

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

PAUL BAXTER, Individually and on behalf
of CAMPUS TOWN, LLC and CAMPUS
VIEW STUDENT HOUSING, LLC,

Plaintiffs,

vs.

BRAD HOUSER, UPWARD BOUND, LLC,
and HOUSER ENTERPRISES, INC.,

Defendants.

Case No. LACV082894

**RULING ON PLAINTIFFS'
MOTION FOR TEMPORARY
INJUNCTION, APPOINTMENT
OF RECEIVER AND
CONSTRUCTIVE TRUST**

On March 11, 2022, the Plaintiffs' Motion for Temporary Injunction, Appointment of Receiver and Constructive Trust came before the Court for evidentiary hearing and argument. Plaintiffs seek to enjoin a sheriff's sale in Polk County, Iowa set for March 22, 2022. The Plaintiff was represented by Attorney Jason O'Rourke. Defendant Brad Houser and Houser Enterprises, Inc. was represented by Attorney Abram Carls. Defendant Upward Bound, LLC was represented by Austin J. Peiffer. By agreement of counsel, due to the need for an expedited hearing, the hearing occurred at the Scott County Courthouse in Davenport, Iowa. After having considered the evidence, the testimony of witnesses, the written and oral arguments of counsel, and the applicable law, the Court enters the following ruling on the pending motion.

I. Temporary Injunction Standard

“A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation.” *Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005) (quoting *Kleman v. Charles City Police Dep’t*, 373 N.W.2d 90, 95 (Iowa 1985)). However, a temporary injunction’s purpose is not “to determine the merits of a case, or to decide controverted facts; and it is not a means for obtaining a piecemeal adjudication of the merits.” *Econ. Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 648 (Iowa 1995) (internal citations omitted).

The decision to issue a temporary injunction rests largely within the discretion of the trial court. *Lewis Invs., Inc.*, 703 N.W.2d at 184. “Generally, the issuance of an injunction invokes the equitable powers of the court and courts apply equitable principles.” *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001). “[A] party seeking an injunction must prove ‘(1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is [not another] adequate [means of protection] available.’” *Ney v. Ney*, 891 N.W.2d 446, 451 (Iowa 2017) (quoting *Sear v. Clayton Cty. Zoning Bd. of Adjustment*, 590 N.W.2d 512, 515 (Iowa 1999)). “The standards considered in granting temporary injunctions are similar to those for permanent injunctions, except temporary injunctions require a showing of the likelihood of success on the merits instead of actual success.” *Max 100 L.C.*, 621 N.W.2d at 181.

In determining whether an injunction is appropriate, a court must carefully consider the “circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance.” *Id.* (quoting *Kleman*, 373 N.W.2d at 96). Thus, an injunction is an extraordinary remedy that should only be granted with caution to avoid irreparable damage. *Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995); see *Myers v.*

deprive a plaintiff of the right to a trial on the merits of the petition seeking a permanent injunction, nor is it an adjudication against such right.” *Econ. Roofing*, 538 N.W.2d at 648 (internal citation omitted).

II. Jurisdiction for Temporary Injunction

Rule 1.1510 of the Iowa Rules of Civil Procedure states: “An action seeking to enjoin proceedings in a civil action, or on a judgment or final order, must be brought in the county and court where such proceedings are pending or such judgment or order was obtained....” In *Bankers’ Trust Co. v. Scott*, 246 N.W. 836, 838 (Iowa 1933), the Iowa Supreme Court reversed a decision by the Scott County District Court granting injunctive relief to halt civil proceedings instituted by Plaintiff in Polk County. *See also Ferris v. Grimes*, 215 N.W. 646, 647 (Iowa 1927)(Affirming dismissal for lack of jurisdiction of action to set aside Polk County judgment filed in Cherokee County.)

A real estate mortgage “shall not be foreclosed in any other manner than by action in court by equitable proceedings.” Iowa Code §654.1 (2021). “Foreclosure by sale, is selling the property under the direction and in pursuance of an order of the court, by an officer thereof, or a person appointed for that purpose; and applying the proceeds of the mortgaged premises to the discharge of incumbrances according to priority, and paying the balance, if any, to the mortgagor.”

Kramer v. Rebman, 9 Iowa 114, 119 (1859). An execution carries out the Order of the court. *Tice v. Tice*, 224 N.W. 571, 572 (Iowa 1929). The court has the equitable power to set aside a sheriff’s sale when the price is so grossly inadequate to be unfair or to amount to oppression. *Butler v. Slattery*, 212 Iowa 677, 237 N.W. 232, 233 (1931).

III. Findings of Fact and Conclusions of Law

Paul A. (“Tony”) Baxter and Brad Houser formed Campus Town, LLC, an Iowa Limited Liability Company (“Campus Town”) on February 22, 2012. Each assumed a 50% ownership stake

in the Company. Among the assets owned by Campus Town is a student housing facility and other vacant real estate in Ankeny, Iowa.¹ On April 29, 2019, the Campus Town granted a mortgage on the real estate to Farmers State Bank (“Farmers”) securing credit of \$15,000,000.² Baxter and Houser each signed as personal guarantors. The loan fell into default and Farmers Bank, through counsel, accelerated the due date and demanded payment of \$9,804,710 on or before December 4, 2020.³ Baxter alleges the real estate has equity in excess of the outstanding balance of the loan.

The real estate is currently being managed by Bluffstone, LLC pursuant to a written management agreement dated November 24, 2020. Baxter resisted appointment of different receiver in the foreclosure action and Bluffstone, LLC remains in place. At the hearing on March 11, 2022, Baxter expressed confidence in Bluffstone’s ability to manage the real estate.

Farmers filed a Petition for Foreclosure without Redemption pursuant to Iowa Code §654.20 in the District Court for Polk County in Equity No. EQCE086418 on January 13, 2021. Campus Town, LLC, Paul A. Baxter and Bradford J. Houser were named as defendants. All parties were represented by counsel in the Polk County Foreclosure. Baxter does not dispute that Farmers had the right to institute the foreclosure action. During this time, Houser and Baxter were actively attempting to refinance the Farmer’s mortgage. In early 2021, Baxter did obtain an offer from a lender to refinance the mortgage but Houser declined because it required each to sign a personal guarantee.

Houser notified Baxter in writing on April 15, 2021 that he wished to end their partnership.⁴ Houser formed Upward Bound, LLC (“Upward Bound”) as an Iowa Limited Liability Company on May 10, 2021.⁵ On May 24, 2021, Houser entered a “Loan Purchase Agreement”

¹ For purposes of this Ruling, “the real estate” is the property identified as the “Mortgaged Real Property” in the Order Granting Plaintiff’s Motion for Summary Judgment filed June 28, 2021 in Polk County Case No. EQCE086418.

² The mortgage was recorded May 7, 2019 as document #201800078360 with the Polk County recorder of deeds.

³ See Exhibit 7 to Farmers State Bank Foreclosure Petition filed January 13, 2021 in Polk County Case No. EQCE086418.

⁴ Defendant Houser Exhibit 6.

⁵ Plaintiffs’ Exhibit 20.

Baxter urges this Court, sitting in Johnson County, to enjoin the sheriff sale scheduled in Polk County for March 22, 2022. Baxter argues such action would not violate Rule 1.1510 of the Iowa Rules of Civil Procedure because this Court would be stopping the actions of Upward Bound, LLC and Houser, not the Polk County District Court. In the alternative, Baxter asks the Court to prospectively enjoin Upward Bound, LLC, Houser or anyone acting by or through them, from disposing of the real estate should they take title at the foreclosure sale.

Rule 1.1510 refers to "proceedings in a civil action" requiring any action to enjoin to be brought in the county and court where the judgment was obtained. In the Order granting summary judgment filed June 28, 2021, the Polk County District Court issued a special execution (¶8) and retained jurisdiction after the sheriff's sale (¶13).

Baxter, Houser and Campus Town, LLC were parties to the foreclosure. Neither Baxter nor Campus Town, LLC have appealed the summary judgment order or otherwise challenged that Order in the Polk County proceeding. Instead, Baxter instituted a separate suit in Johnson County seeking money damages against the defendants as well as judicial dissolution of two limited liability companies. The parties agree the major asset of the Campus Town, LLC is the real estate

⁶ Plaintiffs' Exhibit 18.

⁷ Plaintiffs' Exhibit 22, (SPMB000370)

⁸ Order Granting Plaintiff's Motion for Summary Judgment, EQCE086418, ¶13.

subject to the Polk County foreclosure Order.

A sheriff's sale is a "proceeding" in a civil action within the scope of Rule 1.1510. The sheriff can only sell the real estate subject to the special execution issued by the Court. The Iowa Supreme Court reviewed the predecessor to this rule in *Hawkeye Ins. Co. v. Huston*, 115 Iowa 621, 89 N.W. 29, 33 (1902) and held that one district court does not have the power to enjoin the enforcement of the judgment of another district court. In reaching this conclusion, the Court quoted a Michigan decision that discussed the necessity of continuity, and non-interference, once a court becomes possessed of a case. "The principle is essential to the proper and orderly administration of the laws, and, while its observance might be required on grounds of judicial comity and courtesy, it does not rest upon such consideration exclusively, but is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of process." *Id.* at 33.

The Court finds it does not have jurisdiction to enjoin the sheriff sale scheduled for March 22, 2022 in Polk County case no. EQCE086418. The plain language of Rule 1.1510, and Iowa precedent interpreting that rule, make it clear an action to enjoin the sale must be filed in Polk County, where the judgment was obtained. This Court does not have the jurisdiction or authority to interfere with the Polk County Order. Therefore, the motion to enjoin the foreclosure sale scheduled for March 22, 2022 must be denied.

The Ruling that this court does not have jurisdiction to enjoin the sheriff sale does not prevent the Court from preventing Upward Bound, LLC or Houser, or any person or entity acting by, through or in concert with them, from selling or otherwise disposing of the Campus Town property should either be the successful bidder at the sheriff sale. Plaintiffs' request for temporary injunction is grounded upon Rule 1.1510(2) of the Iowa Rules of Civil Procedure. Under that rule, a temporary injunction may be allowed "[w]here, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject action and tending to make the judgment ineffectual." Among

real estate is the only asset of the company, allowing Upward Bound, LLC or Houser to sell the asset should either obtain title at the foreclosure sale would tend to “make the judgment ineffectual.”

A temporary injunction should maintain the status quo of the parties pending final resolution of the case. Because Plaintiffs seeks relief pursuant to Rule 1.1502(2), they argue no showing of irreparable harm is necessary – only a showing that a judgment would be ineffectual. Defendants argue disposal of the real estate would not prevent judicial dissolution of the company. While this is true, it would make an order of dissolution meaningless as no assets would remain to distribute or sell. “Ineffectual” has been defined to mean “not producing the proper or intended effect.”⁹ “Ineffectual” is synonymous with “futile.” Allowing Upward Bound and Houser to sell or dispose of the real estate after acquiring title at foreclosure sale would make any effort to dissolve Campus Town a futile endeavor.

A petition for injunction invokes the court’s equitable jurisdiction. *Worthington v. Kenkel*, 684 N.W.2d 228, 230 (Iowa 2004). “Actions for equity-based injunctions were developed over time in response to the need for a pliant remedy for harm suffered in a controversy between individuals not available within the rather rigid and sometimes inadequate common-law scheme of remedies.” *Worthington v. Kenkel*, 684 N.W.2d 228, 232 (Iowa 2004). Iowa’s Revised Uniform Limited Liability Company Act in Chapter 489 recognizes the potential need for equitable relief. For instance, §489.701(2) allows a court to “order a remedy other than dissolution” in an action brought to dissolve the company. Section 9.01(d) of the Campus Town Operating Agreement also allows the court to order a remedy other than dissolution – effectively mirroring the language in §489.701(2).

⁹ Merriam-Webster dictionary.

In this case, Houser formed a new company, paid off Farmers and completed the foreclosure of the real estate owned by Campus Town. Once the sheriff's sale is complete, Houser will have effectively terminated his relationship with Baxter because the real estate was the primary asset owned by Campus Town. In addition to a request for judicial dissolution, Baxter also alleges breach of fiduciary duty, breach of contract and fraud against Houser based upon fiduciary duties enumerated in section 3.03 of the Operating Agreement. Those duties include the duty to "refrain from dealing with the Company in the conduct or winding up of the Company's activities as or on behalf of a person having an interest adverse to the Company."

The foreclosure action instituted by Farmers was adverse to the Campus Town. Even though Houser (through Upward Bound) may have paid Farmers the full amount owed by Campus Town to Farmers, when Houser formed Upward Bound and substituted them as Plaintiff in the foreclosure, he arguably assumed a position adverse to Campus Town. A reasonable trier of fact could conclude that by taking over the foreclosure, Houser breached his duty of loyalty to Baxter. This is sufficient to show a reasonable likelihood of success on the merits. Enjoining Houser and Upward Bound from disposing of the real estate should they obtain title at the sheriff's sale would preserve the status quo. The Court is also required to balance the harms. Presently, the real estate is being managed by Bluffstone, an independent company. Failure to enjoin a sale or disposition would cause more harm than requiring Upward Bound and Houser to continue to operate the real estate with Bluffstone in place to manage the operation, collect the rents and pay the expenses.

For the reasons discussed herein, the Court finds that in the event Upward Bound, LLC, Houser Enterprises, Inc., Bradford J. Houser, or any entity or person acting by, through or in concert with them, acquires title to the real estate at the sheriff's sale scheduled for March 22, 2022 in Polk County Case Number EQCE086418, said persons or entities shall be temporarily enjoined from selling or disposing of said real estate without an Order of this Court.

As to the request for appointment of a receiver, the Court finds an independent receiver is

parties have expressed satisfaction with Bluffstone's efforts. In his "Resistance to Application for Appointment of Receiver" filed February 2, 2021 in Polk County Case No. EQCE086418, Baxter asserted that Bluffstone was a "completely independent entity from Campus Town, and the owners of Campus Town have no ownership interest in, and are not affiliated with, Bluffstone." (See ¶13). Under the circumstances, the Court finds a separate receiver is not required at this time. Plaintiffs' request for appointment of a receiver is denied.

The Court denies Plaintiffs' request for imposition of a constructive trust. First, no authority is offered to support imposition of a pre-judgment constructive trust. Second, the Court denied Plaintiffs' request to enjoin the sheriff sale but granted the request for injunction should Upward Bound, LLC or Houser acquire title as a result of the sale on March 22, 2022. The real estate is currently being managed by Bluffstone, an independent entity. Baxter has expressed confidence in Bluffstone's management of the real estate. Therefore, Baxter has failed to demonstrate the need for a constructive trust at this time, assuming such a remedy is even available.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiffs' Motion to cancel the sheriff sale scheduled for March 22, 2022 in Polk County Case Number EQCE086418 is DENIED.
2. Should Upward Bound, LLC, Houser Enterprises, Inc., Bradford J. Houser or any entity or person acting by, through or in concert with any of them, acquire title to the real estate at the sheriff's sale scheduled for March 22, 2022 in Polk County Case Number EQCE086418, Upward Bound, LLC, Houser Enterprises, Inc., Bradford J. Houser and any entity or person acting by, through or in concert with any of them shall be temporarily enjoined from selling or disposing of said real estate without an Order of this Court.
3. Plaintiffs' request to place the real estate in a constructive trust during the pendency of these proceedings is DENIED.



State of Iowa Courts

Case Number
LACV082894
Type:

Case Title
PAUL BAXTER V. BRAD HOUSER ET AL
Other Order

So Ordered

Jeffrey D. Bert, District Court Judge
Seventh Judicial District of Iowa

Electronically signed on 2022-03-16 15:54:16