to accept Asif's argument that the status quo requires [*5] that he regain managerial control over Phoenician Imports and actual possession of the company's Houston store, then common sense dictates that Phoenician Imports would suffer economically while the two brothers jointly operated it. The law does not require the status quo to be "preserved" in such an impractical manner.

As long as the trial court preserves the status quo that the business be allowed to continue as a viable concern and that both brothers be allowed to derive their incomes from it as before, the trial court has wide discretion in fashioning a temporary injunction if the applicant is otherwise entitled. We hold, however, that the trial court abused its discretion by impermissibly changing the status quo when the court did not allow Asif to derive an income from Phoenician Imports during the pendency of the temporary injunction. Accordingly, we sustain issue one. Because of our holding that the temporary injunction did not preserve the status quo, we do not reach appellant's remaining issues two, three, and four.

Asif's Temporary Injunction

(Appellate Case Number 01-07-00261-CV)

Asif also attempts to bring an interlocutory appeal from the August 10, 2006 order [*6] that denied his motion for a temporary injunction. Asif's notice of appeal, however, only challenged the August 10, 2006 "Temporary Injunction against Asif Said." ² We therefore have no jurisdiction over this appeal.

2 Asif has attached an amended notice of appeal to correspondence filed in this Court, but the amended notice is not part of the clerk's record.

Conclusion

In appellate case number 01-06-00763-CV, we reverse the August 10, 2006 temporary injunction in favor of Azhar Said and render judgment denying the temporary injunction. In appellate case number 01-07-00261-CV, we dismiss the interlocutory appeal for want of jurisdiction. The Clerk of this Court is directed to issue the mandates immediately. *See* TEX. R. APP. P. 18.6.

Sam Nuchia

Justice

Panel consists of Justices Nuchia, Keyes, and Higley.