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AFFIRM and Opinion Filed May 17, 2012

In The
Court of Appeals
Fifth District of Texas at Dallas
.....
No. 05-11-01536-CV
.....
HYDROSCIENCE TECHNOLOGIES, INC., Appellant
V.
HYDROSCIENCE, INC., ET AL., Appellees
.....
On Appeal from the 193rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. 10-04434
.....
OPINION
Before Chief Justice Wright and Justices Francis and Lang-Miers
Opinion By Chief Justice Wright

Before the Court is the motion of Hydroscience Technologies, Inc. (HTI) for review of the trial court's order granting a post-judgment injunction. HTI raises four issues contending generally that the trial court erred in granting the post-judgment injunction because: (1) there is no evidence that HTI is likely to dissipate or transfer assets to avoid satisfaction of the judgment; (2) the trial court exceeded the scope of Texas Rule of Appellate Procedure 24.2(d) by not limiting the injunction to actions to avoid satisfaction of the judgment and adding a requirement that any transfers in the normal course of business must also be for fair value in return; and (3) the injunction enjoins parties other than the judgment debtor. We overrule HTI's issues and affirm the injunction.

Background

Hydroscience, Inc. (HSI) filed an original petition for writ of mandamus to compel examination of company books and records and for

declaratory judgment seeking a declaration that it owned stock in HTI. On November 7, 2011, the trial court entered judgment: (1) declaring that HSI owned 818,182 shares of preferred stock and has all rights of a shareholder of HTI; (2) granting HSI's petition for writ of mandamus and ordering HTI to promptly permit HSI to examine the company's books; and (3) awarding attorney's fees. HTI timely appealed.

HSI moved for a post-judgment injunction to prevent HTI from transferring assets outside the ordinary course of business. On January 13, 2012, the trial court granted the relief and ordered: [HTI] and its officers, agents, servants, employees, attorneys, directors, and any other individual with the authority to act on [HTI's] behalf, are hereby ENJOINED from using, transferring, conveying, or dissipating the assets of [HTI], including but not limited to business opportunities, employee services, customers, proprietary information, trade secrets, and accounts receivable, other than for fair value in the ordinary course of business, during the pendency of this appeal.

HTI seeks review of this order.

Standard of Review

Rule 24.2(d) authorizes the trial court to “enjoin the judgment

debtor from dissipating or transferring assets to avoid satisfaction of the judgment" pending an appeal in civil cases. Tex. R. App. P. 24.2(d). We review a trial court's order enjoining a judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment under an abuse of discretion standard. Emeritus Corp. v. Ofczarzak, 198

S.W.3d 222, 225 (Tex.App.-San Antonio 2006, no pet.). The trial court is required to determine whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment. Id. at 227. The trial court abuses its discretion in ordering a post-judgment injunction if the only reasonable decision that could be drawn from the evidence is that the judgment debtor would not dissipate or transfer its assets. Id. A trial court does not abuse its discretion in ordering a post-judgment injunction if the evidence shows that a likelihood exists that a party would dissipate or transfer assets to avoid satisfaction of a judgment. Id. at 228.

Post-Judgment Injunction

In its first issue, HTI contends there is no evidence that it is likely to dissipate or transfer assets to avoid satisfaction of the judgment. At the injunction hearing, Elizabeth Taylor, vice-president and general counsel for appellee Timco Aviation Services and secretary of HSI, testified that in February of 2011 she spoke with Heath Cheek, an attorney for HTI. Cheek told Taylor that Fred Woodland, CEO of HTI, said that if HSI won, he would start a new business and move HTI's business to the new business. Later, after judgment was rendered in HSI's favor, Taylor discovered that Woodland was creating a new company, Solid Seismic, LLC.

Woodland testified that he did not think he had the right to walk away from HTI and take its customers with him. He said he did not create Solid Seismic in response to the unfavorable judgment. Rather, he

claimed its formation had been in the works for a long time. Solid Seismic has a new technology and it manufactures cabling used to detect oil on the ocean floor. HTI used to sell this cabling along with other related technology. Woodland says the technology in the new cabling is much better. Woodland testified that HTI is the sole distributor of the cabling made by Solid Seismic. He said he created a separate entity so Richard Pearce, who created the new technology in the cabling, could have an ownership interest and to protect HSI from the potential risk of litigation and failure. Woodland insisted that Solid Seismic was part of the growth plan for HTI and that it would not put HTI out of business. He said he is trying to find other markets for HTI's older products. Woodland said it was mere coincidence that he allegedly formed Solid Seismic, LLC in April of 2011 but did not have any documentation for it until one week after HSI filed its motion for an injunction.

As to the ownership of Solid Seismic, the evidence was conflicting. Woodland testified that HTI owned seventy percent and Pearce owned thirty percent. He insisted that this ownership apportionment existed since Solid Seismic's formation in April of 2011. In support of this testimony, HTI offered into evidence a Limited Liability Company Agreement and a Contribution Agreement. Both documents, however, were dated December 20, 2011, eight months after Solid Seismic's formation and one week after HSI filed the motion for injunction. Richard Pearce testified that the seventy/thirty split is

the current apportionment but that at an earlier point Solid Seismic was owned one-hundred percent by International Seismic Technology, Inc. (IST). IST is the majority shareholder of HTI.

Lance Bailey, an officer and director of both HTI and IST, filed a Texas Franchise Tax Public Information Report on November 15, 2011 on

HTI's behalf. In the report, Bailey represented that the only corporation or limited liability company that HTI owned 10% or more of was IST. However, Woodland testified that appellant owned 70% of Solid Seismic since April of 2011.

Based upon the evidence presented at the hearing, the trial court found that HTI "will dissipate or transfer HTI's business opportunities and other assets for less than fair value or outside the ordinary course of business." We conclude the evidence supports the trial court's finding. We overrule HTI's first issue.

In HTI's second issue, it contends the trial court exceeded the scope of rule 24.2(d) by omitting language limiting the injunction to actions to avoid satisfaction of the judgment. In its second conclusion of law, the trial court acknowledges the point of the injunction is to prevent the transfer of assets "to avoid satisfaction of the judgment." The conclusions of law are part of the trial court's order. Accordingly, we overrule HTI's second issue.

In its third issue, HTI contends the trial court erred when it ordered that any transfers in the normal course of business must also be for fair value in return. Any transaction in the normal course of

business would be for fair value in return. It would not be a normal business transaction if the company is not getting fair value in return. We conclude that inclusion of this language was not error. We overrule HTI's third issue.

In its final issue, HTI argues the trial court exceeded the scope of rule 24.2(d) by enjoining parties other than the judgment debtor. A corporation can only act through it agents. See GTE Southwest, Inc. v. Bruce, 998 S.W.2d 605, 618 (Tex. 1999). It is HTI's officers and agents who act on behalf of the corporation and make the decisions. Therefore, their actions must also be enjoined. We overrule HTI's fourth issue.

We affirm the trial court's post-judgment injunction order.

CAROLYN WRIGHT
CHIEF JUSTICE
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