Case No. 127458

IN THE SUPREME COURT OF ILLINOIS

CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust.

Plaintiffs/Appellants

vs.

VILLAGE OF BOLINGBROOK,

Intervenor/Defendant – Appellee

On Appeal from the Appellate Court Of Illinois, Third District

Appellate Case No: 3-19-0564

Petition Allowed by Supreme Court: September 29, 2021

Rule 307(a)(1) Appeal from the Circuit Court for the 12th Judicial Circuit Will County, Illinois

Circuit Court Number 15 MR 2972

Honorable Roger D. Rickmon
Judge Presiding

Date of Order: September 24, 2019

Supreme Court Rule which confers jurisdiction upon the reviewing Court: Supreme Court Rule 315

BRIEF AND ARGUMENT OF DEFENDANT-APPELLEE VILLAGE OF BOLINGBROOK

Robert Wilder (ARDC#6244917)
Odelson, Sterk, Murphey, Frazier and McGrath, Ltd.
3318 West 95th Street
Evergreen Park, Illinois 60805
Ph. (708) 424-5678

rwilder@osmfm.com

Attorney for Intervenor/Defendant-Appellee, Village of Bolingbrook

ORAL ARGUMENT REQUESTED

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TABLE OF POINTS & AUTHORITIES

NATURE OF CASE

On September 24, 2019, the trial court entered a preliminary or permanent injunction enjoining the Village of Bolingbrook ("the Village") from proceeding to involuntarily annex Plaintiff's property.

Plaintiff owns certain land in unincorporated Will County. In December 2015, Plaintiff filed an action against Will County seeking administrative review, declaratory relief and mandamus related to Plaintiff's efforts to force Will County to issue a variance for frontage so that Plaintiff could obtain a building permit to construct a pole barn. The Village intervened in that lawsuit, and several months later, it annexed Plaintiff's property.

After the Village annexed Plaintiff's property, Plaintiff requested and was granted leave to file a quo warranto complaint against the Village, asserting that the involuntary annexation was improper. In November 2016, the trial court granted summary judgment in favor of the Village in the quo warranto action and Plaintiff appealed that ruling to the Third District Appellate Court.

In May 2018, in *Chicago Title Land Tr. Co. v. Cty. of Will*, 2018 IL App (3d) 160713 (hereinafter "*James I*"), the Appellate Court reversed the trial court, holding, in essence, that the voluntary annexation of ComEd property, which permitted the involuntary annexation of Plaintiff's property, was a sham.

After the Appellate Court's ruling in *James I*, the trial court entered judgment in Plaintiff's favor as to the quo warranto complaint against the Village. Meanwhile, Plaintiff's claims against Will County remained pending before the trial court.

After the Appellate Court held that the Village's annexation of Plaintiff's property was improper, the Village entered into a new and different annexation agreement with ComEd, containing different terms than the previous annexation agreement, in an effort to address issues raised by the Appellate Court. The second annexation agreement with ComEd was executed in June 2019, and the Village enacted an annexation ordinance in June 2019.

On August 28, 2019, after Plaintiff received notice of the involuntary annexation - without having filed any new complaint against the Village, and in the absence of any cause of action pending between Plaintiff and the Village - Plaintiff filed a three-page motion entitled, "Plaintiff's Motion For Entry Of An Order On Will County To Issue A Building Permit To Plaintiff And To Stay The Village Of Bolingbrook On Force Annexing The Plaintiff's Property Until The Court Has Ruled In This Case."

Plaintiff's motion requested that the trial court enter a ruling as to its zoning complaint against Will County. In that same motion, Plaintiff also requested that the Court "[s]tay the Village of Bolingbrook's second attempt to force annex the Plaintiffs property until the final disposition of this lawsuit." Plaintiff scheduled the motion for presentment on September 4, 2019.

Because the Village was scheduled to hold a hearing on the annexation of Plaintiff's property on September 24, 2019, the trial court entered an expedited briefing schedule, ordering the Village to file a response to the motion by September 11, 2019, Plaintiff to file a reply by September 18, 2019, and setting the matter for hearing on September 20, 2019.

On September 11, 2019, the Village filed a motion to strike the motion to stay, arguing that the motion to stay was actually a motion for preliminary injunction, and that as a motion for preliminary injunction, it was (1) procedurally defective because it was not accompanied or supported by any complaint against the Village, and (2) was substantively deficient because the motion was nothing more than one sentence summarizing the requirements necessary to obtain preliminary injunctive relief. On September 18, 2019, Plaintiff filed a response to the motion to strike.

Notwithstanding the procedural and substantive infirmities of Plaintiff's motion to stay, on September 20, 2019, the trial court denied the Village's motion to strike and held a hearing on Plaintiff's "motion to stay." On September 24, 2019, the trial court entered an order enjoining the Village from "again attempting to involuntarily annex Plaintiff's property as contemplated by Ordinance No. 19-068 scheduled for hearing by the Village at its September 24, 2019, meeting, until such time as the Village of Bolingbrook seeks relief from the Appellate Court."

The Village then appealed the injunctive order to the Third District Appellate Court. The Appellate Court reversed and vacated the trial court's injunctive order on the basis that Plaintiff did not file an appropriate complaint against the Village through which injunctive relief could issue. ("*James II*").

For the reasons stated below, the Appellate Court correctly determined that the injunctive order was entered in error because there was no complaint pending against the Village. Additionally, Plaintiff's motion for injunctive relief was substantively deficient and should have been denied by the trial court.

STATEMENT OF THE ISSUES

1. Whether the Appellate Court correctly held that the trial court committed reversible error when it entered a preliminary and/or permanent injunction unsupported by any complaint

2. Whether the trial court committed reversible error when it denied the Village's motion to strike Plaintiff's patently deficient motion for injunctive relief.

3. Whether the trial court committed reversible error when it found that Plaintiff demonstrated i) a likelihood of success on the merits of Plaintiff's previous, finally adjudicated quo warranto complaint, ii) irreparable harm in the absence of injunctive relief, iii) no adequate remedy at law and iv) the existence of a clearly ascertainable right in need of protection.

4. Whether the trial court committed reversible error when it determined that the Village's second annexation agreement with ComEd and the subsequent effort to annex Plaintiff's property constituted a "collateral attack" on the Appellate Court's jurisdiction.

5. Whether the trial court committed reversible error when it entered an order tantamount to a permanent injunction in the absence of a pending cause of action between the parties, applying the standards applicable to a preliminary injunction, and without any adjudication on the merits.

STATEMENT OF FACTS

In December 2015, Plaintiff ("James" or "Plaintiff"), the owner of certain land in unincorporated Will County, filed an action against Will County seeking administrative review, declaratory relief and mandamus. C000008-0000023. The action against Will

County related to James' efforts to force Will County to issue a variance for frontage so that Plaintiff could obtain a building permit to construct a pole barn. *Id*.

In January 2016, the trial court granted the Village of Bolingbrook's request to intervene. C000027-000106. Subsequently, the Village of Bolingbrook annexed Plaintiff's property.

In June 2016, after the Village annexed Plaintiff's property, Plaintiff requested and was granted leave to file a quo warranto complaint against the Village. C000024. In that complaint, Plaintiff asserted that the involuntary annexation of his property was improper because the Village's voluntary annexation of the adjacent ComEd property was improper. In November 2016, the trial court granted summary judgment in favor of the Village in the quo warranto case and Plaintiff appealed that ruling to the Third District Appellate Court. C000107; C000109.

In May 2018, the Appellate Court reversed the trial court, holding, in essence, that the annexation of ComEd property which permitted the involuntary annexation of Plaintiff's property, was a sham. C000116-000128.

In November 2018, Plaintiff moved for entry of judgment (summary judgment) in the trial court based on the Appellate Court's ruling and on November 28, 2018, the trial court entered judgment in Plaintiff's favor as to the quo warranto action. C000161.

Plaintiff's zoning action against Will County remained pending before the trial court. Plaintiff filed a motion for judgment on the pleadings, and Will County and the Village filed responses thereto. The trial court held a hearing on Plaintiff's motion in May 2019, but no ruling issued at that time. C000170.

After the Appellate Court held that the Village's annexation was improper, the Village sought to enter into a new and different annexation agreement with ComEd containing different terms than the previous annexation agreement, in an effort to address issues raised by the Appellate Court. This second annexation agreement between the Village and ComEd was executed in June 2019, and the Village enacted an annexation ordinance related to the ComEd property in June 2019. C000195-000240.

After Plaintiff received notice of the Village's intent to involuntarily annex his property, on August 28, 2019, Plaintiff filed a three-page motion titled, "Plaintiff's Motion For Entry Of An Order On Will County To Issue A Building Permit To Plaintiff And To Stay The Village Of Bolingbrook On Force Annexing The Plaintiff's Property Until The Court Has Ruled In This Case" and set the motion for presentment on September 4, 2019. C000171-000173.

Plaintiff's motion requested that the trial court enter a ruling in the zoning action against Will County. Tacked on to that motion, Plaintiff also requested that the Court "[s]tay the Village of Bolingbrook's second attempt to force annex the Plaintiffs property until the final disposition of this lawsuit." C000173. The motion stated, inter alia, that "the Plaintiffs property rights are in need of protection and there is a likelihood of Plaintiff succeeding on the merits of the underlying case and the Plaintiff will suffer irreparable harm in the absence of the issuance of a stay of the Village of Bolingbrook forced annexing of Plaintiffs property and the Plaintiff has no other adequate remedy at law." C000172.

Because the Village was scheduled to hold a hearing on the annexation of Plaintiff's property on September 24, 2019, the trial court, on September 4, 2019, entered

an expedited briefing schedule, ordering the Village to file a response to the motion by September 11, 2019, Plaintiff to file a reply by September 18, 2019, and setting the matter for hearing on September 20, 2019. C000188. Regarding the ruling on Plaintiff's motion for judgment on the pleadings as to Plaintiff's claims against Will County, the trial court judge stated that a written ruling would issue in the near future and that the ruling would be in Plaintiff's favor. C000265.

On September 11, 2019, the Village filed a motion to strike the motion to stay, arguing that the motion to stay was actually a motion for preliminary injunction, and that as a motion for preliminary injunction, it was procedurally defective because it was not accompanied or supported by any sort of complaint against the Village, and was substantively deficient because the motion was nothing more than one sentence summarizing the elements necessary to obtain preliminary injunctive relief. C000172. At the end of business of September 18, 2019, Plaintiff filed a response to the motion to strike. C000241.

On September 20, 2019, the trial court orally denied the Village's motion to strike and heard oral arguments on Plaintiff's "motion to stay," but delayed entering a formal order until September 24, 2019. C000259-000261.

On September 24, 2019, the trial court entered an order finding that:

1. That the second attempt of the Village of Bolingbrook to involuntarily annex the Plaintiffs property as contained in its proposed Ordinance No. 19-068 scheduled for public hearing and action by the Village on September 24, 2019, is a collateral attack on the jurisdiction of the Appellate Court.

2. That Plaintiffs property rights will be irreparably harmed by the action of the Village of Bolingbrook in involuntarily annexing the Plaintiffs property.

3. That Plaintiff has a likelihood of success on the merits of the previously decided quo warranto action and that Plaintiff has no adequate remedy at law without the entry of an order enjoining the Village from proceeding upon its involuntary annexation of Plaintiffs property.

4. That the Village's new annexation agreement with ComEd does not address all of the issues raised by the Appellate Court in that the Appellate Court questions that the annexation of the ComEd property is only an accommodation of the Village so it can involuntarily annex the Plaintiffs property. C000259-C000260.

In the same order, the trial court enjoined the Village from "again attempting to involuntarily annex Plaintiff's property as contemplated by Ordinance No. 19-068 scheduled for hearing by the Village at its September 24, 2019 meeting, until such time as the Village of Bolingbrook seeks relief from the Appellate Court." C000260.

The Village appealed to the Third District Appellate Court pursuant to Supreme Court Rule 307(a)(1), and on May 24, 2021, the Appellate Court reversed the imposition of injunctive relief and remanded the case to the trial court. A001-009.

STANDARD OF REVIEW

There appears to be a split of authority as to the standard of review applied to an interlocutory appeal of a denial or grant of injunctive relief (*see LAS, Inc. v. Mini-Tankers, USA, Inc.*, 342 Ill.App.3d 997 (5th Dist. 2003), several courts have held that where the trial court does not make any factual findings or the underlying facts are not in dispute, the court's decision is based upon a purely legal analysis; thus, the review of a

trial court's granting of injunctive relief is *de novo*. *Hutcherson v. Sears Roebuck & Co.*, 342 Ill.App.3d 109, 115 (1st Dist. 2003); *LAS, Inc. v. Mini-Tankers, USA, Inc.*, 342 Ill.App.3d 997 (5th Dist. 2003); see also *Peregrine Financials and Securities v. Hakakha*, 338 Ill.App.3d 197, 202 (1st Dist. 2003) ("Because this ruling was clearly one of law, and the relevant underlying facts are not in dispute, a de novo standard of review is appropriate"); *see also Cohen v. Blockbuster Entertainment, Inc.*, 351 Ill.App.3d 772 (1st Dist. 2004) ("Here, the trial court based its ruling on the undisputed facts in the record and therefore, our review of the arbitrability issue is *de novo*").

Although the Appellate Court did not decide which standard of review is applicable here, but instead held that injunctive order was improper under either standard, the applicable standard in this this case is *de novo* review. In this case, the trial court made no credibility determinations, held no evidentiary hearing, and enjoined the Village solely on the basis of three pleadings: Plaintiff's "motion to stay," the Village's motion to strike the motion to stay, and Plaintiff's response to the Village's motion to strike. The trial court's granting of the preliminary injunction was based on purely legal arguments and conclusions. Therefore, the appropriate standard of review in this case is *de novo*.

ARGUMENT

I. The Appellate Court Correctly Held that the Trial Court Erred When It Entered a Preliminary And/Or Permanent[1] Injunction Unsupported By Any Complaint.

It is well-established, and the Appellate Court correctly held that a motion seeking preliminary injunctive relief must be supported by some sort of complaint stating a cause of action. *People ex rel. Carter v. Hurley*, 4 Ill. App. 2d 24, 27 (1st Dist. 1954) ("A

[1] The permanent nature of the injunction is discussed in Section V, *infra.*

complaint incorporating a prayer for injunctive relief must provide grounds upon which a court can fix its equitable jurisdiction before an injunction may issue"); *see also Kolstad v. Rankin*, 179 Ill. App. 3d 1022, 1029 (4th Dist. 1989), quoting *3 C. Nichols, Illinois Civil Practice* § 2276, at 23 (rev. vol. 1987) ("The application for temporary restraining order or preliminary injunction may be included in the original complaint, in which case the complaint must be verified, or it may be requested by motion filed at the same time [as the complaint] or later and supported by proper affidavits. Even though requested in the complaint, a motion is necessary in order to bring it to the attention of the court and in order to settle the question of notice and bond"); *Keeshin v. Schultz*, 128 Ill. App. 2d 460, 468 (1st Dist. 1970) (A preliminary injunction preserves the status quo pending a resolution on the merits of the complaint brought by the party seeking the injunction); *PSL Realty Co. v. Granite Inv. Co.*, 42 Ill. App. 3d 697, 701 (5th Dist. 1976) ("a preliminary injunction and a receivership are merely ancillary remedies and cannot constitute the ultimate relief afforded in a particular dispute").

The fact that a party seeking a preliminary injunction must also file some form of complaint stating a cause of action is obvious from what the courts require the movant to demonstrate: (i) an ascertainable right in need of protection, (ii) *a likelihood of success on the merits*, (iii) irreparable harm in the absence of injunctive relief, and (iv) the lack of an adequate remedy at law. *Bridgeview Bank Grp. v. Meyer*, 2016 IL App (1st) 160042, ¶ 12 (emphasis added).

As the Appellate Court correctly observed, "[w]ithout filing a complaint regarding the new agreement, the plaintiff could not challenge the validity of the new agreement. Further, if there was no complaint on which a final decision could be reached,

there would be nothing to halt the operation of the preliminary injunction." (A007 at ¶ 16).

For this reason alone, Plaintiff's motion for injunctive relief was procedurally fatally defective and should have been stricken. The trial court committed reversible error when it ignored this fatal defect, denied the Village's motion to strike, and granted the motion for injunctive relief, and the Appellate Court's reversal of the injunction was correct.

Plaintiff's opening brief ignores these axiomatic principles and instead summarizes the law governing intervention. For example, Plaintiff argues that "the Intervention Statute specifically prohibits the intervenor from conduct that would 'interfere with the control of the litigation, as justice and avoidance of undue delay may require.' " (Pl. Brief at p. 22). First, the principle that an intervenor must not interfere with the control of litigation refers to conduct within the context of a judicial proceeding, rather than extra-judicial conduct, such as a statutorily ordained annexation of property, which is precisely what the trial court enjoined.

Plaintiff's arguments regarding intervention are not only incorrect, they miss the point. Plaintiff's zoning complaint against Will County not only made no allegations related to the Village and sought no relief against the Village, it had nothing whatsoever to do with the annexation of Plaintiff's property by the Village, and therefore could not provide the vehicle by which the trial court enjoined the Village from proceeding with the annexation of Plaintiff's property. The fact that the Village intervened in the zoning lawsuit against Will County does not automatically, without more, subject the Village to this type of injunctive relief and surely, if any precedent existed to support Plaintiff's

position, it surely would have been cited in the opening brief. Indeed, despite filing a 37-page brief with this Court, Plaintiff fails to cite to any analogous precedent in support of the imposition of injunctive relief under circumstances similar to those here.

Equally significant is the fact that the trial court specifically declined to find that Plaintiff demonstrated a likelihood of success on the zoning complaint, but made the specific finding that "Plaintiff has a likelihood of success on the merits of the previously decided quo warranto action…." C000260.

The Appellate Court was correct when it reversed and vacated the injunction. The trial court erred when it relied on the previously filed quo warranto action as the basis for the preliminary injunction for at least two reasons: 1) final judgment in the previously filed quo warranto action had already been entered; and 2) the previously filed and finally adjudicated quo warranto action sought to void the annexation of Plaintiff's property by challenging the validity of a previous version of an annexation agreement between the Village and ComEd and, of necessity, the previous, finally adjudicated quo warranto action could not and did not, challenge the validity of the new and different annexation agreement between the Village and ComEd.

The previously filed and finally adjudicated quo warranto action could not be the vehicle through which Plaintiff obtained a preliminary injunction because that action was based upon allegations specific to the then-existing annexation agreement between the Village and ComEd and, in particular, was based on the following salient allegations:

- "The Village's annexation of the ComEd Property under the ComEd Ordinance was contingent and was not final on May 10, 2016, and it remains contingent and not final";

- The ComEd Annexation Agreement provides in §2B and Exhibit B, as a defined "Condition Subsequent," for a "unzoned" zoning designation

that is unique to ComEd in the Village, and the Village agreed to amend the Bolingbrook Zoning Ordinance especially for ComEd so that the ComEd property "shall be deemed unzoned property and shall not be subject to the regulations set forth in this Ordinance;

- Section 2B of the ComEd Annexation Agreement contains numerous conditions precedent to the annexation of the ComEd Property and qualifies the Village's annexation of the ComEd Property by stating that "the annexation of ComEd's Property pursuant to the Petition and this Agreement are hereby expressly made conditional upon the occurrence or fulfillment of the conditions precedent set forth below";

- ComEd's Petition for Annexation, attached as Exhibit C to the ComEd Annexation Agreement, provides in paragraph 1, in part, "[t]hat subject to satisfaction of the Conditions Precedent and the Condition Subsequent of the ComEd Annexation Agreement, the property be annexed to the Village ...";

- Among the expressly defined "Conditions Precedent" in Section 2B of the ComEd Annexation Agreement are the following:

  (b) The absence of any change in circumstances which in ComEd's reasonable judgment is likely to have a material adverse effect on ComEd or the ComEd Companies.

  * * *

  (c) The absence of any change in circumstances which in ComEd's reasonable judgment obviates the need for the annexation of the Property by the Village in light of the Village's stated municipal objectives;

- Under §2B of the ComEd Annexation Agreement, ComEd may terminate the ComEd Annexation Agreement on or before June 30, 2016, or such other extended deadline to which the Village and ComEd may mutually assent;

- By its express terms, the ComEd Annexation Agreement remains contingent until either all of the Conditions Precedent have occurred or been fulfilled, or July 1, 2016 (if there is no extension of that deadline), whichever occurs later;

- All of the Conditions Precedent to the annexation of the ComEd Property have not occurred or been fulfilled so the ComEd Property is not yet annexed to the Village;

- Section 10 of the ComEd Annexation Agreement provides that ComEd may elect to disconnect from the Village at any time during the term of the ComEd Annexation Agreement upon the occurrence of any one of several conditions, including if one (1) year has passed from the annexation date and ComEd's disconnection would not disrupt the contiguity of territory within the Village.

C00032-000035.

As explained to the trial court in the Village's motion to strike, after the Appellate Court's decision in *James I*, when the Village began the process of the second annexation of ComEd property, the Village made efforts to address the issues raised in the Appellate Court's decision by entering into a new and substantively different annexation agreement with ComEd, and in June 2019, passed an ordinance annexing the ComEd property pursuant to the new and different annexation agreement. Notably, the new, substantively different annexation agreement between the Village and ComEd, *inter alia*, removed all of the contingencies that the Appellate Court found objectionable in *James I*, annexed significantly more land, and zoned the newly-annexed ComEd property.

The facts surrounding the second annexation of ComEd property were materially different from those alleged in the previously filed and finally adjudicated quo warranto complaint. Accordingly, the previous quo warranto action could not be a vehicle through which Plaintiff could obtain a preliminary injunction against the Village, and the Appellate Court correctly held that when the trial court enjoined the Village on September 24, 2019, there was no complaint stating a cause of action upon which Plaintiff could show a likelihood of success on the merits and therefore was not entitled

to injunctive relief against the Village.

II. Plaintiff's Motion For Injunctive Relief Was Patently Substantively Deficient and Should Have Been Stricken by the Trial Court

Plaintiff's "motion to stay" should have been stricken or denied because it was facially insufficient and conclusory. It is well-established that broad, conclusory allegations are insufficient to establish a plaintiff's entitlement to temporary injunctive relief. *Bridgeview Bank Grp. v. Meyer*, 2016 IL App (1st) 160042, ¶ 15, citing *Capstone Financial Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957, ¶ 11; *see also Office Elecs., Inc. v. Adell*, 228 Ill. App. 3d 814, 820 (1st Dist. 1992) ("Even a cursory review of the motion in this case reveals that plaintiff's allegations concerning irreparable injury and the lack of an adequate legal remedy are merely conclusory and fail to set forth facts with the detail necessary to support the issuance of a preliminary injunction").

In this case, even a cursory review of Plaintiff's "motion to stay" reveals that the motion was devoid of any legal argument or factual affidavit, and was supported by just one conclusory sentence summarizing what a movant must demonstrate in order to obtain a preliminary injunction:

> "The Plaintiffs property rights are in need of protection and there is a likelihood of Plaintiff succeeding on the merits of the underlying case and the Plaintiff will suffer irreparable harm in the absence of the issuance of a stay of the Village of Bolingbrook forced annexing of Plaintiffs property and the Plaintiff has no other adequate remedy at law."

C000172.

Plaintiff's motion for injunctive relief in the trial court contained no substantive arguments whatsoever in support of preliminary injunctive relief, making it impossible for the Village to make any cogent, well-developed counter-arguments.

To the extent Plaintiff ever made substantive arguments in support of injunctive

relief, those arguments were made in response to the Village's motion to strike. This was procedurally improper and resulted in an improper shifting of the burden of persuasion from Plaintiff to the Village, which is particularly prejudicial and improper in the context of a motion seeking such extraordinary relief. The purpose of a response to a motion to strike is to provide a party with an opportunity to explain to the court why the pleading being attacked (the "motion to stay") should not be stricken; in other words, to defend the actual motion for injunctive relief, and not to provide the party with another bite at the apple.

Because the motion for preliminary injunctive relief itself was so patently inadequate and devoid of any substantive arguments, the trial court should have stricken Plaintiff's motion, as the Village requested, ignored the Plaintiff's newly-raised arguments in the response to the motion to strike, and required Plaintiff to file an appropriate complaint and a substantively sufficient motion.

III. Plaintiff Failed to Establish Entitlement to Injunctive Relief in the Trial Court

It is axiomatic that this Court is not bound by the reasoning of the Appellate Court and may affirm for any basis presented in the record. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 258 (2006), citing *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248 (2004). In this case, the Appellate Court focused solely on the procedural deficiencies of Plaintiff's motion for injunctive relief and did not address the substantive deficiencies of the motion. It is clear, however, that substantively, even if Plaintiff did have an appropriate complaint through which it could obtain injunctive relief against the Village, it did not and could not establish entitlement to the extraordinary

remedy of a preliminary injunction. It is well-established that a movant seeking preliminary injunctive relief has the burden of establishing entitlement to it. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 336 (1st Dist. 2001) ("To justify entry of a preliminary injunction, the moving party carries the burden of persuasion"); *see also Illinois Hous. Dev. Auth. v. Arbor Trails Dev.*, 84 Ill. App. 3d 97, 103 (3rd Dist. 1980); *Mid-Town Petroleum, Inc. v. Gowen*, 243 Ill. App. 3d 63, 68 (1st Dist. 1993).

A preliminary injunction is an extraordinary remedy, and mandatory preliminary injunctions are disfavored by the courts. It is available only in those cases where an emergency exists and serious harm would result if an injunction were not issued to preserve the status quo. *Lumbermen's Mut. Cas. Co. v. Sykes*, 384 Ill. App. 3d 207, 230 (1st Dist. 2008), citing *Board of Education of Dolton School District 149 v. Miller*, 349 Ill.App.3d 806, 814 (1st Dist. 2004) and *Shodeen v. Chicago Title & Trust Co.*, 162 Ill.App.3d 667, 673 (2nd Dist. 1987).

A. Plaintiff failed to demonstrate that it had no adequate remedy at law in the trial court.

It is well-established that if a party's injury can be adequately compensated through money damages, then it has an adequate remedy at law and does not need the extraordinary remedy of injunctive relief. *Lumbermen's Mut. Cas. Co.,* 384 Ill. App. 3d at 230–31. It is only when money is insufficient to compensate the injury, or when the injury cannot be properly quantified in terms of money, that injunctive relief is necessary. *Id*. Irreparable harm occurs only where the remedy at law is inadequate, meaning that monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards. *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 947 (2nd Dist. 2001).

In the trial court, Plaintiff's argument that it had no adequate remedy at law was opaque and incoherent:

> "Moreover, Plaintiff does not have an adequate remedy at law in this matter. It is axiomatic that Plaintiff cannot challenge the forced annexation of its property by quo warranto until after the annexation has been complete, something that has not occurred. See *Petition of Village of Kildeer to Annex Certain Property*, 162 Ill.App.3d 262, 271 (2nd Dist. 1987). Plaintiff has now spent over six (6) years litigating its property rights and has finally won. This new scheme to force annex Plaintiffs property is nothing more than a spiteful attempt by the Village to further deprive Plaintiff of its property rights."

C000249.

In its opening brief, Plaintiff repeats the essence of its previous argument, asserting that "[i]f the Village's second forced annexation was allowed to proceed, the only way James could potentially contest the forced annexation and protect the relief the trial court had just granted him was by filing a second complaint in quo warranto, which James could not legally file until after the second forced annexation of the Property was complete, something that had not occurred when the injunction was entered." (Pl. Brief at p. 29-30).

First, it is not entirely clear, particularly on this sparse record, that Plaintiff's argument that there is no means to challenge the annexation until after the annexation is complete is even correct. Plaintiff may have had standing to challenge the already completed annexation of the ComEd property in a quo warranto action (*see People ex rel. Koplin v. Vill. of Hinsdale*, 38 Ill. App. 3d 714 (2nd Dist. 1976) (plaintiff attempted to challenge the propriety of the annexation of property adjacent to his own and the trial court granted temporary injunctive relief); *see also People ex rel. Ryan v. City of W. Chicago*, 216 Ill. App. 3d 683 (2nd Dist. 1991) (quo warranto action is appropriate to

challenge a voluntary annexation agreement). Under the unique circumstances in this case, Plaintiff may have had sufficient standing to prospectively challenge the pending involuntary annexation of Plaintiff's property through such an action, or to retrospectively challenge the voluntary annexation of the ComEd property.

Moreover, even assuming hypothetically that the trial court had *denied* Plaintiff's motion for injunctive relief, and assuming Plaintiff would then be required to wait until the annexation of Plaintiff's property was completed in order to challenge it, and further assuming, as Plaintiff claimed, the second annexation was improper just like the first annexation, then the second annexation would ultimately fail and Plaintiff would again be under the jurisdiction of Will County zoning and building codes, and would again be entitled to the variance and building permit. The fact that Plaintiff might be again required to challenge a facially valid annexation does not mean that Plaintiff had no adequate remedy at law.

Finally, it is clear from the record that Plaintiff wished to obtain a building permit from Will County in order to build a pole barn, which as discussed in greater detail in Section III(C), at the time Plaintiff moved for injunctive relief, it did not have a right to do. If, as Plaintiff argues, Plaintiff would not be able to build a pole barn in the absence of an injunction against the Village, Plaintiff failed to explain to the trial court, and continues to omit any explanation why this cannot be measured by pecuniary standards.

B. Plaintiff could not demonstrate a likelihood of success on the merits.

As set forth in Section I, *supra*, because there was no pending cause of action existing between Plaintiff and the Village which would permit injunctive relief against the Village, Plaintiff could not establish a likelihood of success on the merits. In the trial

court, the only argument Plaintiff advanced in writing prior to the hearing(s) was that Plaintiff had already succeeded on the merits of its zoning action against Will County. C000245, ¶ 2. But the zoning action could not be the basis for injunctive relief against the Village because that action is directed only against Will County, does not contain any allegations against the Village, does not seek relief of any kind against the Village, does not challenge the Village's annexation of property, and has nothing whatsoever to do with annexation of Plaintiff's property by the Village. C000008-0000023.

Moreover, it is undisputed that the trial court did not find that Plaintiff demonstrated a likelihood of success on the merits of the zoning complaint against Will County, but instead found that Plaintiff had demonstrated a likelihood of success on the merits of the previously finally adjudicated quo warranto action. That finding was erroneous and the resulting injunction, which was clearly based on that finding, was also incorrect.

Ultimately, neither the zoning complaint nor the finally adjudicated quo warranto complaint were procedurally proper vehicles to obtain this injunctive relief against the Village and therefore, Plaintiff could not establish this fundamental element necessary to obtain preliminary injunctive relief.

C. Plaintiff could not establish an ascertainable right in need of protection.

Plaintiff's initial motion for injunctive relief contained no substantive argument that it had an ascertainable right in need of protection. Then, on September 4, 2019, at the presentment of the motion to stay, the trial court indicated that, in the zoning action, it intended to order Will County to issue a building permit to Plaintiff. Subsequently, in response to the Village's motion to strike, Plaintiff seized upon the trial court's statement

and argued that the preliminary ruling constituted an entitlement to the building permit and constituted an ascertainable right in need of protection. By advancing this argument, Plaintiff tacitly admitted that when the motion for injunctive relief was filed, any right in need of protection was purely speculative and was entirely dependent upon the trial court's ruling in the zoning complaint against Will County. Therefore, even assuming *arguendo* that the trial court's ruling in Plaintiff's favor in the action against Will County created an ascertainable right in need of protection, it certainly did not exist at the time Plaintiff moved for injunctive relief, and did not exist until the trial court actually entered the order on September 24, 2019, contemporaneous with the injunctive order.

Moreover, Plaintiff's argument that the trial court's order of September 24, 2019, ordering Will County to issue a building permit constituted a property right in need of protection cannot withstand scrutiny. Plaintiff concedes as much in its opening brief, noting that "a zoning classification or building permit may not be a vested right in need of protection." Then, relying on *1350 Lake Shore Associates v. Randall*, 401 Ill. App. 3d 96 (1st Dist. 2010), Plaintiff argues that the facts of this case justify the application of the exception to the general rule. The instant case has no factual commonality with *1350 Lake Shore Associates*. The court in *1350 Lake Shore Associates* explained that "[f]irst, it must be determined which of the expenditures made or obligations incurred by the property owner were done in good-faith reliance on the probability that it would obtain the necessary approvals to develop the property pursuant to the prior zoning classification." *Id*. at 103.

In the instant case, Plaintiff presented no evidence whatsoever that it had made substantial expenditures or investments in good faith reliance on the probability that Will

County would issue a building permit for the pole barn and, even if Plaintiff had attempted to demonstrate that it incurred significant expenditures in anticipation of Will County issuing a pole barn, any such expenditures would not have been made in a good faith reliance on the probability that a building permit would be issued. Not only did Will County not promise or even suggest that a building permit would issue, Will County refused at all times to issue the building permit, and was not required to issue a building permit until September 24, 2019. Accordingly, Plaintiff did not incur expenditures in a good-faith reliance on the County and did not have a vested property right to develop the property in accordance with the building permit which was at all times denied by the County.

Significantly, none of these arguments were sufficiently developed in the trial court because the trial court improperly reversed the burden of persuasion and allowed Plaintiff to make substantive arguments in support of the cursory motion for injunctive relief in a brief filed in response to the Village's motion to strike.

IV. The Trial Court Committed Reversible Error When It Adopted Plaintiff's Argument That The Village's Second Annexation Agreement With ComEd And The Subsequent Effort To Annex Plaintiff's Property Constituted A "Collateral Attack" On the Appellate Court's Jurisdiction.

Although not addressed by the Appellate Court, the trial court improperly adopted an argument not appearing anywhere in Plaintiff's motion for preliminary injunctive relief, but which appeared for the first time in response to the Village's motion to strike – i.e. that the Village's second annexation agreement constituted a "collateral attack" on the Appellate Court's jurisdiction.

Not only was it improper for the trial court to rely on an argument not appearing in Plaintiff's motion for injunctive relief, the trial court's reliance on the concept of

"collateral attack" was incorrect. The concept of collateral attack has no application to the instant case. "A collateral attack on a judgment is an attempt to impeach that judgment in an action other than that in which it was rendered. Describing the well-established collateral-attack doctrine, our supreme court explained that, once a court of competent jurisdiction renders a judgment, it is not open to contradiction or impeachment in any collateral proceeding. Once a court with proper jurisdiction has entered a final judgment, that judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute." *Vill. of Vernon Hills v. Heelan*, 2014 IL App (2d) 130823, ¶ 29, citing *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 Ill.App.3d 179, 188 (1st Dist. 2010), *Malone v. Cosentino*, 99 Ill.2d 29, 32 (1983), and *Bd. of Ed. of the City of Chicago v. Bd. of Trustees of the Public Schools Teachers' Pension & Retirement Fund of Chicago*, 395 Ill.App.3d 735, 740 (1st Dist. 2009).

First, a collateral attack means that a party is attempting to relitigate the same facts which have already been adjudicated. In this case, the Village's second annexation agreement with ComEd is not in any sense a *litigation*, it is an extra-judicial act authorized by statute. Moreover, substantively, the facts surrounding the second annexation agreement between the Village and ComEd are significantly and materially different from those present in the previously adjudicated quo warranto action and therefore, the Village's second annexation process did not and could not constitute a "collateral attack." *See e.g. People ex rel. Cherry Valley Fire Prot. Dist. v. City of Rockford*, 122 Ill. App. 2d 272 (2nd Dist. 1970) ("If we were to determine that the doctrine of res adjudicata had application as here urged, it would mean that this territory could never be annexed to the City of Rockford").

Finally, under Plaintiff's reasoning, because this Court previously denied the Village's Petition for Leave to Appeal the Appellate Court's decision in *James I*, the Village could never, under any circumstance, annex either the ComEd property or Plaintiff's property, because doing so would always constitute a "collateral attack." No fair reading of the Appellate Court's decision in *James I* leads to the conclusion that the Appellate Court contemplated such a result.

V. The Trial Court Erred When It Entered An Order Tantamount To A Permanent Injunction In The Absence of A Pending Cause of Action Between The Parties, Applying The Standards Applicable To A Preliminary Injunction, And Without Any Adjudication On The Merits.

The order, as entered by the trial court, is actually a permanent injunction rather than a preliminary injunction and, as such, was improper and the Appellate Court's decision to vacate it was correct and should be affirmed. "Under Illinois law, there are three types of injunctive relief: a TRO, a preliminary injunction, and a permanent injunction." *Cty. of Boone v. Plote Constr., Inc.*, 2017 IL App (2d) 160184, ¶ 27.

A preliminary injunction differs from a TRO in that it "is not necessarily of extremely brief duration since its primary purpose is to provide relief to an injured party and maintain the status quo *until a trial on the merits*." *Id.*, ¶ 28 (emphasis added). A permanent injunction, on the other hand, means that the "trial court, by definition, necessarily decides the plaintiff's success on the merits of the case." *Butler v. USA Volleyball*, 285 Ill. App. 3d 578, 582 (1996).

In this case, as set forth above, Plaintiff argued, and the trial court agreed, that the Village should be enjoined from proceeding with its plan to annex Plaintiff's property because of the alleged irreparable harm, likelihood of success on the merits and lack of an

adequate remedy at law. These are the required showings a party must make in order to obtain a preliminary injunction.

Although the trial court appeared to intend, based on those findings, to enter a preliminary injunction, the order is, in reality, a permanent injunction because there were no actual ongoing proceedings between Plaintiff and the Village. In fact, because the trial court also entered judgment in Plaintiff's favor in the zoning complaint against Will County, there were no pending proceedings whatsoever below. Therefore, when the trial court entered the injunction against the Village, there was no complaint or cause of action to finally adjudicate. As such, there was no opportunity for the Village to prevail on the merits of any underlying complaint in order to vacate or dissolve the injunction.

Indeed, on its face, the trial court's order was permanent in nature because it stated that the only way for the Village to terminate the injunction was to file an appeal. As such, the permanent nature of the injunction was improper because it was entered solely on the pleadings discussed herein: a three-page motion containing one paragraph in support of an injunction against the Village, a motion to strike filed by the Village, and an eight-page brief filed by Plaintiff in response to the Village's motion to strike. There was there no evidentiary hearing of any sort and no affidavits filed, and the "hearing" on Plaintiff's motion for preliminary injunctive relief was nothing more than a 30-minute oral argument consisting of a recapitulation of the arguments in those briefs.

In essence, the trial court conducted a final adjudication on the merits of a hypothetical and non-existent second quo warranto action as to the validity of the second annexation agreement between the Village and ComEd based solely on those three briefs.

This was completely improper, and the Appellate Court correctly vacated and remanded the injunction.

CONCLUSION

For the reasons set forth above, the Village of Bolingbrook prays that this Court affirm the decision of the Third District Appellate Court vacating the injunction entered against the Village of Bolingbrook by the trial court.

DATED: December 29, 2021

Respectfully submitted,

VILLAGE OF BOLINGBROOK

By: */s Robert Wilder*
One of its attorneys

Robert Wilder
Burton S. Odelson
ODELSON, STERK, MURPHEY, FRAZIER & McGRATH, LTD.
3318 West 95th Street
Evergreen Park, Illinois
60805 (708) 424-5678
rwilder@osmfm.com
attyburt@osmfm.com

ILLINOIS SUPREME COURT RULE 341(c)
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 26 pages.

Respectfully submitted,

/s Robert Wilder
Robert Wilder
Attorney for Defendant-Appellee,
Village of Bolingbrook

Robert Wilder (Att. No. 6244917)
Odelson, Sterk, Murphey, Frazier & McGrath, Ltd.
3318 West 95th Street
Evergreen Park, IL 60805
708-424-5678 telephone
708-424-5829 facsimile
rwilder@osmfm.com e-mail

VERIFICATION AND CERTIFICATE OF SERVICE

Under penalties as provided for by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Robert Wilder, an attorney, hereby certifies that the statements made in this instrument are true and correct, except those matters therein to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes to be true and I caused to be served a copy of the foregoing **Brief and Argument of Defendant-Appellee Village of Bolingbrook** to the following parties by electronic mail at the email addresses stated below and also filed the Brief and Argument of Defendant-Appellee Village of Bolingbrook with the Court's Odyssey eFileIL System on December 29, 2021.

James Glasgow
Will County State's Attorney
c/o Matthew L. Guzman
Assistant Will County State's Attorney
57 N. Ottawa Street, 5th Floor
Joliet, IL 60432
MGuzman@willcountyillinois.com

Michael J. Martin
Michael R. Martin
Dunn, Martin & Miller, Ltd.
15 W. Jefferson Street, Suite 300
Joliet, IL 60432
mikejmartin@willcountylaw.com
mikermartin@willcountylaw.com

By */s/ Robert Wilder*

Robert Wilder (Att. No. 6244917)
Odelson, Sterk, Murphey, Frazier & McGrath, Ltd.
3318 West 95th Street
Evergreen Park, IL 60805
708-424-5678 telephone
708-424-5829 facsimile
rwilder@osmfm.com e-mail

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CYNTHIA A. GRANT
SUPREME COURT CLERK

Case No. 127458

IN THE SUPREME COURT OF ILLINOIS

CHICAGO TITLE LAND TRUST COMPANY, as Trustee and as Successor to North Star Trust Company, Successor to Harris Bank, Successor to First National Bank, under a Trust Agreement Dated October 21, 1979 and known as Trust Number 1689, by HENRY E. JAMES, the Holder of the Power of Direction and the owner of the Beneficial Interest of the Land Trust. Plaintiff/Appellants, v. VILLAGE OF BOLINGBROOK, Intervenor/Defendant-Appellee	On Appeal from the Appellate Court of Illinois, Third District Appellate Case No. 3-19-0564 Petition Allowed by Supreme Court: September 29, 2021 Rule 307(a)(1) Appeal from the Circuit Court for the 12th Judicial Circuit Will County, Illinois Circuit Court No. 15 MR 2972 Honorable Roger D. Rickmon Judge Presiding Date of Order: September 24, 2019 Supreme Court Rule which confers jurisdiction upon reviewing Court: Supreme Court Rule 315

NOTICE OF FILING

TO: James William Glasgow
Will County State's Attorney
c/o Matthew L. Guzman
Assistant Will County State's Attorney
57 N. Ottawa Street, 5th Floor
Joliet, IL 60432
mguzman@willcountylaw.com

Michael J. Martin (ARDC#1781960)
Michael R. Martin (ARDC#6288388)
Dunn, Martin & Miller, Ltd.
15 W. Jefferson Street, Suite 300
Joliet, IL 60432
mikejmartin@willcountylaw.com
mikermartin@willcountylaw.com

PLEASE TAKE NOTICE that on **December 29, 2021,** the undersigned electronically filed with the clerk of the Illinois Supreme Court, **BRIEF AND ARGUMENT OF DEFENDANT-APPELLEE VILLAGE OF BOLINGBROOK,** a copy of which is attached hereto and hereby served upon you.

/s/ Robert Wilder
Robert Wilder
(rwilder@osmfm.com)

Robert Wilder (Attorney No. 6244917)
Odelson, Sterk, Murphey, Frazier, & McGrath, Ltd.
3318 West 95th Street
Evergreen Park, Illinois 60805