Reversed and Opinion Filed February 14, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-01222-CV

TOTUS GROUP, LLC AND TOTUS HOLDINGS, LLC, Appellants
V.
THE PRUITT FAMILY LIVING TRUST, THE SCHUGART FAMILY, LLC, AND PATEL LEGACY TRUST 2022, Appellees

On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-23-05872-E

MEMORANDUM OPINION

Before Justices Miskel, Breedlove, and Barbare[1]
Opinion by Justice Miskel

Appellants Totus Group, LLC and Totus Holdings, LLC appeal an interlocutory order by the trial court which granted an application for temporary injunction filed by appellees The Pruitt Family Living Trust, The Schugart Family, LLC, and Patel Legacy Trust 2022. We hold the trial court abused its discretion by signing a temporary injunction order that did not comply with Rule 683 of the Texas Rules of Civil Procedure. Accordingly, we conclude this order is void. We reverse

[1] Justice Cynthia Barbare succeeded Justice Erin A. Nowell, a member of the original panel. Justice Barbare has reviewed the briefs and record before the Court.

the order of the trial court, dissolve the temporary injunction, and remand to the trial court for further proceedings.

I. Background

Totus Group, LLC ("Group") is a company in the gift card business. Group solicited a $5 million investment from appellees, The Pruitt Family Living Trust, The Schugart Family, LLC, and Patel Legacy Trust 2022 (collectively, the "Preferred Investors"). The Preferred Investors allege that Group represented to them that, in exchange for their investment, they would receive Series A Preferred Shares and would be senior to Group's Series B Common Shareholders. As Series A Preferred Shareholders, the Preferred Investors allegedly would own 20% of Group and would receive three times their original investment before any other distributions were made. In addition, the Preferred Investors allege Group represented to them that, once these thresholds were met, the Preferred Investors would receive 20% of all distributions thereafter.

A. Group's Request for Additional Capital

The Preferred Investors allege that Group was not satisfied with the Preferred Investors' $5 million investment, and thus Group's representatives tried to convince the Preferred Investors that Group needed additional outside investors to support its growth. However, potential outside investors allegedly would not provide additional capital to Group unless the Preferred Investors agreed to terminate their 20% distribution rights.

B. The Purported Fraudulent Scheme

The Preferred Investors allege that they were willing to invest further in Group, but they would not agree to its "unreasonable request to re-write the deal." Unable to convince the Preferred Investors to make an additional investment, Group allegedly embarked on a fraudulent scheme that involved multiple steps.

First, on February 6, 2023, Group's principals allegedly revealed to the Preferred Investors for the first time that Group had formed a new company, Totus Gift Card Management, LLC ("TGCM"). Group is the 100% owner of TGCM. The Preferred Investors also claim that Group is the sole managing member of TGCM and that Group transferred all its assets to TGCM.

Second, on March 11, 2023, Group's principals created another new entity, Totus Holdings, LLC ("Holdings"). Holdings' owners include SCOWAL Investments, Ltd. ("SCOWAL"), which is an entity allegedly owned by Group's CEO, Scott Walker. Holdings now owns 99.995% of Group.

Third, Group's principals formed Holdings for the alleged purpose of making a $3,000,000 bridge loan to TGCM, which, as stated above, allegedly held all the assets of Group. This loan from Holdings to TGCM closed on April 20, 2023, and we will refer to it as the "Holdings Loan." To secure the loan, TGCM pledged its assets and equity interests to Holdings, and Group served as guarantor of the loan. The loan is subject to a nine-month term (due January 20, 2024) and a 15% interest rate. The Preferred Investors claim that Group's principals intended to manufacture

TGCM's default on the loan so that, in January 2024, SCOWAL could foreclose on the assets, thereby eliminating the value of the Preferred Investors' interests in Group. The Preferred Investors' appeal brief also cites deposition testimony of TGCM's CEO that, as of October 2023, TGCM did not have available cash to make the payment due on the Holdings loan in January 2024, and that the failure to make this payment would result in a default on the loan.

C. The Lawsuit

On September 8, 2023, two of the Preferred Investors (The Pruitt Family Living Trust and The Schugart Family, LLC) sued Group and Holdings, alleging, among other things, misrepresentations in the sale of securities. For purposes of this appeal, we will refer to Group and Holdings, collectively, as "the Totus Entities." On October 30, 2023, the two Preferred Investors amended their petition to add the third Preferred Investor, Patel Legacy Trust 2022, as a plaintiff and TGCM as a defendant. The Preferred Investors' original and amended petitions included an application for a temporary restraining order and for a temporary and permanent injunction.

The Preferred Investors allege that officers and directors of the Totus Entities fraudulently induced the Preferred Investors to invest $5 million in Group. The Preferred Investors further allege that, after the investment, "these persons began a scheme to inappropriately pay themselves high salaries, wrongfully dilute the ownership interest of Plaintiffs, usurp corporate opportunities of the company and

eliminate Plaintiffs' rights distributions of profits past, present and future—all for Defendants and their cronies own self dealing." The amended petition asserts the following causes of action against the Totus Entities and TGCM: violations of the Texas Securities Act; fraud under § 27.01 of the Texas Business and Commerce Code; common-law fraud; fraudulent inducement; violations of the Texas Fraudulent Transfer Act; breach of contract; and receivership and accounting.

On November 7, 2023, the trial court held a hearing on the Preferred Investors' application for temporary injunction. One week later, on November 14, the trial court signed the temporary injunction order at issue in this appeal. The Totus Entities timely appealed the trial court's order.[2] *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(4) (authorizing appeal from interlocutory order that grants or denies temporary injunction).

On December 1, 2023, the Totus Entities also filed a motion in the trial court to modify and clarify two paragraphs in the temporary injunction order. On December 5, Group filed a motion in this Court to stay the temporary injunction order, and Holdings joined in the motion. On January 18, 2024, we granted the motion to stay "to the extent that we **STAY** enforcement of the temporary injunction pending the trial court's . . . hearing on the [Totus Entities'] motion to modify the temporary injunction." The trial court held this hearing on February 16, 2024, and

[2] TGCM also filed a notice of appeal, but it subsequently dismissed its appeal.

it signed an order on April 23, 2024, granting the Totus Entities' motion to modify and to clarify the temporary injunction . *See Sweet v. Inkjet Int'l, Ltd.*, No. 05–03–00233–CV, 2003 WL 22254695, at *1 (Tex. App.—Dallas Oct.2, 2003, no pet.) (mem. op.) (concluding, based on TEX. R. APP. P. 29.5, that trial court had jurisdiction to amend temporary injunction during pendency of interlocutory appeal to clarify definition). As of the date of this opinion, we have not lifted the stay issued by this Court's January 18, 2024 Order.

II. The Preferred Investors' Motion to Dismiss

On July 25, 2024, the Preferred Investors filed in this Court a motion to dismiss this appeal and to lift our January 18, 2024 Stay Order.[3] The Preferred Investors' motion to dismiss contends, among other arguments, that the Totus Entities' appeal from the November 14, 2023 temporary injunction order is moot because such order was subsequently modified by the April 23, 2024 order granting the Totus Entities' motion to modify and to clarify.[4] As discussed below, we disagree that the April 23rd order moots this appeal.

[3] We will address the Preferred Investors' Motion to Lift Stay in Section IV of this opinion.

[4] The Preferred Investors' motion to dismiss also requested us to dismiss this appeal because the Totus Entities purportedly failed to timely file their appeal brief. However, the Totus Entities filed their brief within the briefing deadline set by this Court. Accordingly, this argument is now moot.

A. Per the Totus Entities' Request, the Trial Court Modified Two Paragraphs in the Temporary Injunction Order.

The Totus Entities' motion to modify focused on two paragraphs of the temporary injunction order, which ordered the Totus Entities, TGCM, and their "Agents" (a defined term) to:

- Hold in constructive trust any asset and/or corporate opportunity of Totus Group, LLC, Totus Management, LLC, Totus Holdings, LLC, Totus International, LLC and/or any subsidiary of any of these companies and shall not take any action to transfer, convey, assign or encumber any such asset; and

- Maintain the status quo and regular course of business operations of Totus Group, LLC, Totus Management, LLC and Totus Group Holdings, LLC and not take any action inconsistent with this Temporary Injunction.

The Totus Entities urged that the above paragraphs were "internally inconsistent and unworkable" because "[i]t is not possible to on the one hand (i) maintain the status quo and regular course of business (i.e., pay employees, vendors, landlords, service contracts, process transactions, solicit new business, etc.) while (ii) not conveying any assets of [the Totus Entities and TGCM]."

The trial court conducted a hearing on the Totus Entities' motion on February 16, 2024, and it signed an order on April 23, 2024, granting the motion. The order reflects that it was submitted to the trial court by counsel for the Totus Entities. The April 23rd order amends the above two paragraphs from the November 14, 2023 temporary injunction order as follows:

> The Defendants shall not alienate any of their assets other than those necessary to maintain the status quo or conduct their business

> operations in the ordinary course (including, but limited to, making payments for payroll and other employee expenses, insurance premiums, rents, service and vendor contracts, process transactions for customers, solicit new business, establish pods for new business, etc.).

B. The Trial Court's Modifications to the Temporary Injunction Order Do Not Render This Appeal Moot.

The Preferred Investors argue that the above April 23, 2024 order granting the Totus Entities' motion to modify and to clarify renders moot the Totus Entities' appeal of the November 14, 2023 temporary injunction order. The Preferred Investors assert two reasons to support their argument: (1) in the Preferred Investors' view, the April 23rd order replaces the November 14th order "to such an extent" that the April 23rd order renders moot the Totus Entities' appeal of the November 14th order; and (2) the Totus Entities submitted the proposed order which the trial court signed on April 24th, and by doing so, they have already received their requested modifications to the November 14th temporary injunction order. We agree with this argument to the extent the Totus Entities seek in this appeal to challenge the paragraphs of the November 14th temporary injunction order that the trial court has already modified upon their request in the April 23rd order. *See Compass Bank, N.A. v. SanJeck, LLP*, No. 05-11–00913-CV, 2012 WL 601191, at *2–*3 (Tex. App.—Dallas Feb. 23, 2012, no pet.) (mem. op.) (holding that appeal from first temporary-injunction order was rendered moot by amended injunction that afforded appellant all relief sought on appeal as to first injunction). However, the Totus Entities' appeal brief does not reference the above paragraphs in the injunction order,

and we do not interpret their appeal as challenging the portions of the order that the trial court has already modified. Accordingly, we conclude this appeal is not moot regarding the Totus Entities' challenge to the portions of the temporary injunction order that the trial court has not modified. We deny the Preferred Investors' motion to dismiss.

III. Temporary Injunction Order

The Totus Entities raise three issues. Their first issue contends the trial court signed a void injunction order in violation of Rule 683 of the Texas Rules of Civil Procedure. Their second issue urges that the trial court abused its discretion in signing an injunction order that does not specify the Preferred Investors' alleged irreparable injury or include any facts that demonstrate the Preferred Investors have no adequate remedy at law. The Totus Entities' third issue argues that they have not taken any steps to foreclose on their security interests in TGCM's assets, and their unexercised contractual rights to foreclose on these assets, without more, do not constitute the required "imminent harm" that would justify the trial court's temporary injunction order. We conclude the trial court's injunction order does not comply with Rule 683. As discussed below, we will resolve this appeal based on the Totus Entities' first and second issues.

A. Applicable Law and Standard of Review

To be entitled to a temporary injunction, an applicant must plead and prove three specific elements: (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). We review the trial court's grant or denial of a temporary injunction for an abuse of discretion. *City of Dallas v. Stamatina Holdings, LLC*, No. 05-20-00975-CV, 2021 WL 1826931, at *2 (Tex. App. —Dallas May 7, 2021, no pet.) (mem. op.). We limit the scope of our review to the validity of the order, without reviewing or deciding the underlying merits, and we will not disturb the order unless it is so arbitrary that it exceeds the bounds of reasonable discretion. *Henry v. Cox*, 520 S.W.3d 28, 33–34 (Tex. 2017); *see also Reiss v. Hanson*, No. 05-18-00923-CV, 2019 WL 1760360, at *2 (Tex. App.—Dallas, Apr. 22, 2019, no pet.) (mem. op.).

Rule 683 of the Texas Rules of Civil Procedure requires that every order granting an injunction "shall set forth the reasons for its issuance; shall be specific in terms; [and] 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. The requirements of Rule 683 are mandatory and must be strictly followed. *City of Dallas*, 2021 WL 1826931, at *2; *Indep. Capital Mgmt., L.L.C. v. Collins*, 261 S.W.3d 792, 795 (Tex. App. —Dallas 2008, no pet.). Accordingly, a trial court abuses its discretion by issuing a temporary injunction order that does not comply with the requirements of Rule 683. *Collins*, 261 S.W.3d at 795. In determining whether these requirements have been met, we must read the temporary injunction order "as a whole." *See McCaskill v. National Circuit Assembly*, 05-17-

01289-CV, 2018 WL 3154616, at *3 (Tex. App.—Dallas June 28, 2018, no pet.) (mem. op).

1. Reasons for Issuance

"A trial court's order stating its reasons for granting a temporary injunction must be specific and legally sufficient on its face and not merely conclusory." *El Tacaso, Inc. v. Jireh Star, Inc.*, 356 S.W.3d 740, 744 (Tex. App.—Dallas 2011, no pet.); *see also Arkoma Basin Exploration Co. v. FMF Assocs. 1990–A, Ltd.*, 249 S.W.3d 380, 389 n. 32 (Tex. 2008) (nothing that "conclusory" is defined as "[e]xpressing a factual inference without stating the underlying facts on which the inference is based") (citing BLACK'S LAW DICTIONARY 308 (8th ed. 2004)). Rule 683 requires the trial court to "set out in the temporary injunction order the reasons the court deems it proper to issue the injunction, including the reasons why the applicant will suffer injury if the injunctive relief is not ordered." *El Tacaso*, 356 S.W.3d at 744; *see also Transport Co. of Tex. v. Robertson Transports, Inc.*, 261 S.W.2d 549, 553 (Tex. 1953) (stating that temporary injunction order must "set forth . . . the reasons why the court believes the applicant's probable right will be endangered if the writ does not issue"). Moreover, such reasons must be in the order itself. *See Home Asset, Inc. v. MPT of Victory Lakes Fcer, LLC*, No. 01-22-00441-CV, 2023 WL 3183322, at *2 (Tex. App.—Houston [1st Dist.] May 2, 2023, no pet.) (mem. op.) ("[W]e cannot infer the reasons for an injunction from the pleadings, evidence presented at the hearing on the application, or the trial court's oral

pronouncement."); *El Tacaso*, 356 S.W.3d at 745 ("Even if a sound reason for granting relief appears elsewhere in the record, the Texas Supreme Court has stated in the strongest terms that rule of civil procedure 683 is mandatory."). A trial court's description of the reasons why an applicant will suffer irreparable injury will vary from case to case because each case in which a temporary injunction is sought presents a unique set of facts. *El Tacaso*, 356 S.W.3d at 747–48.

2. Acts Sought to Be Restrained

"An injunction must be as definite, clear, and precise as possible and when practicable it should inform the defendant of the acts he is restrained from doing, without calling on him for inferences or conclusions about which persons might well differ and without leaving anything for further hearing." *Computek Comput. & Office Supplies, Inc. v. Walton*, 156 S.W.3d 217, 220–21 (Tex. App.—Dallas 2005, no pet.); *see also Arterberry v. Willowtax, LLC*, No. 05-21-00238-CV, 2022 WL 472796, at *5 (Tex. App.—Dallas Feb. 16, 2022, pet. denied) (mem. op.) ("[T]erms that are vague and fail to provide adequate notice to [defendants] of the acts they are restrained from doing—in terms not subject to reasonable disagreement—violate rule 683's specificity requirement."); *Clark v. Hastings Equity Partners, LLC*, 651 S.W.3d 359, 372 (Tex. App.—Houston [1st Dist.] 2022, no pet.) ("Restrained parties should be able to pick up a temporary injunction order, read it, understand it, and not have to guess about what they are prohibited from doing upon threat of contempt."); *Ramirez v. Ignite Holdings, Ltd.*, No. 05-12-01024-CV, 2013 WL

4568365, at *3 (Tex. App.—Dallas Aug. 26, 2013, no pet.) (mem. op.) ("The rule's purpose is to ensure the enjoined parties are given adequate notice of the acts they are enjoined from doing.").

In addition, the temporary injunction order must provide a nexus between the actions restrained and an irreparable injury that cannot be adequately compensated absent the order. *El Tacaso*, 356 S.W.3d at 747. Without such an explanation the restrained party is unable to understand the basis for the ruling and evaluate the propriety of a challenge to the injunction, and we are without an adequate basis for appellate review. *In re PJD Law Firm*, PLLC, No. 05-23-00012-CV, 2023 WL 2887616, at *3 (Tex. App.—Dallas Apr. 11, 2023, no pet.) (mem. op.). We have applied this reasoning to declare other temporary injunctions and temporary restraining orders void. *Id*. at *3.

3. Failure to Comply With Rule 683

A temporary injunction order that fails to comply with these requirements is void and must be dissolved. *City of Dallas*, 2021 WL 1826931, at *2; *Massenburg v. Lake Point Advisory Gp., LLC*, 05-19-00808-CV, 2020 WL 1472215, at *1 (Tex. App.—Dallas Mar. 20, 2020, no pet.) (mem. op.); *see also Collins*, 261 S.W.3d at 795 (noting that an appellate court can declare a temporary injunction void even if the issue has not been raised by the parties). However, as discussed in more detail below, if there is only a discrete omission, instead of dissolving the entire order, in some cases "we have reversed the portion of the order that lacked specificity and

remanded to the trial court for further proceedings." *White v. Impact Floors of Tex,, LP*, No. 05-18-00384-CV, 2018 WL 6616973, at *3 (Tex. App.—Dallas Dec. 18, 2018, no pet.) (mem. op.).

B. The Temporary Injunction Order Does Not Comply With Rule 683.

The Totus Entities' first issue contends the trial court's temporary injunction order does not comply with Rule 683. Their second issue argues the order does not specify the Preferred Investors' alleged irreparable injury, nor does it include any facts that demonstrate the Preferred Investors have no adequate remedy at law. We agree for the reasons set forth below.

1. The order does not adequately explain the reasons for its issuance.

As explained previously, a temporary injunction order must include the reasons why the applicant will suffer an irreparable injury if the injunctive relief is not granted. *See El Tacaso*, 356 S.W.3d at 744, 747–48; TEX. R. CIV. P. 683 (requiring injunction order to "set forth the reasons for its issuance" and "be specific in terms"). The temporary injunction order in this case states, in pertinent part:

> After notice and hearing, reviewing the Application, hearing and receiving evidence and arguments of counsel,[5] the Court is of the opinion that the Application should be GRANTED.

[5] The Preferred Investors contend their application and their evidence set forth numerous specific facts that were considered by the trial court in deciding to grant a temporary injunction. Nevertheless, we may not rely on such evidence in determining whether the temporary injunction order complies with Rule 683. Instead, we look to the language in the order itself. *See Home Asset*, 2023 WL 3183322, at *2; *El Tacaso*, 356 S.W.3d at 745.

> The Court finds that the [Preferred Investors] have demonstrated a likelihood of success on the merits and established a clear and immediate harm to the [Preferred Investors] if this injunction is not granted. The [Preferred Investors] have shown that the [Totus Entities and TGCM] have already engaged in conduct that has violated their agreements with the [Preferred Investors] and are devaluing [the Preferred Investors'] interests and investment with respect to Totus Group, LLC and its wholly owned subsidiary, Totus Gift Card Management, LLC, and that unless and until the [Totus Entities and TGCM] are restrained from any further such conduct, the [Preferred Investors] will suffer irreparable injury for which there is no adequate remedy at law.
>
> The Court finds that the [Preferred Investors] have demonstrated that unless the [Totus Entities and TGCM], together with their . . . "Agents"[6] . . . are immediately restrained, enjoined and prohibited from engaging in or performing, directly or indirectly, certain acts, the irreparable injury will continue. (underlining added).

The Totus Entities argue that the above language does not comply with Rule 683 because such language provides only a conclusory basis as to why a temporary injunction order is necessary in this case. They also contend that the above language does not (1) explain how the Totus Entities and TGCM have "violated their agreements" with the Preferred Investors, (2) specify the alleged "irreparable injury," (3) link any alleged breach to such alleged "irreparable injury," or (4) explain why the Preferred Investors have no adequate remedy at law.

[6] The temporary injunction order defines "Agents," and this definition includes James P. Moon (an attorney engaged by Group), Scott B. Walker (a member of Group's Board of Managers), David S. Jones (a member of Group's Board of Managers), Mike Vogus (Group's President and CRO), Mike Stulus, Rick Lafitte, Scowal Investments, Ltd., Totus International, LLC, Totus Gift Card Management, LLC, and "all other affiliated entities and persons, or subsidiary entities with these persons and entities."

In response, the Preferred Investors contend the Totus Entities have not challenged the sufficiency of the evidence to support the temporary injunction, and therefore, the Totus Entities have conceded the evidence was sufficient to support the injunction. As for the form of the injunction, the Preferred Investors contend the temporary injunction order complies with Rule 683 because it "sets forth a summation of the factual support for the injunction and further delineates specific restrictions imposed that implicitly set forth the reasons for the trial court's conclusion that the [Preferred Investors] will suffer irreparable injury with no adequate remedy at law." They also argue that the order "sufficiently set[s] forth the irreparable harm and the [Preferred Investors'] lack of an adequate remedy at law by specifically outlining the restrictions within the body of the Injunction that directly speak to the irreparable harm that would result without such restrictions."

We agree with the Totus Entities that the temporary injunction order does not adequately explain the nature of the injury the Preferred Investors will suffer if the injunction does not issue, nor does the order explain why the injury is irreparable if not prevented by an injunction. Specifically, although the order states the Totus Entities and TGCM "have already engaged in conduct that has violated their agreements with the [Preferred Investors]," the order does not specify *which* agreements the Totus Entities and TGCM have breached, nor does it explain *why* these breaches cannot be remedied through a remedy at law as opposed to an injunction. In addition, while the order says the Totus Entities and TGCM "are

devaluing [the Preferred Investors'] interests and investment," it does not explain *how* the Totus Entities are devaluing these interests. Moreover, the order does not explain *how* or *why* such devaluation would result in irreparable injury if not remedied by an injunction. In prior cases, this Court has determined that similar injunction orders do not comply with Rule 683. *See, e.g.:*

- *4415 W Lovers Lane, LLC v. Stanton*, No. 05-17-01363-CV, 2018 WL 3387384, at *3 (Tex. App.—Dallas, July 12, 2018, no pet.) (mem. op.) ("The trial court's order does not state or explain the probable, imminent, and irreparable harm the [applicants] will suffer absent an injunction.");

- *In re Elevacity, LLC*, No. 05–18–00135–CV, 2018 WL 915031, at *2 (Tex. App.—Dallas Feb. 16, 2018, orig. proceeding) (mem. op.) ("[T]he temporary restraining order is void because it does not define the injury it is designed to prevent, does not explain why such injury would be irreparable, and is not specific in its terms.");

- *El Tacaso*, 356 S.W.3d at 748 ("[T]he trial court's order does not state or explain the reasons why irreparable injury will result absent an injunction."); and

- *Collins*, 261 S.W.3d at 796 (concluding that temporary injunction failed to comply with Rule 683 because it did not specify facts that the trial court relied on, nor did it identify any injury applicants would suffer if the injunction did not issue).[7]

[7] In drafting this opinion, we also found the Texas Supreme Court's 1953 decision in *Transport Co. of Texas*, which neither of the parties cited in their briefs. *See* 261 S.W.2d 549. In that case, the Court held that a temporary injunction order complied with Rule 683 by stating the following reasons for its issuance: "that if respondent operated under the amended permit 'he would interfere with the markets established by the plaintiffs and would probably divert freight tonnage and revenue from the plaintiff' and 'that such interference with customers and markets and diversion of freight tonnage and revenues would result in irreparable and inestimable damage to the plaintiffs.'" *Id.* at 553. Analogous to the above language from the *Transport Co. of Texas* temporary injunction regarding the respondent's "interfere[ence]" with markets and "diver[sion]" of freight tonnage and revenue, the injunction order in this case states that the Totus Entities and TGCM "are devaluing [the Preferred Investors'] interests and investment with [Totus Group, LLC and TGCM]." [Footnote continued on next page]

We likewise conclude the temporary injunction order in this case is conclusory, does not adequately explain the reasons for its issuance, and does not comply with Rule 683.

2. The order uses vague and conclusory terms regarding the acts to be restrained and does not explain how such restraints will prevent the alleged irreparable injury.

The temporary injunction order lists thirteen acts to be restrained. These enjoined acts apply to "the Defendants," i.e., Group, Holdings, and TGCM, "together with their Agents as described herein." The Totus Entities contend the order's description of the acts to be restrained does not comply with Rule 683. *See Computek*, 156 S.W.3d at 221 (noting that an injunction "should inform the defendant of the acts he is restrained from doing, without calling on him for inferences or conclusions about which persons might well differ and without leaving anything for further hearing"). We agree for the reasons set forth below.

Paragraphs 3, 4, and 10

The Totus Entities contend that paragraphs 3, 4, and 10 of the acts to be restrained, when considered together, are illogical and are therefore insufficient to

However, the temporary injunction order in *Transport Co. of Texas* was more specific than the injunction order at issue in this case regarding the reason for the order's issuance. The injunction order in *Transport Co. of Texas* explained that a specific permit had authorized the respondent "to transport all liquid chemicals of any nature whatever both present and future," which gave rise to the above market interference and diversion of freight tonnage and revenue to be enjoined. *Id.* at 551. In contrast, as discussed above, the temporary injunction order in this case does not specify which agreements the Totus Entities and TGCM have violated, nor does it explain how the Totus Entities and TGCM violated these agreements or how such violations are devaluing the Preferred Investors' interests. Accordingly, we conclude *Transportation Co. of Texas* is distinguishable from this case.

satisfy Rule 683. Paragraphs 3 and 4 prohibit the Defendants or their Agents from "[t]aking any action to declare a default on," or to "accelerate or call due," "any Note, Guaranty, or Loan or similar commercial paper held by any Defendant or Agent against any Defendant." The Totus Entities contrast the above paragraphs with paragraph 10, which prohibits the Defendants or their Agents from "[f]ailing to fund to the fullest extent on any note, security, guaranty, agreement or other loan document between any Defendants and/or between any Defendants and any of its Agents." The Totus Entities contend that paragraph 10 requires them to "fund the business enterprise" and to "do so without rights," and they argue the temporary injunction order does not explain why this paragraph is necessary to prevent the Preferred Investors' alleged harm, given that paragraphs 3 and 4 also enjoin the enforcement of any debt instrument held by any "Defendant" against any "Defendant."

Upon considering the above paragraphs, we conclude paragraph 10 of the temporary injunction order does not adequately inform the Totus Entities of which loan documents they are required to "fund to the fullest extent," nor does it adequately explain why this requirement is necessary to prevent the Preferred Investors' alleged harm. Although the Preferred Investors contend that paragraph 10 does no more than preserve this status quo, this is not clear from the face of the order. Accordingly, we conclude paragraph 10 fails to comply with Rule 683. *See El Tacaso,* 356 S.W.3d at 744 ("A trial court's order stating its reasons for granting

a temporary injunction must be specific and legally sufficient on its face and not merely conclusory."); *Computek*, 156 S.W.3d at 221 (describing Rule 683's specificity requirements regarding acts to be restrained).

No Nexus Between Acts to Be Restrained and Irreparable Injury

In addition, we conclude the temporary injunction order does not explain how the acts to be restrained will prevent the Preferred Investors' alleged irreparable injury. In addition to paragraphs 3, 4, and 10, discussed previously, the order enjoins the following acts:

- Interfering with the Preferred Investors' rights established under the Subscription Agreement, Certificate of Designations and Amended Company Agreement with regard to voting, non-dilution and ownership interest in Totus Group, LLC (¶ 1);

- Failing to comply with the Subscription Agreement, Certificate of Designation and Amended Company Agreement with regard to Plaintiffs' rights regarding their investment, distributions and ownership interest (¶ 2);

- Transferring, conveying, assigning or encumbering in any way, directly or indirectly, any asset or property of Totus Group, LLC, Totus Holdings, LLC, Totus Management, LLC, Totus International, LLC or any of their Agents (¶ 5);

- Taking any action that would usurp or attempt to usurp any corporate opportunity of Totus Group, LLC or Totus Management, LLC for the benefit of any other Defendant or Agents (¶ 6);

- Taking any action to dilute, or to begin to dilute, any of the ownership interest of the Plaintiffs or any Preferred shareholder in Totus Group, LLC or Totus Management, LLC (¶ 7);

- Taking any action to amend or alter the terms of the original Subscription Agreement or the Company Agreements related to the Plaintiffs or any

Preferred shareholder or unit holder's ownership interest in Totus Group, LLC or Totus Management, LLC (¶ 8);

- Interfering with the existing or potential contractual relationships of Totus Group, LLC or Totus Management, LLC (¶ 8);[8]

- Taking any action in furtherance of making a demand for payment, declaring default, posting or seeking foreclosure or recovery on or from any note, security, guaranty, agreement or other loan document between any Defendants and/or between any Defendants [sic] and any of its Agents (¶ 9);

- Performing any action or utilizing any entity (including, but not limited to Totus Holdings, LLC and Totus International, LLC or their Agents) that competes in any way, directly or indirectly, with the business Totus Group, LLC or Totus Gift Card Management, LLC, including but not limited to the issuance, redemption, administration, management, consulting, marketing, promotion, sale, or distribution of gift cards, incentive cards, loyalty cards, or other stored value cards, whether physical or digital, in the United States of America, Europe, Asia, and such other countries [without Court consent] (¶ 11).

- From disparaging any Plaintiff or their trustees, agents, owners, representatives or beneficiaries to this Lawsuit (¶ 12).

Although the above list is long, it does not explain how or why the above restraints are necessary to prevent the "deval[uation]" of the Preferred Investors' "interests and investment," which is the stated reason for the injunction. Accordingly, the order fails to provide a nexus between the acts restrained and the alleged irreparable injury to the Preferred Investors that cannot be adequately compensated. *See El Tacaso,*, 356 S.W.3d at 747 (requiring such a nexus); *Mark Bailey, Edamame, Inc. v. Ramirez*, No. 05-22-00072-CV, 2022 WL 18006718, at *3

[8] The order contains two paragraphs labeled as paragraph 8.

(Tex. App.—Dallas Dec. 30, 2022, no pet.) (mem. op.) ("The [injunction] does not explain why the four actions being enjoined need to be enjoined or how those actions could prejudice Applicant's rights."); *Arterberry*, 2022 WL 472796, at *4 (noting that temporary injunction did not address any of acts to be restrained with any details regarding how applicant would be "irreparably harmed" without immediate restraint).

Undefined Terms and References to External Documents

Finally, although not expressly raised by the Totus Entities, we conclude that the order's list of the acts to be restrained contains many terms that are not defined or otherwise explained—for example, "directly or indirectly" (see the prohibitive provision); "Subscription Agreement" (¶¶ 1, 2, and 8); "Certificate of Designations" (¶ 2); "Amended Company Agreement" (¶¶ 1 and 2); "Note" (¶¶ 3 and 4); "Guaranty" (¶¶ 3 and 4); and "Loan" (¶¶ 3 and 4). By failing to define, explain, or otherwise describe the above terms, the order leaves the Totus Entities to speculate about the meaning of these terms and thus fails to provide necessary notice as to how to confirm their conduct. *See Arterberry*, 2022 WL 472796, at *5 (concluding that injunction order's use of "directly or indirectly" in prohibitive provision, and its use of other undefined terms, failed to meet Rule 683's specificity requirement); *Ramirez* , 2013 WL 4568365, at *4 (concluding temporary injunction violated Rule 683 because it failed to define "Proprietary Information/Trade Secrets" with "enough specificity to give appellants notice of the acts they are restrained from

doing"). In addition, although many of these terms are defined or explained elsewhere in the Preferred Investors' pleadings or in their evidence offered in support of their application for temporary injunction, Rule 683 precludes us from referring to these external documents in determining whether the order complies with the Rule. *See In re Luther*, 620 S.W.3d 715, 723 (Tex. 2021) (orig. proceeding) (per curiam) ("Rule 683 requires that the order itself specify the acts sought to be restrained, without reference to another document.").

3. Conclusion

For each of the above reasons, we conclude the temporary injunction order in this case fails to comply with Rule 683 of the Texas Rules of Civil Procedure. Accordingly, the trial court abused its discretion in signing such an order. *See Collins*, 261 S.W.3d at 795.

We sustain the Totus Entities' first and second issues.

C. The Temporary Injunction Order Is Void and Should Be Dissolved.

Given our determination that the temporary injunction order fails to comply with Rule 683, the Preferred Investors argue that, instead of dissolving the order, we should modify the order ourselves to correct the deficiencies or should remand the order to the trial court so that it may modify the order to make the necessary corrections. As support, the Preferred Investors cite Rule 29.5 of the Texas Rules of Appellate Procedure, which authorizes a trial court take make further orders while an appeal of an interlocutory order is pending, so long us such orders do not interfere

with or impair the jurisdiction of the appellate court. *See also Compass Bank*, 2012 WL 601191 at *2 (concluding trial court had jurisdiction to make temporary injunction orders that amended original temporary injunction order).

We have previously stated that "[l]ong-standing precedent of this Court and the supreme court establishes that the requirements of Rule 683 are mandatory and a temporary injunction that fails to comply with those requirements is void and *must be* dissolved." *Massenburg*, 2020 WL 1472215, at *1 (emphasis added). However, the Supreme Court has noted that an order that does not strictly comply with Rule 683 is "is *subject to* being declared void and dissolved," *In re Luther*, 620 S.W.3d at 722 (emphasis added), which suggests that dissolution of a non-compliant injunction order is not necessarily required in every case.

Related to this issue, in some prior cases, instead of dissolving the order, "we have reversed the portion of the order that lacked specificity and remanded to the trial court for further proceedings." *See White*, 2018 WL 6616973, at *3.

- In *Hipps v. CBRE, Inc.*, we concluded that a temporary injunction order failed to comply with Rule 683 only as to its geographical scope. No. 05-24-00056-CV, 2024 WL 3823233, at *12 (Tex. App.—Dallas Aug. 15, 2024, no pet.) (mem. op.). We reversed this portion of the order and remanded the case to the trial court for reformation of the order consistent with our opinion. *Id.* at *13.

- In *White*, we reversed the paragraph of a temporary injunction order that referenced an "Employment Agreement" to provide the definition of "Confidential Information" rather than stating within the order what information respondent was enjoined from disclosing. *See* 2018 WL 6616973, at *3, *5.

- In *McCaskill*, we reversed the paragraphs of a temporary injunction order that that did not specifically identify the clients or customers whom the respondents were prohibited from soliciting or contacting. *See* 2018 WL 3154616, at *4–*5.

- In *Computek*, we reversed the paragraphs of a permanent injunction order that prevented the respondent from doing business with the applicant's clients but did not include a list of the off-limits clients. *See* 56 S.W.3d at 221–24.

In each of these cases, we did not dissolve the injunction order on appeal, but instead, we remanded the order to the trial court for further proceedings. *See Hipps*, 2024 WL 3823233, at *13; *White*, 2018 WL 6616973, at *4, *5; *McCaskill*, 2018 WL 3154616, at *4–*5; *Computek*, 56 S.W.3d at 221–24.[9]

The injunction orders in *Hipps*, *White*, *McCaskill*, and *Computek* contained discrete non-compliances under Rule 683, and thus, under the circumstances, we determined that reversing and remanding to the trial court to modify such specific defects was preferable to dissolving the injunction. In contrast, in this case, we have identified numerous ways in which the order does not comply with Rule 683, including a failure to adequately explain the reasons for the injunction and a failure to explain how the acts to be restrained will prevent the alleged irreparable injury. In this circumstance, we conclude that we should follow our "[l]ong-standing precedent" of dissolving the non-complaint injunction order. *See Massenburg*, 2020 WL 1472215, at *1.

[9] In *McCaskill* and *Computek*, we also discussed certain other defects in the injunction orders and modified such defects ourselves. *See McCaskill*, 2018 WL 3154616, at *3, *5; *Computek*, 56 S.W.3d at 223, 224.

IV. Conclusion

We reverse the trial court's November 14, 2023 temporary injunction order, dissolve the temporary injunction order, and remand this case to the trial court for further proceedings. Since we have dissolved the temporary injunction order, we need not consider the Totus Entities' third issue. Also, given our dissolution of the November 14, 2023 temporary injunction order, we likewise dissolve the trial court's April 23, 2024 order that modified two paragraphs of the November 14, 2023 temporary injunction order. In addition, our dissolution of the above temporary injunction orders renders moot our January 18, 2024 order, which stayed enforcement of the temporary injunction. We therefore deny the motion to stay.

/Emily A. Miskel/
EMILY A. MISKEL
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

TOTUS GROUP, LLC and TOTUS HOLDINGS, LLC, Appellants

No. 05-23-01222-CV V.

THE PRUITT FAMILY LIVING TRUST, THE SCHUGART FAMILY, LLC, AND PATEL LEGACY TRUST 2022, Appellees

On Appeal from the County Court at Law No. 5, Dallas County, Texas
Trial Court Cause No. CC-23-05872-E.
Opinion delivered by Justice Miskel.
Justices Breedlove and Barbare participating.

In accordance with this Court's opinion of this date, the November 14, 2023 temporary injunction of the trial court is **REVERSED**, the temporary injunction is **DISSOLVED,** and this cause is **REMANDED** to the trial court for further proceedings. Given our dissolution of the November 14, 2023 temporary injunction, we likewise **DISSOLVE** the trial court's April 23, 2024 order granting appellants' motion to modify and clarify the injunction.

It is **ORDERED** that appellants TOTUS GROUP, LLC and TOTUS HOLDINGS, LLC recover their costs of this appeal from appellees THE PRUITT FAMILY LIVING TRUST, THE SCHUGART FAMILY, LLC, AND PATEL LEGACY TRUST 2022.

Judgment entered this 14th day of February, 2025.