

AFFIRMED and Opinion Filed October 28, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-20-00789-CV

**ANWAR KAZI, ZAMEER SACHEDINA, ROHIT SHARMA, AND
WISEMAN INNOVATIONS, LLC., Appellants**

V.

MOHAMMAD SOHAIL, Appellee

**On Appeal from the 101st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-09713**

MEMORANDUM OPINION

Before Justices Molberg, Goldstein, and Smith
Opinion by Justice Goldstein

This is an accelerated interlocutory appeal from a temporary injunction enjoining appellants from altering any voting rights at Wiseman Innovations, LLC, taking any board vote or other action outside the normal course of business with respect to any corporate governance changes or major corporate transactions. In a single issue, appellants argue the trial court erred in entering a temporary injunction when no evidence was admitted in support of it. We affirm.

Factual Allegations

Appellee Mohammad Sohail's live pleading alleges the following to support his fraud, fraudulent inducement causes of action against appellants, seeking a declaratory judgment establishing that his resignation letter and the consulting agreement were signed under duress, induced by fraud and null and void.

Wiseman is a healthcare software vendor founded in 2017 by Sohail, Kazi, and others. Sohail was Wiseman's "leader and chief executive officer." On January 16, 2020, Sharma made a series of calls to Sohail between midnight and 1:00 a.m., advising that two members of Wiseman believed Sohail had embezzled company money, planned to report Sohail to the authorities and sue him personally. Sharma represented that these allegations would prevent Sohail and his family from obtaining United States citizenship. Sharma said he and Kazi would talk the members out of taking any action against Sohail if Sohail would resign from his position and sign a "consulting agreement" that "(a) relegated [Sohail] to mere consultant status, (b) imposed onerous exclusivity, non-compete and non-solicit obligations on him, and (c) purported to release all claims he might have against" appellants. Sharma advised that resigning and signing the consulting agreement "would put an end to the accusations and that they would never be raised again or held against" Sohail but that if he did not sign the consulting agreement that night, "he would be in jail by morning and no one in healthcare would ever hire him again." After speaking with Sharma, Sohail called Kazi, who "confirmed Sharma's false

representations.” At approximately 1:00 a.m., Sohail signed both a letter of resignation and the consulting agreement.

Sohail asserts that both Sharma and Kazi concealed that they were lying to him and acted in concert with Sachedina “in a plot to deceive him and that he could not trust their factual representations.” Approximately three weeks later, the two members of Wiseman who purportedly believed Sohail had embezzled money “sought out [Sohail] to inquire as to his sudden resignation in the middle of the night. Both members “confirmed that they had never planned or discussed any action of any kind against [Sohail] and were shocked at the allegations falsely attributed to them.”

Sohail filed a verified application for temporary restraining order and preliminary injunction seeking to enjoin appellants from altering any voting rights at Wiseman or acting on any vote taken at Wiseman “on July 16, 2020, or thereafter, based on ostensibly altered voting rights.” The application reasserted the allegations contained in Sohail’s petition, set out the applicable legal standard for a temporary injunction, averring Sohail would suffer irreparable harm without injunctive relief, and demonstrating a probable right of recovery at trial on asserted elements of his causes of action.

Procedural History

Having previously granted a temporary restraining order, on August 10, 2020, the trial court held a hearing on Sohail’s application via a Zoom videoconference.

The trial court's emergency standing order in effect at the time of the hearing provided:

Subject to the proper exercise of judicial discretion, evidence which typically would be presented via the testimony of live witnesses is generally to be discouraged. Rather, Parties are hereby urged to make such presentment via affidavits, declarations or depositions consistent with SCOTX Misc. Docket Order No. 20-9042(2)(c). A party should seek leave of Court in advance of any proceeding if that party believes that the presentment of live testimony is indispensable [sic].

Regarding evidence submitted in connection with Zoom hearings, the order provided:

Any party needing to admit either exhibits or other evidence referred to above must electronically deliver same to the Court Reporter and Court Coordinator in PDF format in advance of the hearing, already pre-marked with exhibit stickers and chronologically numbered for ease of reference (and directing a witness's attention) during remote proceedings. The pages of each Exhibit, deposition, declaration of [sic.] other proffered evidence must be sequentially numbered for ease of reference. Copies must contemporaneously be directed to opposing Counsel.

At the beginning of the hearing, counsel, parties and witnesses were identified in virtual attendance, including Sohail. Sohail's counsel referred to evidence he had submitted electronically as follows:

MR. SBAITI: Thank you, Your Honor. Because of the timing and because of the TI hearing, we submitted some supplemental evidence to essentially put on the record the evidence that they said we either didn't have, but more importantly we put on the record evidence that rebutted and showed that the evidence or the allegations that they're making counter to us really don't amount to very much.

And attached and submitted via Dropbox about an hour and a half, two hours ago are some clips of audio, phone recordings that my client had. They're proven up by the affidavits, and so these are conversations

either with the company representatives or with some of the Defendants that are here, Your Honor. And so rather than try to play them, I'm not sure how we would even accomplish that, you know, those are proven up in our -- we would consider them a part of the record unless any objections arise, and we can just handle those. Otherwise, I was prepared to just make an argument to Your Honor and sort of point out the key evidence we think supports our position and go with that.

THE COURT: All right. So let's start with your argument, starting now.

Appellants' counsel did not object to this evidence being "put on the record."

During argument supporting injunctive relief, that Sohail was threatened with criminal charges and defrauded into resigning his position, counsel requested the trial court to "look at my client's affidavit that we submitted today, the supplemental affidavit and the recordings referenced in there" In response, the trial court stated that "half the pages didn't come through" but said "Okay" after she "opened it back up." Sohail presented no live testimony, either in person or virtually. Appellants called witnesses for brief testimony and admission of exhibits.

Following the hearing, the trial court signed an order granting injunctive relief stating "[t]he evidence presented" led the trial court to "give credence to the allegations that some or all of the [appellants] used deceptive means to convince [Sohail] to sign a unilateral 'consulting agreement' and resign his positions" at Wiseman. The order reflects that Sohail "contends and has offered evidence to show that his position was procured by fraud, and that his current inability to run the company and have a voice on the board constitutes irreparable harm." This appeal followed.

Issue

In their sole issue, appellants argue the trial court erred in entering a temporary injunction when there was no evidence admitted in its support. Specifically, appellants contend Sohail offered no live testimony and no affidavit, testimony, or exhibits were admitted in support of his application. In contrast, appellants argue, they admitted un rebutted testimony and exhibits in opposition, thus “the only evidence admitted by the Trial Court supported denying the temporary injunction; “therefore, the trial court “had no basis to enter” the temporary injunction order.

Abuse of Discretion Standard of Review

A temporary injunction is an extraordinary remedy, not issued as a matter of right. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993). To obtain a temporary injunction, an applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Amend v. Watson*, 333 S.W.3d 625, 627 (Tex. App.—Dallas 2009, no pet.). The decision to grant or deny a temporary writ of injunction lies in the sound discretion of the trial court, and the court’s grant or denial is subject to reversal only for a clear abuse of that discretion. *Walling*, 863 S.W.2d at 57. At the hearing for a temporary writ of injunction, the applicant is not required to establish that he will prevail on final trial; the only question before the trial court is whether the applicant is entitled to preservation of the status quo pending trial on the merits. *Id.*

Analysis

Appellants argue, under the rules, injunctions are issued solely based upon evidence admitted at a hearing, and a temporary injunction may not be based upon sworn pleadings or affidavits, unless those sworn pleadings or affidavits are agreed to by the parties or are admitted into evidence.

During the time of COVID, remote proceedings and electronic submissions are the rule rather than the exception. Sohail's submission of his affidavit and other evidence electronically prior to the Zoom videoconference was in compliance with the trial court's standing order. Sohail's evidence was put into the record, referenced and discussed without objection from appellants. Although the trial court did not use "magic words" admitting into evidence Sohail's affidavit and electronic submissions, the trial court's order granting a temporary injunction repeatedly states that it was based on Sohail's evidence.

We note that the clerk's record contains Sohail's affidavit setting forth the evidence the trial court determined entitled him to injunctive relief, including the audio files of phone calls between Sohail and appellants supporting Sohail's claims. The trial court may take judicial notice of its file at any stage of proceedings and is presumed to have done so with or without a request from a party. *Barnard v. Barnard*, 133 S.W.3d 782, 786 (Tex. App.—Ft. Worth 2004, pet. denied).

The record is clear that the trial court considered the evidence electronically submitted and filed among the papers of the court at the hearing in determining

whether to grant a temporary injunction. *See id.* Under these circumstances, we conclude the trial court did not abuse its discretion in granting a temporary injunction based on the evidence in the record. *See Walling*, 863 S.W.2d at 57. We overrule appellants' sole issue and affirm the trial court's order granting a temporary injunction.

/Bonnie Lee Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ANWAR KAZI, ZAMEER
SACHEDINA, ROHIT SHARMA,
AND WISEMAN INNOVATIONS,
LLC., Appellants

No. 05-20-00789-CV V.

On Appeal from the 101st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-09713.
Opinion delivered by Justice
Goldstein. Justices Molberg and
Smith participating.

MOHAMMAD SOHAIL, Appellee

In accordance with this Court's opinion of this date, the trial court's August 10, 2020 order granting a temporary injunction is **AFFIRMED**.

It is **ORDERED** that appellee MOHAMMAD SOHAIL recover his costs of this appeal from appellants ANWAR KAZI, ZAMEER SACHEDINA, ROHIT SHARMA, AND WISEMAN INNOVATIONS, LLC.

Judgment entered this 28th day of October 2021.