2021 IL App (2d) 210474-U
No. 2-21-0474
Order filed August 31, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DIMITRIOS POULOKEFALOS, individually and derivatively on behalf of AMERICAN GASKET TECHNOLOGIES, INC.,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 21-CH-94
AMERICAN GASKET TECHNOLOGIES, INC., and NIKOLAS KALOURIS,	)	Honorable James D. Orel
Defendants-Appellants.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Bridges and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in denying defendants' motion to dissolve the TRO.

¶ 2 Today, we address a four-month-old temporary restraining order (TRO), which the circuit court entered until the injunction specifically, like the parties' larger disputes, is addressed through arbitration. Defendants filed an emergency motion to dissolve the TRO, which the circuit court denied. Defendants appeal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The operative facts are not in dispute. Although the parties' supplemental records do not give us a complete picture of the proceedings in the circuit court, they are adequate to permit our limited review of the order in question. See *McHenry County Sheriff v. McHenry County Department of Health*, 2020 IL App (2d) 200339, ¶ 29; *Capstone Financial Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957, ¶ 1.

¶ 5 Dimitrios Poulokefalos and Nikolas Kalouris have been business partners for decades. This case concerns one of their largest businesses, American Gasket Technologies (AGT), for which Kalouris is the president and Poulokefalos is the secretary. The parties wholly own AGT in equal shares.

¶ 6 In early 2020, Poulokefalos was diagnosed with cancer and underwent treatment. During this time, according to the complaint, Kalouris "embarked upon a broad campaign of shareholder oppression and breach of his fiduciary duties ***." Specifically, Kalouris transferred $4,275,000 from AGT's accounts at PNC Bank and moved the money into two accounts with First National Bank of Omaha, for which Kalouris was the only signatory. After taking exclusive control of these funds, Kalouris locked Poulokefalos out of AGT's offices and changed the passwords for AGT's computer systems. Kalouris also allegedly hired his sons, his wife, and other relatives, placed them on AGT's payroll, and engaged his daughter's law firm to represent the company.

¶ 7 On March 18, 2021, Poulokefalos filed a complaint, both individually and derivatively on behalf of AGT, sounding in breach of fiduciary duty, conversion, computer tampering, violations of state business laws, and unjust enrichment. The complaint sought injunctive relief, an accounting, and damages.

¶ 8 On April 12, 2021, Poulokefalos filed a motion seeking a TRO and a preliminary injunction. The motion was heard in court, with both parties present, and granted in part on April 21, 2021. Specifically, the TRO enjoined Kalouris from making any payments, except for employee payroll, from AGT's corporate accounts. The order also prohibited Kalouris from making any AGT payroll payments to six members of his family or to his daughter's law firm. Finally, the order permitted Kalouris and Poulokefalos to make payments to AGT's vendors, provided both sides agreed to the disbursement.

¶ 9 The circuit court also set the case for an evidentiary hearing in May. It appears that hearing date was stricken and on May 21, 2021, by agreement, the court modified the TRO to authorize two payments to one previously prohibited AGT employee. The TRO remained the same in all other relevant aspects.

¶ 10 On June 4, 2021, the court heard and denied Kalouris's motion to dissolve the TRO. On July 2, 2021, by agreement, the court set the date for a hearing on Poulokefalos's request for a preliminary injunction in September.

¶ 11 At some point, Kalouris filed a motion to dismiss and compel arbitration. See 735 ILCS 5/2-619(a)(9) (West 2020). (The motion was premised on a shareholders' agreement that is not included in the record, but neither side (at least for the moment) disputes whether the case is subject to arbitration.) On July 27, 2021, the court found that the shareholders' agreement controlled; the court granted Kalouris's motion and directed the parties to arbitration through the American Arbitration Association (AAA). The court stated that it would retain jurisdiction for all non-arbitrable matters and would "keep the TRO until [AAA] gets the case." The court encouraged the parties to use AAA's process for emergency motions if both parties wished to have a speedier review and have the arbiter or panel "decide if they want to keep the TRO or not." The court further

stated as follows:

> "I've said this over and over again in this case. My TRO ruling was very, very limited affecting only a few people. This corporation is still viable. I told the [d]efendants to come into this courtroom if they needed payments for some of the employees that were all the employees that were listed. In fact, [defendants have] done it once. So, this TRO is very limited.
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> ***
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> So, my ruling is [the motion to dismiss and to compel arbitration] is granted. The [c]ourt retains jurisdiction or all non-arbitrable issues. Whatever the arbitrator decides not to proceed on, this [c]ourt will hear. And I will retain the TRO until the arbitrator chooses to proceed with that TRO finding. That's my ruling. Thank you both ***."

¶ 12 That brings us to the matter, and the only order, at hand. On August 16, 2021, Kalouris filed an emergency motion seeking to, again, dissolve the TRO. As part of the motion, Kalouris alleged that Poulokefalos had blocked payments for AGT's payroll, payments for AGT's payroll taxes, "cancelled multiple [corporate] credit cards," and blocked transactions involving another company owned by both parties. Kalouris alleged that AAA had not yet appointed an arbitration panel, so the TRO could only be considered, immediately, on an emergency basis. The motion further alleged that AAA would not consider the TRO as an emergency because Poulokefalos had not consented to a pre-panel, emergency review.

¶ 13 On August 19, 2021, the circuit court heard both parties' arguments and denied Kalouris's successive motion to dissolve. The court stated that the TRO was necessary to maintain the status quo until the injunction was addressed through arbitration, whether on an expedited basis or in the

ordinary course of review. The court suggested the parties jointly seek emergency review but acknowledged that it could not order the parties to proceed with arbitration in a particular way, stating, "It's up to the parties, and I don't know if the two parties will ever agree on anything, but it's up to the parties to get this in front of a panel as soon as possible." In the meantime, the court said it would revisit any aspect of the TRO, on either party's motion, pending arbitration.

¶ 14 Kalouris timely appealed.

¶ 15 II. ANALYSIS

¶ 16 Before turning to the merits, we first address a challenge to our jurisdiction. In his memorandum before this Court, Poulokefalos cites our decision in *Bradford v. Wynstone Property Owners' Ass'n*, 355 Ill. App. 3d 736 (2005), for the proposition that, by failing to appeal from the initial entry or modification of the TRO, the injunction became law of the case, and we lack "jurisdiction" to address the denial of the most recent motion to dissolve. We disagree.

¶ 17 We can easily distinguish *Bradford*, as here there is no indication that Kalouris pursued this appeal for an improper purpose, or that he filed his second motion to dissolve the TRO merely to evade the two-day limitation on appeals under Supreme Court Rule 307(d). See Ill. S.Ct. R. 307(d) (eff. Nov. 1, 2017). Furthermore, as we have pointed out before (see *McHenry County Sheriff v. McHenry County Department of Health*, 2020 IL App (2d) 200339, ¶ 34; *County of Boone v. Plote Construction, Inc.*, 2017 IL App (2d) 160184, ¶ 25) our decision in *Bradford* was based on a line of authority that was neither good law in 2005, nor today. In *Salstiz v. Kreiss*, 198 Ill. 2d 1 (2001), our supreme court adopted a definitive reading of Supreme Court Rule 307(d) that a party need not immediately appeal an interlocutory injunctive order to preserve its challenge to an injunction. *Id.* at 11-12. Furthermore, in *Salstiz*, our supreme court specifically overruled decisions cited in *Bradford*, which *Bradford* did not address. In addition, we observe that *Bradford*

and Poulokefalos's interpretation is at odds with the plain language of Rule 307(d), which provides for appellate "review of the granting or denial of a temporary restraining order *or an order* modifying, dissolving, *or refusing to dissolve* or modify *a temporary restraining order*." (Emphasis added.) Ill. S.Ct. R. 307(d); accord. Ill. S.Ct. R. 307(a). If the TRO were truly law of the case, there would be no need to provide for the appealability of subsequent interlocutory orders.

¶ 18 Accordingly, there can be no doubt that Kalouris's failure to take an immediate appeal from the injunctive order entered in April and modified in May did not render that order the law of the case in this appeal. *McHenry County Sheriff*, 2020 IL App (2d) 200339, ¶ 34; *County of Boone*, 2017 IL App (2d) 160184, ¶ 25. And, similarly, there can be no doubt that we have jurisdiction over this appeal pursuant to Supreme Court Rules 307(a)(1) and 307(d).

¶ 19 Turning now to the merits, Kalouris contends that the circuit court erred when it denied his motion to dissolve the TRO. As part of his argument, Kalouris recounts his frustrations with having the TRO addressed through arbitration on an emergency basis. Due to these difficulties, Kalouris asserts that the TRO has no specified duration and will continue indefinitely as a *de facto* preliminary injunction. We disagree.

¶ 20 "The only issue before the appellate court when reviewing the denial of a motion to dissolve a temporary restraining order is whether the trial court abused its discretion." *McHenry County Sheriff*, 2020 IL App (2d) 200339, ¶ 22. After reviewing the supplemental record and the parties' memoranda, we determine that the circuit court's denial of Kalouris's motion to dissolve was not an abuse of discretion.

¶ 21 As an initial matter, we reject Kalouris's assertion that the TRO is a *de facto* preliminary injunction entered without an evidentiary hearing. For one thing, the record reflects that the circuit court set four separate dates for a hearing, all of which were stricken or continued by agreement

without Kalouris's objection. Naturally, Kalouris cannot acquiesce to these delays in the circuit court—in effect waiving his right to an evidentiary hearing—and then complain about them here. He is barred from doing so as, under the rule of invited error, acquiescence is a form of procedural default phrased in estoppel terms. *Gaffney v. Board of Trustees of Orland Fire Protection Dist.*, 2012 IL 110012, ¶ 33; see also *Auton v. Logan Landfill, Inc.*, 105 Ill. 2d 537, 543 (1984) ("A party cannot complain of an error which he induced the court to make or to which he consented [citation]") (internal quotation marks omitted).

¶ 22 In any case, and more to the point, we agree with the circuit court that the TRO in this case is not unlimited. While a TRO should be of "brief duration" (*Abdulhafedh v. Secretary of State*, 161 Ill. App. 3d 413, 417 (1987)), it need not expire on a predetermined time and date. Rather, a TRO's expiration may reasonably be tied to a specific event or a specific act required of the parties. See, *e.g.*, *Everen Securities, Inc. v. A.G. Edwards and Sons, Inc.*, 308 Ill.App.3d 268, 274 (1999); *Peoples Gas Light and Coke Co. v. City of Chicago*, 117 Ill. App. 3d 353, 357 (1983); see also *Fraternal Order of Police Chicago Lodge No. 7 v. City of Chicago*, 2020 IL App (1st) 200066-U, ¶ 15 (upholding TRO "in aid of arbitration in a labor dispute"). Here, as in *Peoples Gas*, the TRO would be of indefinite duration if and only if the enjoined party chooses to make it so—that is, if Kalouris either continues to waive an evidentiary hearing or fails to move forward with arbitration. Accordingly, there is no reasonable probability that the TRO will "extend beyond the conclusion of the action" (*Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1044 (2000)), or any court proceedings after arbitration.

¶ 23 As is common in such cases, here, "[t]he TRO served to maintain the status quo without prejudice to the merits of any of the parties' claims or defenses until an arbitration panel could consider the issues presented." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Salvano*, 999 F.2d

211, 215 (7th Cir. 1993). We note that although we do not have transcripts of all of the proceedings in the circuit court, what we do have shows that the court repeatedly stated its commitment to address any non-arbitrable issue covered in the TRO until the TRO could be addressed in arbitration. We are satisfied that the circuit court has carefully exercised its discretion, and that its denial of Kalouris's most recent motion to dissolve the TRO was not an abuse of discretion.

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Du Page County denying the motion to dissolve the TRO.

¶ 26 Affirmed.