

**Affirmed and Memorandum Opinion filed August 25, 2009.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-07-01008-CV**

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**KENNETH RYALS AS ACTING TRUSTEE OF EAST TEXAS INVESTMENT  
TRUST, Appellant**

**V.**

**LISA OGDEN, STEVEN GAYLE, AND WAYNE WESTBROOK, Appellees**

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**On Appeal from the 55th District Court  
Harris County, Texas  
Trial Court Cause No. 2007-63116**

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**MEMORANDUM OPINION**

Kenneth Ryals appeals from an order granting a temporary injunction. Ryals contends that the district court lacked jurisdiction because the same dispute was decided in a prior lawsuit filed in the County Civil Court at Law No. 1 in Harris County. He also asserts that the trial court should have denied injunctive relief based on the doctrine of unclean hands. We affirm.

## **Background**

The East Texas Investment Trust (“the Trust”) was created on May 2, 2001, by Pauline Westbrook. Maxie Westbrook is Pauline’s son and Tammie Guinn is his wife. Lisa Ogden and Wayne Westbrook are Maxie’s children born during his marriage to Rita Gayle. Steven Gayle is Rita Gayle’s son. The original named trustees of the Trust were Maxie Westbrook and Guinn. The trust corpus is real property located at 11747 Eastex Freeway in Houston, Texas. The property produces rental income in the form of lease payments from Big Man Trucking.

On November 9, 2006, the judge of the County Civil Court at Law No. 1 signed a judgment in a lawsuit filed by Ryals as the managing trustee of the Trust. Ryals sued Maxie Westbrook, Commercial Industrial Roofs, Inc., d/b/a Industrial Roofs of Texas, Commercial Roofing Supplies, Inc., Doc’s Tractor Parts Company, Tammie Guinn, along with their tenants, agents, assigns, and other parties claiming through them.

The record in this appeal contains no documents filed in the county court suit other than the November 9, 2006 judgment. From the arguments and testimony in the district court hearing on the temporary injunction, it appears that the county court suit was filed to determine (1) the ownership of 11747 Eastex Freeway; and (2) whether trustees Maxie Westbrook and Guinn breached a lease agreement with the Trust. The county court determined that the Trust owned the 11747 Eastex Freeway property, and ordered “Maxie Warren Westbrook, Commercial Industrial Roofs, Inc., d/b/a Industrial Roofs of Texas, Commercial Roofing Supplies, Inc., Doc’[s] Tractor Parts Company, Tammie Rene Guinn, and any of their tenants, such as Bonnie and Wendell Edwards, d/b/a Big Man Diesel Repair, agents, such as Lisa Ogden lessor of fraudulent lease, assigns, or other parties, claiming through them” to pay past due rent. The county court appointed Rick Bowman as receiver

to facilitate enforcement of the county court's final judgment.<sup>1</sup> Maxie Westbrook and Guinn appealed the county court judgment, but their appeal was dismissed for want of prosecution.

On October 11, 2007, appellees Lisa Ogden, Steven Gayle, and Wayne Westbrook sued Ryals in Harris County district court alleging breach of the trust agreement. They alleged that Ryals breached the Trust agreement by removing Maxie Westbrook and Guinn as trustees without their consent and without complying with the Trust terms. The petition requested a temporary injunction enjoining Ryals from selling or otherwise conveying the 11747 Eastex Freeway property.

At the temporary injunction hearing in district court, Lisa Ogden testified that Maxie Westbrook owed Ryals money; according to Ogden, Ryals intended to sell the 11747 Eastex Freeway property and apply the sales proceeds to Maxie Westbrook's debt. Ogden testified that Ryals improperly removed Maxie Westbrook and Guinn as trustees of the Trust, and that he had expressed his intent to sell the property. On cross-examination, Ogden testified that more than \$40,000 in taxes was owed on the property. Before Ryals filed the prior county court suit, Ogden used rental income from the property to pay taxes; after the county court suit was filed, Ogden used a portion of the property's rental income to pay attorneys' fees.

Ryals testified at the temporary injunction hearing that Maxie Westbrook told him he no longer wanted to be a trustee of the Trust, and requested that Ryals act as trustee. Ryals asked several family members to act as trustee, but no one wanted to be involved in Maxie Westbrook's business dealings; Ryals characterized those dealings as "frauds." Ryals also testified that Guinn resigned as trustee. Ryals said he never has been paid for work done for Maxie Westbrook, and asserted that the Trust owes him back pay. Ryals testified that he obtained written resignations from Maxie Westbrook and Guinn and presented them to the county court.

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<sup>1</sup> At the district court temporary injunction hearing, the parties referred to a "turnover order" and referred to Bowman as the "turnover receiver." Only the county court's final judgment is in the appellate record; therefore, we conclude the parties are referring to the above quoted portion of the judgment in which the county court ordered the defendants to pay rental income to Ryals.

After the temporary injunction hearing, the district court granted appellees' request for temporary injunction and set the case for trial. This interlocutory appeal followed.<sup>2</sup>

### **Standard of Review**

A temporary injunction preserves the status quo until trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To obtain a temporary injunction, the applicant must plead a cause of action against the defendant and show both a probable right to recover on that cause of action and a probable, imminent, and irreparable injury in the interim. *Id.* To show a probable right of recovery, the applicant must present evidence to sustain the pleaded cause of action. *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 197 (Tex. App.—Fort Worth 2005, no pet.). An injury is irreparable when the injured party cannot be adequately compensated in damages or if damages cannot be measured by any certain pecuniary standard. *Butnaru*, 84 S.W.3d at 204.

The decision to grant or deny a temporary injunction lies within the sound discretion of the trial court. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993). A trial court does not abuse its discretion by granting a temporary injunction if some evidence supports its decision. *Sharma v. Vinmar Int'l, Ltd.*, 231 S.W.3d 405, 419 (Tex. App.—Houston [14th Dist.] 2007, no pet.). In reviewing the trial court's exercise of discretion, the appellate court must draw all legitimate inferences from the evidence in the light most favorable to the trial court's order granting the temporary injunction. *Id.*

### **Analysis**

Ryals does not challenge appellees' probable right to recovery, nor does he challenge their assertion that they will suffer irreparable injury absent a temporary injunction. Ryals argues that (1) the district court's temporary injunction is beyond the district court's jurisdiction because it interferes with enforcement of the prior County Court at Law judgment; (2) the temporary injunction is barred by res judicata, collateral estoppel, and the

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<sup>2</sup> A party may appeal from an interlocutory order of a district court that grants or refuses a temporary injunction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(4) (Vernon 2008).

doctrine of unclean hands; and (3) appellees failed to exhaust all legal remedies by failing to pursue an appeal from the county court judgment.

### **I. Collateral Attack**

In his first issue, Ryals argues that the district court violated section 65.023 of the Texas Civil Practice and Remedies Code because the county court retains jurisdiction over this dispute. In his second issue, Ryals argues that the relief sought by appellees in the district court is barred by res judicata, collateral estoppel, issue preclusion, and estoppel by judgment because appellees have an identity of interest with Maxie Westbrook. In his fourth issue, Ryals argues that because Maxie Westbrook failed to pursue his appeal of the county court judgment, he may not seek equitable relief in the district court. Each issue is predicated on Ryals's underlying assertion that the district court suit is merely a collateral attack on the county court judgment.

A direct attack on a judgment seeks to amend, correct, reform, vacate, or enjoin the execution of the judgment in a proceeding instituted for that purpose, such as a motion for a rehearing or an appeal. *Crawford v. McDonald*, 88 Tex. 626, 630, 33 S.W. 325, 327 (1895). A collateral attack, in contrast, seeks to avoid the effect of a judgment in a proceeding brought for some other purpose. *Browning v. Prostock*, 165 S.W.3d 336, 346 (Tex. 2005).

We conclude the district court suit is not a collateral attack because it does not seek to avoid the effect of the county court judgment. The county court judgment determined that the Trust owned the property, and that Maxie Westbrook, Guinn, and their tenants or agents owed \$48,000 in unpaid rent. The district court suit focuses on a different dispute; appellees assert that Ryals improperly removed Maxie Westbrook and Guinn as trustees of the Trust and thereby breached the Trust agreement, which requires a minimum of two managing trustees. Appellees requested a temporary injunction to prevent Ryals from selling or otherwise conveying the 11747 Eastex Freeway property until the court could determine whether he is entitled to act as trustee. The district court suit does not explicitly or implicitly challenge the county court's finding that the Trust owns the property; it challenges only

whether Ryals has authority to act on behalf of the Trust. The temporary injunction enjoining sale or conveyance of the property merely maintains the status quo until the district court can determine whether Ryals breached the trust agreement by removing Maxie Westbrook and Guinn as trustees.

Ryals claims that by granting the temporary injunction, the district court interfered with the enforcement of the county court judgment. Ryals points to section 65.023 of the Texas Civil Practice and Remedies Code, which provides that a writ of injunction granted to stay proceedings in a suit or execution on a judgment must be tried in the court in which the suit is pending or the judgment was rendered. Tex. Civ. Prac. & Rem. Code Ann. § 65.023(b) (Vernon 2008). The district court, however, specifically addressed this issue at the conclusion of the hearing: “[W]hat I want to do is enjoin Mr. Ryals from selling or otherwise conveying the real property. And I don’t want it to restrict Mr. Bowman in any way from collecting on the judgment in County Court at Law No. 1.” The district court did not violate section 65.023(b) because the temporary injunction did not stay execution of the county court judgment.

Similarly, the relief sought by appellees in the district court is not barred by res judicata, issue preclusion, or collateral estoppel. Res judicata precludes relitigation of claims that have been finally adjudicated, or that arise out of the same subject matter and could have been litigated in a prior action. *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 654 (Tex. 1996). It requires proof of the following elements: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action. *Espeche v. Ritzell*, 123 S.W.3d 657, 665 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). Issue preclusion, also known as collateral estoppel, precludes relitigation of particular issues already resolved in a prior action. It requires that (1) the facts sought to be litigated in the second action were fully and fairly litigated in the first; (2) those facts were essential to the judgment in the first action; and (3) the party against whom the doctrine is

asserted was a party, or in privity to a party, in the first action. *Sysco Food Servs., Inc. v. Trapnell*, 890 S.W.2d 796, 801–02 (Tex. 1994).

Ryals argues that the district court suit is barred by res judicata and collateral estoppel because the issue of his authority as trustee was fully and fairly litigated in the county court. Although appellees were not parties to the county court suit, Ryals argues that they acted in privity with Maxie Westbrook and Guinn and thus are barred from raising the issue of Ryals's authority in the district court suit. Ryals also argues that by bringing the county court suit in his capacity as managing trustee of the Trust and presenting documentation to support his claim as trustee, the scope of his authority was decided by the county court.

The record reflects that the county court made no determination as to Ryals's authority to administer the Trust. Further, a county court has no jurisdiction to construe a trust agreement. *See* Tex. Prop. Code Ann. § 115.001(a)(1) (Vernon Supp. 2008) (A district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to construe a trust instrument.). Therefore, Ryals's res judicata and collateral estoppel arguments fail because the issue of whether Ryals has authority to manage the Trust was not fully and fairly litigated in the previous suit, nor could it have been raised in the county court.

Finally, because the property ownership issue was the subject of the county court suit, appellees' failure to pursue their appeal of that judgment does not preclude relief by temporary injunction in the district court. The district court action is focused on breach of the Trust agreement rather than property ownership.

Because the district court suit and the accompanying temporary injunction do not constitute a collateral attack on the county court judgment, we overrule Ryals's first, second, and fourth issues. The district court was not without jurisdiction to grant the temporary injunction.

## II. Unclean Hands

In his third issue, Ryals argues that Ogden is not entitled to equitable relief under the “unclean hands” doctrine because she admitted to using rental income from the property to pay attorney’s fees.

This doctrine requires a person who comes into a court of equity to enter with clean hands. *Grohn v. Marquardt*, 657 S.W.2d 851, 855 (Tex. App.—San Antonio 1983, writ ref’d n.r.e.). The equitable maxim is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction. *Lazy M Ranch, Ltd. v. TXI Operations, LP*, 978 S.W.2d 678, 683 (Tex. App.—Austin 1998, pet. denied). It does not extend to any misconduct, however gross, unconnected with the matter in litigation, and with which the opposite party has no concern. *See Axelson v. McIlhany*, 798 S.W.2d 550, 556 (Tex. 1990). The unclean hands doctrine should not be applied when the defendant has not been seriously harmed and the wrong complained of can be corrected. *Paciwest, Inc. v. Warner Alan Properties, LLC*, 266 S.W.3d 559, 571 (Tex. App.—Fort Worth 2008, pet. denied). It is within the trial court’s discretion to determine whether a party has unclean hands and whether the party’s alleged fraudulent actions should bar equitable relief. *Grohn*, 657 S.W.2d at 855.

Because the district court made no findings of fact or conclusions of law addressing whether Ogden had unclean hands, the issue before us is whether Ryals’s assertion that the temporary injunction should have been denied because Ogden had unclean hands is supported by the record. *See Davis v. Huey*, 571 S.W.2d 859, 861–62 (Tex. 1978). The county court judgment recited that Ryals as the managing trustee of the Trust was entitled to recover past due rent from Maxie Westbrook, Guinn, and any of their tenants including Ogden. The county court appointed a receiver to facilitate the turnover of rental income to Ryals. At the district court hearing on the temporary injunction, Ogden admitted that she had used a portion of the rental income from the property to pay her attorney’s fees. Ryals argues



that because Ogden has failed to follow the county court’s turnover order, she is not entitled to equitable relief in the district court.

Even if this court were to conclude that Ogden’s conduct in diverting the Trust’s rent payments from the receiver and failing to comply with the county court’s turnover order were sufficient to invoke application of the unclean hands doctrine, that conclusion would not provide any basis to reverse the trial court because Ogden was only one of three plaintiffs granted relief. A finding that Ogden had unclean hands would not bar injunctive relief for the other two plaintiffs — Steven Gayle and Wayne Westbrook, neither of whom were alleged to have come to court with unclean hands. Therefore, even if this court were to find merit in Ryals’s “unclean hands” argument as to Ogden, Ryals still could not prevail on appeal because he has not even attempted to demonstrate that the injunctive relief is not sustainable as to the other two plaintiffs. Under these circumstances, we cannot conclude that the trial court abused its discretion in granting the temporary injunction. We overrule Ryals’s third issue.

The judgment of the trial court is affirmed.

/s/ William J. Boyce  
Justice

Panel consists of Justices Anderson, Frost, and Boyce.