

[Cite as *CS/RW Westlake Indoor Storage, L.L.C. v. Russo*, 2016-Ohio-2845.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103877

CS/RW WESTLAKE INDOOR STORAGE, L.L.C.

RELATOR

vs.

THE HONORABLE JUDGE JOHN J. RUSSO, ETC.

RESPONDENT

**JUDGMENT:
WRIT DENIED**

Writ of Prohibition
Motion No. 492481
Order No. 494632

RELEASE DATE: May 4, 2016

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EILEEN A. GALLAGHER, J.:

{¶1} The relator, CS/RW Westlake Indoor Storage, L.L.C. (“CS/RW”) has filed a complaint for a writ of prohibition. CS/RW seeks to prevent the respondent, Judge John J. Russo, from enforcing a temporary restraining order and from issuing a preliminary injunction in *KESI, L.L.C. v. CS/RW Westlake Indoor Storage, L.L.C.*, Cuyahoga C.P. No. CV-14-832518. Judge Russo has filed a motion for summary judgment. For the following reasons, we grant Judge Russo’s motion for summary judgment and decline to issue a writ of prohibition.

FACTS AND PROCEDURAL HISTORY

{¶2} The following facts that are pertinent to this original action are gleaned from the complaint for a writ of prohibition, the competing motions for summary judgment and the corresponding briefs filed in opposition to the motions for summary judgment.

{¶3} Robert Weeks is the owner of CS/RW, which operated an indoor storage facility, known as “Westlake Indoor Self Storage” (“storage business”), located at 27310 Detroit Road, Westlake, Ohio.

{¶4} In late 2010, Weeks entered into discussions with Timothy Ely in regard to the sale of the storage business to Ely. An oral agreement was reached which allowed Ely to operate the storage business. Contending that Weeks orally agreed to sell the storage business for \$50,000, Ely formed KESI, L.L.C. (“KESI”) in anticipation of a

formal purchase agreement. Ely was permitted to possess and operate the storage business and Weeks executed a change of ownership form to allow Ely to change the telephone number for the storage business. Ely took possession of the storage business on January 1, 2011 and has exclusively operated the storage business, paid all rent and assumed all other obligations of the storage business.

{¶5} On August 22, 2014, CS/RW filed an action for forcible entry and detainer against KESI in the Rocky River Municipal Court, case captioned *CS/RW Westlake Indoor Storage, L.L.C. v. KESI, L.L.C.*, Rocky River M.C. No. 14-CVG-1593.

{¶6} On September 9, 2014, KESI and Ely filed a complaint in the Cuyahoga County Court of Common Pleas, *KESI L.L.C. v. CS/RW Westlake Indoor Storage, L.L.C.*, Cuyahoga C.P. No. CV-14-832518. The complaint alleged breach of the oral agreement to sell the storage business to Ely, promissory estoppel, unjust enrichment and tortious interference with existing business.

{¶7} On December 1, 2014, a Rocky River Municipal Court magistrate determined that CS/RW was not entitled to immediate possession of the storage business and denied the writ of restitution. CS/RW objected to the magistrate's decision but the objections were overruled by the Rocky River Municipal Court and the magistrate's decision was adopted on January 6, 2015.

{¶8} The judgment of the Rocky River Municipal Court was appealed to this court on January 26, 2015.

{¶9} On November 5, 2015, this court reversed the judgment of the Rocky River Municipal Court and remanded the case for further proceedings. See *CS/RW Westlake Indoor Storage, L.L.C. v. KESI, L.L.C.*, 8th Dist. Cuyahoga No. 102535, 2015-Ohio-4584.

{¶10} On December 1, 2015, KESI filed a motion for a temporary restraining order and preliminary injunction in Cuyahoga C.P. No. CV-14-832518 in an attempt to prevent CS/RW from occupying and operating the storage business.

{¶11} On December 3, 2015, Judge Russo granted KESI's motion for a temporary restraining order that provided that:

Plaintiff(s) KESI, L.L.C. (p1) and Timothy S. Ely (p2) motion for temporary restraining order plaintiffs' motion for temporary restraining order, filed 12/01/2015, is granted. Defendants are precluded from attempting to occupy and operate the business located at 27310 Detroit Road, Westlake, Ohio 44145 known as Westlake Indoor Self Storage. This court finds irreparable harm including jeopardizing the business will result if plaintiffs are locked out this business plaintiffs' have exclusively run since 2011. Therefore, plaintiffs' motion for a temporary restraining order is granted. This order shall be effective until the hearing on the motion for a preliminary injunction set for 12/14/15 at 10am. It is so ordered. Notice issued.

{¶12} On December 10, 2015, CS/RW filed this original action in prohibition against Judge Russo.

LAW AND ANALYSIS

{¶13} CS/RW, through its complaint for a writ of prohibition, seeks to prevent Judge Russo from maintaining and enforcing the temporary restraining order of December 3, 2015, issuing a preliminary injunction or exercising any judicial authority that would prevent CS/RW from taking immediate possession of the storage business vis-a-vis the pending forcible entry and detainer action pending before the Rocky River Municipal Court.

{¶14} A writ of prohibition is designed to prevent a tribunal from proceeding in a matter in which it is not authorized to hear and determine, or in which it seeks to usurp or exercise jurisdiction with which it has not been invested by law. *State ex rel. Brown v. Butler Cty. Bd. of Elections*, 109 Ohio St.3d 63, 2006-Ohio-1292, 846 N.E.2d 8; *State ex rel., Keenan v. Calabrese*, 69 Ohio St.3d 176, 631 N.E.2d 119 (1994); *State ex rel. Doe v. Tracy*, 51 Ohio App.3d 198, 555 N.E.2d 674 (12th Dist.1988).

{¶15} It is well established that the purpose of a writ of prohibition is to prevent inferior courts and tribunals from usurping jurisdiction beyond that which they have been granted by law. *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 686 N.E.2d 267 (1997). Where a court possesses general subject-matter jurisdiction over a pending action, a writ of prohibition will not issue to prevent an error of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181; *State ex rel. Winnefeld v.*

Court of Common Pleas of Butler Cty., 159 Ohio St. 225, 112 N.E.2d 27 (1953). If a court patently and unambiguously lacks general subject-matter jurisdiction, a writ of prohibition will issue to correct the results of prior unauthorized actions. *State ex rel. Cordray v. Marshall*, 123 Ohio St.3d 229, 2009-Ohio-4986, 915 N.E.2d 633. However, if a court does not *patently and unambiguously* lack general subject-matter jurisdiction, prohibition will not issue and the issue of jurisdiction must be addressed through an appeal. *State ex rel. Bradford v. Trumbull Cty. Court*, 64 Ohio St.3d 502, 597 N.E.2d 116 (1992); *State ex rel. Pearson v. Moore*, 48 Ohio St.3d 37, 548 N.E.2d 945 (1990).

{¶16} In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, the Supreme Court of Ohio examined in detail the subject of jurisdiction and held that:

The general term “jurisdiction” can be used to connote several distinct concepts, including jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case. *Id.* at ¶ 11-12. The often unspecified use of this polysemic word can lead to confusion and has repeatedly required clarification as to which type of “jurisdiction” is applicable in various legal analyses. See, e.g., *id.* at ¶ 33; *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344, 893 N.E.2d 142, ¶ 27; *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 10-16. * * *

Subject-matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases. *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). A court’s subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998-Ohio-275, 701 N.E.2d 1002 (1998); *Handy v. Ins. Co.*, 37 Ohio St. 366, 370 (1881). A court’s jurisdiction over a particular case refers to the court’s authority to proceed or rule on a case that is within the court’s subject-matter jurisdiction. *Pratts* at ¶ 12, [102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992]. This latter jurisdictional category

involves consideration of the rights of the parties. If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void. *Id.* at ¶ 12.

Kuchta at ¶ 18 - 23.

{¶17} In the case sub judice, we find that CS/RW has failed to establish that Judge Russo patently and unambiguously lacks the general subject-matter jurisdiction to preside over the civil action pending in CV-14-832518. Judge Russo, as an elected judge of the Cuyahoga County Court of Common Pleas, possesses the basic subject-matter jurisdiction to determine the disputed business claims being litigated in CV-14-832518. *See* R.C. 2305.01 and Ohio Constitution Article IV, Sections 4(A) and (B). Judge Russo is cloaked with the necessary subject matter jurisdiction to hear and determine the claims of breach of contract, promissory estoppel, unjust enrichment and tortious interference with existing business.

{¶18} We further find that res judicata is not an appropriate basis for extraordinary relief because res judicata does not divest a trial court of jurisdiction to decide its applicability and the denial of this defense by the trial court can be adequately challenged by post-judgment appeal. *Smith v. Voorhies*, 119 Ohio St.3d 345, 2008-Ohio-4479, 894 N.E.2d 44, quoting *State ex rel. Nationwide Mut. Ins. Co. v. Henson*, 96 Ohio St.3d 33, 2002-Ohio-2851, 770 N.E.2d 580. Thus, the opinion rendered by this court in *CS/RW Westlake Indoor Storage, L.L.C. v. KESI, L.L.C.*, 8th Dist. Cuyahoga No. 102535, 2015-Ohio-4584, does not divest Judge Russo of the necessary general subject-matter jurisdiction to proceed to judgment.

{¶19} CS/RW also argues that a writ of prohibition should issue because Judge Russo patently and unambiguously lacked jurisdiction based upon the concurrent jurisdiction rule since the Rocky River Municipal Court first acquired jurisdiction over the parties in the forcible entry and detainer action. The concurrent jurisdiction rule provides that, as between courts of concurrent jurisdiction, the one whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties. *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279, 364 N.E.2d 33 (1977); *John Weenik & Sons Co. v. Court of Common Pleas*, 150 Ohio St. 349, 82 N.E.2d 730 (1948); *Miller v. Court of Common Pleas*, 143 Ohio St. 68, 54 N.E.2d 130 (1944).

{¶20} Two separate and distinct lines of authority have been generated by the Supreme Court of Ohio with regard to the application of the concurrent jurisdiction rule. In some cases, the Supreme Court of Ohio has required that the claims or causes of action be the same in both cases. If the second case is not the same cause of action, nor between the same parties, the former action will not prevent the latter. *State ex rel. Sellers v. Gerken*, 72 Ohio St.3d 115, 647 N.E.2d 807 (1995); *State ex rel. Judson v. Spahr*, 33 Ohio St.3d 111, 515 N.E.2d 911 (1987).

{¶21} In a second line of authority, the Supreme Court of Ohio has applied the concurrent jurisdiction priority rule in cases where the two actions were not identical but sufficiently similar. *State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 476 N.E.2d 1060 (1985); *State ex rel. Phillips v. Polcar*, *supra*.

{¶22} According to CS/RW, Judge Russo patently and unambiguously lacks jurisdiction to proceed based upon the concurrent jurisdiction rule. Upon consideration of the two lines of authority that have evolved from the Supreme Court of Ohio regarding the concurrent jurisdiction priority rule, we find the issue of jurisdiction is unclear. As previously stated, when the claimed lack of jurisdiction is unclear, a court possessing general subject-matter jurisdiction has the authority to determine its own jurisdiction and an adequate remedy at law exists to challenge an adverse judgment by way of an appeal. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 638 N.E.2d 541 (1994); *State ex rel. Pearson v. Moore*, 48 Ohio St.3d 37, 548 N.E.2d 945 (1990). It must be noted, however, that this opinion makes no ruling with regard to any jurisdiction issue that may be raised on appeal and is simply limited to whether jurisdiction is unambiguously lacking. *State ex rel. Sellers v. Gerken*, *supra*. See also *State ex rel. R.W. v. Williams*, Slip Opinion No. 2016-Ohio-562; *State ex rel. McGinty v. Eighth District Court of Appeals*, 142 Ohio St.3d 100, 2015-Ohio-937, 28 N.E.3d 88; *Worrell v. Court of Common Pleas*, 69 Ohio St.3d 491, 633 N.E.2d 1130 (1994).

{¶23} Finally, we find that the primary purpose of preliminary injunctive relief is to preserve the status quo pending final determination of the matter. *Garono v. State*, 37 Ohio St.3d 171, 524 N.E.2d 496 (1988). A court issues a temporary injunction when it is necessary to preserve the status quo of the case to prevent any actions of the parties from making null and unenforceable a final judgment. See *Gries Sports Ents., Inc. v.*

Cleveland Browns Football Co., 26 Ohio St.3d 15, 496 N.E.2d 959 (1986). *See also* R.C. 2727.02.

{¶24} Herein, the status quo is being maintained. We acknowledge that CS/RW's ability to immediately go forward with the forcible entry and detainer action may be delayed by waiting to appeal any preliminary injunction. However, a delay itself does not deprive CS/RW of any meaningful remedy. *Westfall v. Cross*, 144 Ohio App.3d 211, 759 N.E.2d 881 (7th Dist.2001). If the underlying case proceeds to a final judgment, Judge Russo decides the oral contract action on behalf of KESI and Ely and grants a permanent injunction, CS/RW still possesses the right to appeal Judge Russo's judgment to this court. If we were to reverse the judgment of Judge Russo, CS/RW would still be able to proceed with the action for forcible entry and detainer that remains pending before the Rocky River Municipal Court. The judgment of Judge Russo to grant a temporary restraining order and/or a preliminary injunction does not affect the ability of the Rocky River Municipal Court to enter an order of eviction nor does it override the appellate decision rendered by this court in *CS/RW Westlake Indoor Storage, L.L.C. v. KESI, L.L.C.*, 8th Dist. Cuyahoga No. 102535, 2015-Ohio-4584. The temporary restraining order and/or preliminary injunction simply delays the forcible entry and detainer action so that irreparable harm does not occur to any party.

{¶25} Accordingly, we grant Judge Russo's motion for summary judgment. The alternative writ of prohibition, as issued on December 11, 2015, is dissolved. Costs to

CS/RW. The court directs the clerk of courts to serve all parties with notice of this judgment and the date of entry upon the journal as required by Civ.R. 58(B).

{¶26} Writ denied.

EILEEN A. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
EILEEN T. GALLAGHER, J., CONCUR