

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

GRANITE BROADCASTING CORPORATION,  
WLAJ, INC., and LANSING 53, INC.,

UNPUBLISHED  
May 26, 2000

Plaintiffs-Appellees,

v

No. 214677  
Jackson Circuit Court  
LC No. 98-089462-CH

TOMPKINS, INC., ROBERT P. BENKO, MARY  
BENKO, GEORGE E. BENKO, and ELLA F.  
BENKO,

Defendants-Appellants.

---

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Defendants appeal the trial court's order granting a preliminary injunction and judgment on plaintiff's count for specific performance. We vacate the trial court's judgment, dissolve the injunction and remand.

In June 1990, plaintiff Lansing 53, Inc. ("plaintiff Lansing") assumed by assignment the leasehold interest in land owned by defendants. The terms of that assigned lease were set forth in a January 1982 instrument as amended in August 1984, June 1990, December 1990, and October 1995. Of particular importance to this appeal is the following provision from the December 1990 amendment:

2. Paragraph 8 of the January 25, 1982 Lease Agreement is hereby restated in total as follows:

\* \* \*

8. The Tenant covenants not to assign or transfer this Lease without the consent of the Landlord and the written consent of the Landlord will be given and not unreasonably withheld if the proposed assignee is as credit worthy as the Tenant and in the event the Landlord determines that the proposed assignee

is not as credit worthy, then the consent will be provided so long as the Tenant, in addition to the proposed assignee remains liable to the landlord to fully perform according to the terms of the Lease, as amended. . . .

In documents dated October 27, 1996 plaintiff Lansing and plaintiff Granite Broadcasting Corporation (“plaintiff Granite”) entered into two agreements: a time brokerage agreement and a purchase and sale agreement. In the time brokerage agreement, plaintiff Lansing, licensee of television station WLAJ retained plaintiff Granite to provide programming for the station. In the purchase and sale agreement, plaintiff Granite agreed to purchase television station WLAJ, including its broadcasting assets, from plaintiff Lansing. The broadcasting assets included all leasehold interests “owned or held and used or useful to [plaintiff Lansing] in connection with the business and operations of WLAJ.” The consummation of the sale was conditioned upon, among other things, the grant of a final order from the Federal Communications Commission (FCC) consenting to the assignment of the WLAJ licenses. That approval was granted in late June 1998 and became final on or about August 4, 1998.

Prior to receiving the FCC approval, plaintiff Granite entered into a purchase and sale agreement with Freedom Communications, Inc. (“Freedom”), dated February 18, 1998, in which Granite agreed to sell to Freedom the assets of WLAJ that Granite purchased pursuant to the October 27, 1996 purchase and sale agreement.<sup>1</sup> During the summer of 1998, the parties attempted to reach a resolution with respect to assignment of the lease and a related dispute involving back rent claimed by defendants. In a letter dated June 10, 1998, plaintiff Granite requested defendants to consent to an assignment of the lease from plaintiff Lansing to plaintiff Granite, and then from plaintiff Granite to Freedom. In a letter dated July 14, 1998 defendants’ attorney sent plaintiff Lansing’s attorney a proposed consent to the following series of lease assignments: from plaintiff Lansing to plaintiff Granite; from plaintiff Granite to Freedom; and, from Freedom to Freedom Broadcasting of Michigan (“FBM”). The July 14 letter also included an offer to settle the dispute regarding the back rent. In a letter dated July 15, 1998, plaintiff Lansing’s attorney advised defendants as follows:

In response to your July 14, 1998 correspondence, this is to provide you with information that, based upon our opinion, the Assignee that Lansing 53, Inc. is proposing to assign its interest in the Lease to is more creditworthy than Lansing 53, Inc. However, if this is not satisfactory, then Lansing 53, Inc. agrees to remain liable to the Landlord to fully perform according to the terms of the Lease, in addition to the Assignee.<sup>2</sup>

On July 29, 1998, defendants served plaintiffs Lansing and Granite with a demand for possession for non-payment of rent and a notice to quit. On August 4, 1998, plaintiffs filed a four count complaint against defendants. In count one, plaintiffs alleged breach of contract and requested specific performance in the form of defendants’ consent to the assignment of the leasehold interest. Plaintiffs’ remaining counts alleged: that defendants unlawfully interfered with their possessory leasehold interest; that defendants engaged in a civil conspiracy to interfere with their leasehold interest; and that defendants tortiously interfered with a business relationship. In their prayer for relief, plaintiffs requested the issuance of a preliminary injunction to enjoin defendants from withholding consent under the lease

and otherwise interfering with the sale agreements, with access to the property or with the operation of plaintiffs' broadcast tower. Plaintiffs further requested that the trial court consolidate the final hearing on the merits of the specific performance claim with the preliminary injunction hearing pursuant to MCR 3.310, enter judgment against defendants requiring specific performance of their obligation to provide written consent to the proposed lease assignments and enter judgment against defendants for damages.

On August 5, 1998, the trial court ordered defendants to appear on August 14, 1998, to show cause

as to why this Court should not grant a preliminary injunction, restraining and enjoining defendants during the pendency of this matter from interfering with the operation of the broadcast tower used by Lansing 53, Inc. to transmit its broadcast signal and to require the Defendants to specifically perform their duties under the subject Lease.

The trial court further ordered that on the same date, it would consider whether the trial on count one of plaintiffs' complaint should be consolidated with the hearing on the motion for preliminary injunction pursuant to MCR 3.310(A)(2).

Defendants filed their answer, jury demand and affirmative defenses on the first day of the hearing. Defendants' counsel stated at the hearing that she was not prepared and had not seen some of the documentary evidence presented by plaintiffs and, on the second day of the hearing, August 17, 1998, moved to adjourn the proceedings. The trial court denied defendants' motion on the ground that time was of the essence in light of the impending closing date and that the documents defendants' counsel referred to as unavailable to her were not relevant to the dispute.<sup>3</sup> In its oral ruling from the bench after the hearing, the trial court stated: that "all of the elements had been met" to proceed with regard to the specific performance matter; that defendants' summary proceedings with regard to the land have not yet been started in district court; that the 1996 operating agreement between plaintiffs Lansing and Granite did not constitute a sublease that triggered an increase in rent owed to defendants; that the remedy of defendants is solely one of damages; that in light of defendants' agreement not to interfere with the operation of the broadcast tower on the leased property, an order shall enter that they will not interfere with the tower; that defendants improperly withheld their consent to the assignment of the lease; and, that in lieu of providing a valid assignment the court shall enter an order that the lease rights shall be assigned. The trial court further stated that "as far as I'm concerned, I think that the hearing and the ruling disposes of all outstanding matters between the parties." Plaintiffs subsequently filed a "Notice of Closing," which stated that the transactions were consummated on August 19, 1998.

In its written order entered September 11, 1998, the trial court made four separate rulings. First, the court consolidated the trial on the merits of plaintiffs' count one with the hearing on plaintiffs' motion for a preliminary injunction pursuant to MCR 3.310(A)(2). Second, the court entered final judgment with respect to plaintiffs' count one, finding that the 1990 amendment to the lease governs the circumstances under which plaintiffs must provide their written consent to assignments of the lease. The court found "that defendants failed to demonstrate that an unauthorized assignment, transfer or sublease of the Lease occurred" when plaintiff Lansing entered into a time brokerage agreement with plaintiff Granite in 1996. Third, the court ordered

[t]hat in lieu of the defendants [sic] execution of their written consent to the plaintiffs' proposed assignments of the Lease, this Order shall stand as defendants' execution in the following form:

Landlord hereby consents to the assignment of the Lease by Lansing 53, Inc. to WLAJ, Inc., the assignment of the Lease by WLAJ, Inc., to Freedom Broadcasting of Michigan, Inc. ("FBM") and FBM's acceptance and assumption thereof, at a base rental rate of \$50,000 per year commencing on August 19, 1998, and as otherwise provided by amendment to the Lease of December 27, 1990.

The consents were further "conditioned upon plaintiff Lansing 53, Inc.'s continuing agreement to remain liable to fully perform according to the terms of the Lease, as amended, the continuing existence of a stand-by letter of credit securing payment of the rent until August 21, 2004 and the transfer having occurred the week of August 17, 1998." Fourth, the court ordered that defendants were "enjoined in any way from interfering with, and/or attempting to take possession of, and/or otherwise attempting to block access to the property and/or to the operations of the television broadcast tower or related buildings which are located on the property." The trial court's "Final order" of October 27, 1998, stated that its September 11, 1998 order "constituted a full, final judgment as to all of the claims between the parties per MCR 7.202(8)."<sup>4</sup>

In their first issue on appeal, defendants contend that the trial court erred in issuing a permanent injunction restraining them from interfering with access to the subject property under a request and hearing for a preliminary injunction. We agree. This Court reviews a trial court's decision to grant injunctive relief for an abuse of discretion. *Michigan Coalition of State Employees Unions v. Civil Service Comm*, 236 Mich App 96, 101-102; 600 NW2d 362 (1999). "An abuse of discretion occurs when an unprejudiced person, considering the facts upon which the trial court acted, would say that there was no justification or excuse for the trial court's ruling." *In re Condemnation of Private Property for Hwy Purposes (Dep't of Transportation v. Randolph)*, 228 Mich App 91, 94; 576 NW2d 719 (1998). "The object of a preliminary injunction is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either. *Bratton v DAIE*, 120 Mich App 73, 79; 327 NW2d 396 (1982).

Here, the trial court scheduled a hearing ten days after the filing of the complaint, for defendants to show cause "as to why this Court should not grant a preliminary injunction, restraining and enjoining defendants during the pendency of this matter from interfering with the operation of the broadcast tower." However, after the hearing, the trial court issued what appears to be a permanent injunction preventing defendants, the landlords, from taking possession of the leasehold. The trial court's order did not merely preserve the status quo pending the litigation of the matter; rather, the court effectively entered a permanent injunction without the benefit of a final hearing or a request for that relief in plaintiffs' complaint. By enjoining defendants from attempting to take possession of the leased premises, the court's injunction effectively rewrote the parties' lease by preventing defendants from pursuing their rights as lessors. Furthermore, the trial court considered its ruling after the hearing as disposing of all outstanding matters between the parties. Such a ruling is contrary to the purpose of a

preliminary injunction to preserve the status quo until a trial on the merits can be held. See, *Bratton, supra* at 79 (“a preliminary injunction will not be issued if it will grant one of the parties all the relief requested prior to a hearing on the merits”). Under these circumstances, we conclude that the trial court abused its discretion when it issued the injunction.

In their second issue on appeal, defendants contend that the trial court erred in consolidating the trial of the specific performance count with the motion for a preliminary injunction under MCR 3.310(A)(2). We agree. As a general rule, “[a] trial court’s decision denying a motion to consolidate is reversible only in case of an abuse of discretion.” *Gardner v. Stodgel*, 175 Mich App 241, 250; 437 NW2d 276 (1989). “The purpose of consolidation is to promote the convenient administration of justice and to avoid needless duplication of time, effort and expense.” *Id.* However, a court should not order consolidation “if a substantial right of a party would be significantly prejudiced.” *Id.* MCR 3.310(A)(2) provides for an expedited trial on the merits in cases involving a motion for a preliminary injunction:

Before or after the commencement of the hearing on a motion for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when consolidation is not ordered, evidence received at the hearing for a preliminary injunction that would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This provision may not be used to deny the parties any rights they may have to trial by jury.

“MCR 3.310(A)(2) was taken directly from FRCiv P 65(a)(2), and adopts the Federal practice of permitting the trial of the action to be consolidated with the hearing on the motion for preliminary injunction.” Martin, Dean, and Webster, *Michigan Court Rules Practice*, 3d ed, p 473.<sup>5</sup>

While the trial court could consolidate the trial of plaintiff’s specific performance claim with the hearing on the preliminary injunction pursuant to MCR 3.310(A)(2), we find that the court abused its discretion in holding the trial only ten days after plaintiffs filed their complaint and that the trial court’s actions significantly prejudiced a substantial right of defendants, i.e., adequate notice of the trial. Although the trial court can consolidate proceedings under MCR 3.310(A)(2), the court is nonetheless bound by the mandate in MCR 2.501(C) that parties must be given twenty-eight days’ notice of trial assignments unless “(1) a rule or statute provides otherwise as to a particular type of action, (2) the adjournment is of a previously scheduled trial, or (3) the court otherwise directs for good cause.” Here, contrary to the twenty-eight day notice provision in MCR 2.501(C), defendants had only ten days to prepare for trial. The record does not indicate that the trial court considered any of the three exceptions to the twenty-eight day notice requirement in determining to consolidate the specific performance trial and setting the August 14, 1998 trial date. Under these circumstances, we conclude that the trial court abused its discretion in consolidating the preliminary injunction hearing and the specific performance trial on the merits. Accordingly, we remand this matter to the trial court with instructions to hold a trial on that claim in accordance with the notice provisions set forth in MCR 2.501(C).

In their third issue, defendants contend that the trial court erred in making findings of fact and conclusions of law after a four and one-half hour trial without discovery. Because the trial court improperly consolidated the matters for trial, we need not address this issue.

The trial court's orders of September 11, 1998 and October 27, 1998 are vacated, the injunction dissolved and the matter remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

<sup>1</sup> The February 18, 1998 transaction also included WMMT-TV, Inc., WLAJ, Inc. and WMMT License, Inc. However, for purposes of this opinion, we shall limit our discussion to that portion of the February 18, 1998 agreement in which plaintiff Granite agreed to sell its interest in the leasehold.

<sup>2</sup> Plaintiff Lansing's response appears to refer to that portion of the December 1990 amendment to paragraph eight, which provides that in the event the landlord determines that the proposed assignee is not as credit worthy as the tenant, "then the consent will be provided so long as the Tenant, in addition to the proposed assignee remains liable to the landlord to fully perform according to the terms of the Lease . . . ."

<sup>3</sup> At the hearing on Monday, August 17, 1998, the trial court stated that the proposed closing was to occur "this Wednesday," which we interpret to mean August 19, 1998.

<sup>4</sup> The October 27, 1998 order was apparently in response to this Court's letter dated October 6, 1998, requesting a copy of the order disposing of all claims.

<sup>5</sup> We note the following observations made by the court in *Pughsley v 3750 Lake Shore Drive Cooperative Building*, 463 F2d 1055, 1057 (CA 7, 1972), with respect to the adequacy of notice when consolidating proceedings under FR Civ P 65(a)(2):

If a consolidation of a trial on the merits with a hearing on a motion for a preliminary injunction is to be ordered, the parties should normally receive clear and unambiguous notice to that effect either before the hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases.