

Intex Livingspace, LTD., Intex Design, L.L.C., Bruce D. Wolfe, and Fred Beiser, Appellants

v.

Roset USA Corporation, Appellee

No. 14-10-00855-CV

Court of Appeals of Texas, Fourteenth District

April 19, 2011

On Appeal from the 152nd District Court Harris County, Texas Trial Court Cause No. 2010-51720.

Panel consists of Brown, Jamison, and McCally Justices.

MEMORANDUM OPINION

Martha Hill Jamison Justice.

In this interlocutory appeal, appellants Intex Livingspace, Ltd., Intex Design, L.L.C., Bruce D. Wolfe, and Fred Beiser[1] appeal the trial court's order granting the application of appellee Roset USA Corporation for a temporary injunction. Because the order does not comply with the mandatory requirement of Texas Rule of Civil Procedure 683, we declare the order void and dissolve the injunction.

Background

In July 2002, Intex Livingspace, Ltd., and Roset USA executed a dealership agreement whereby Intex had the exclusive right to purchase and resell Ligne Roset products in Houston.[2] A paragraph titled " *Conditions of Sale* " provided in part, "Roset's Standard Conditions of Sale to Resellers (the "Standard Conditions") in effect on the date of each order will govern your purchases of [Ligne Roset] Products." The agreement was to expire of its own terms in May 2007, but the parties continued to operate as if the agreement had not expired. By 2008, Wolfe had become the sole member and manager of Intex. [3] Beiser was a friend and advisor, but was not on Intex's payroll.

For many years, according to Wolfe, Intex did not have to pay in advance for the orders it sent Roset. When Wolfe started working at Intex in 2000, the terms and conditions of the sales were "Net 30, " meaning payment was due thirty days after receipt of the product at the warehouse. Those terms remained in effect for almost a decade.

In January 2010, however, Wolfe estimated Intex

owed \$350, 000 to Roset, but did not have the ability to pay Roset at that time. Roset's Standard Conditions now required Intex to pay fifty percent of Roset's invoice amount before it would release an order for shipment and required Intex to pay the remaining fifty percent before delivery. Roset and Intex executed a security agreement which gave Roset a security interest constituting a lien in all of the "Collateral, " which comprised Roset goods delivered to Intex and all of Intex's receivables from Roset customers. The security agreement also provided that Intex would make all of its books and records available to Roset upon request.

By letter dated July 16, 2010, Roset informed Intex that it would no longer accept orders from Intex but did intend to honor orders it previously had accepted in writing. For those orders, Roset expected payment in full prior to production. Roset further requested Intex to remove all signs bearing any of Roset's trademarks and to discontinue use of materials identifying Intex as an authorized Roset dealer or its showrooms as authorized showrooms. A few days later, Roset, through counsel, made demand for immediate payment of \$385, 403.46.

In early August 2010, Intex allegedly vacated the Houston showroom, leaving very little inside. Intex left a sign on the front door referring all inquiries to Roset. Intex also emailed its customers, again referring inquiries to Roset.

On August 18, 2010, Roset filed its original petition and application for injunctive relief. Roset alleged causes of action for a suit on a sworn account, breach of contract, quantum meruit, enforcement of the security agreement, and fraudulent transfer. Roset also sought a temporary restraining order and a temporary injunction. In support of its request for a temporary injunction, Roset alleged, in part, that because Intex closed its stores and left notice to customers to contact Roset, Roset would be "unable to assist those customers, to verify payment or to assure delivery" and "[s]uch circumstances [would] do immediate and irreparable harm to the image and brand of Ligne Roset."

On August 18, 2010, the trial court signed a temporary restraining order, setting the hearing on the temporary injunction for August 27, 2010. Wolfe and Pierre Delaye, Vice President of Finance of Roset USA, testified at the hearing.[4]

On August 31, 2010, the trial court signed an order for a temporary injunction. The court ordered, in relevant part, that (1) Intex stop using the Roset name, trademarks, and website, (2) keep all its books and records and (3) not sell, transfer, or damage any of the Collateral. The court further ordered Intex, within seven days, to shut down the LigneRosetHouston website and turn over to Roset its

books, records and Collateral.

In the order, the court set a trial date and set bond. The court did not specify the reasons for issuance of the injunction.

Issues Presented

In four issues, Intex argues the trial court erred in granting the temporary injunction. Intex contends (1) the trial court impermissibly altered the status quo between the parties, (2) Roset failed to show irreparable harm and the trial court did not detail why irreparable harm would occur if the injunction were not granted, (3) the trial court impermissibly granted Roset possessory rights, and (4) the trial court failed to require Roset to produce evidence that Intex was insolvent.

Standard of Review

We review the grant or denial of a temporary injunction for an abuse of discretion. *Davis v. Huey*, 571 S.W.2d 859, 861–62 (Tex. 1978); *EMSL Analytical, Inc. v. Younker*, 154 S.W.3d 693, 696 (Tex. App.—Houston [14th Dist.] 2004, no pet.). The trial court abuses its discretion if it acts arbitrarily and unreasonably, without reference to guiding rules or principles, or if it misapplies the law to the established facts of the case. *Law v. William Marsh Rice Univ.*, 123 S.W.3d 786, 792 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Analysis

In issue two, Intex argues, in part, that the trial court erred in not detailing why irreparable harm would occur if it did not grant the temporary injunction. Although Roset argued it would be irreparably harmed because, without the injunction, it would be unable to assist customers and would incur damage to its image, the order for the injunction does not specify the court's reasons for issuing the injunction.

Texas Rule of Civil Procedure 683 provides in relevant part, "Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained..." Tex.R.Civ.P. 683; *see AutoNation, Inc. v. Hatfield*, 186 S.W.3d 576, 581 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Merely stating that a party "will suffer irreparable harm" or "has no adequate remedy at law" does not meet the Rule 683 requirement for specificity. *AutoNation*, 186 S.W.3d at 581.

"The requirements of Rule 683 are mandatory and must be strictly followed. When a temporary injunction order does not adhere to the requirements of Rule 683, the injunction order is subject to being declared void and dissolved." *InterFirst Bank San Felipe, N.A. v. Paz*

Constr. Co., 715 S.W.2d 640, 641 (Tex. 1986) (per curiam); *see AutoNation*, 186 S.W.3d at 581; *Indep. Capital Mgmt., L.L.C. v. Collins*, 261 S.W.3d 792, 795 (Tex. App.—Dallas 2008, no pet.). Even if a sound reason for granting relief appears elsewhere in the record, the Texas Supreme Court states in the strongest terms that Rule 683 is mandatory. *See State v. United Cook, Inc.*, 464 S.W.2d 105 (Tex. 1971) (stating trial court cannot be excused from setting forth specific reasons in support of injunction). Thus, a trial court abuses its discretion if it issues a temporary injunction order that does not comply with the Rule 683 requirements. *Indep. Capital Mgmt.*, 261 S.W.3d at 795.

The order in the present case is completely devoid of any reason for its issuance. Accordingly, we sustain Intex's second issue. Because of our disposition of this issue, we need not address Intex's remaining issues. Tex.R.Civ.P. 47.1.

Conclusion

Having sustained Intex's second issue, we declare the temporary injunction order void, order the temporary injunction dissolved, and remand the case for further proceedings consistent with this opinion.

Notes:

[1] Unless necessary to distinguish among the appellants, we refer to them collectively as "Intex."

[2] The dealership agreement refers only to a Houston store. Other documents and the testimony contain references to a store in Austin.

[3] Intex represents, without citation to the record, that Wolfe purchased Intex LivingSpace, Ltd. in 2006. A form 409 in the record shows Wolfe as the manager and sole member of Intex Design L.L.C. as of May 27, 2008.

[4] By the time of the hearing, Intex customers Danny and Isabel David had intervened. Although they appeared at the hearing, they are not parties to the present appeal.
