IN THE MISSOURI SUPREME COURT

NO. SC85520

STATE OF MISSOURI ex rel. CRAIG L. LEONARDI
and CRAIG L. LEONARDI, M.D., P.C.,

Relators,

v.

THE HONORABLE THEA A. SHERRY,
Judge of the Circuit Court of St. Louis County, Missouri

Respondent.

PROCEEDING IN PROHIBITION
CIRCUIT COURT OF ST. LOUIS COUNTY—CAUSE NO. 02CC-000533

RELATORS' SUBSTITUTE REPLY BRIEF

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POINTS RELIED ON IN REPLY

I. Dr. Leonardi is entitled to an order prohibiting Respondent from denying him the constitutional right of a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, a trial court cannot deny a party a jury trial on legal claims when the court has not granted any equitable relief or resolved the equitable claims raised by the Plaintiff, in that Respondent has denied Radiant's motion for a preliminary injunction and has granted no equitable relief, and therefore equity has not attached and Respondent has no equitable jurisdiction over this matter.

Krummenacher v. Western Auto Supply Co., 217 S.W.2d 473 (Mo. banc 1949)

Sapp v. Garrett, 284 S.W.2d 49 (Mo. Ct. App. 1955)

Thornbrugh v. Poulin, 679 S.W.2d 416 (Mo. Ct. App. 1984)

Mo. Const. art V, § 4

ARGUMENT

I. Dr. Leonardi is entitled to an order prohibiting Respondent from denying him the constitutional right of a jury trial in the absence of a finding that there has been an equitable violation, because where the only equitable claim is a request for injunctive relief, a trial court cannot deny a party a jury trial on legal claims when the court has not granted any equitable relief or resolved the equitable claims raised by the Plaintiff, in that Respondent has denied Radiant's motion for a preliminary injunction and has granted no equitable relief, and therefore equity has not attached and Respondent has no equitable jurisdiction over this matter.

This case turns on one principal issue—whether, in a case where the only equitable claim at issue is a request for injunctive relief, it is appropriate or constitutional for a trial court, pursuant to the equitable clean-up doctrine, to deny a party its right to a jury trial on legal claims when the court has not found any equitable violation or granted any equitable relief. Dr. Leonardi's brief explicitly stated this issue in each of its points relied on, and emphasized the distinction between this specific situation and other situations involving different equitable relief or claims.

Glaringly absent from Radiant's brief is any direct discussion of this narrowly framed question of law. Radiant's brief misconstrues or avoids Dr. Leonardi's argument altogether, and simply never addresses the specific question at issue in the controversy before this Court. Because of this avoidance of the relevant issue, Radiant's brief misses the mark. Radiant's analysis is faulty in several respects, relying on inapposite cases and broadly interpreting general holdings and legal principles to extend beyond the propositions for which they stand.

Accordingly, this Court should find that the Respondent acted in excess of her jurisdiction by improperly applying the equitable clean-up doctrine and, thereby, improperly denied Dr. Leonardi his constitutional right to a jury trial on all of the legal issues presented in the Petition and Counterclaims.

A. Equitable jurisdiction does not attach in the context of a request for injunctive relief until a court finds an equitable violation or grants some form of equitable relief.

Radiant fails to cite any relevant authority in support of its argument regarding when equitable jurisdiction attaches in injunction cases. Instead, Radiant simply states that in the instant case, the Respondent acquired equitable jurisdiction over the underlying action at the time suit was filed, and cites as its only authority one Missouri case, Missouri Cafeteria v. McVey, 242 S.W.2d 549 (Mo. banc

1951)[1], and a volume of American Jurisprudence. (Respondent's Substitute Brief at 21, 22.) Neither of these sources support Radiant's argument.

Radiant's brief does not accurately represent the holding of Missouri Cafeteria, and a full reading of the complete opinion in Missouri Cafeteria reveals that it does not support Radiant's argument. Radiant cites to Missouri Cafeteria in support of its argument that the Respondent acquired jurisdiction over the underlying action upon the filing of Radiant's Petition. Specifically, Radiant notes that in Missouri Cafeteria, the "defendants' written renunciation of future wrongful conduct did not 'deprive the trial court of the equitable jurisdiction it has acquired the day the suit was filed.'" (Respondent's Substitute Brief at 21.) (Citing Missouri Cafeteria.) This citation is taken out of context, because earlier in the Missouri Cafeteria opinion the court explicitly noted that the plaintiffs' equitable rights had been violated at the time the plaintiffs filed the petition. In relevant part, the Missouri Cafeteria court held that**:**

> The fact that an injunction against picketing was not justified at the time of the trial does not mean that the trial court could properly sustain defendants' motion to dismiss at the close of

[1] Respondent's Substitute Brief's citation of Missouri Cafeteria is the first reference to this case at any stage in the instant litigation.

> plaintiffs' case **since plaintiffs' evidence clearly showed that plaintiffs were entitled to injunctive relief on the day the suit was filed**. A court of equity having once acquired jurisdiction, will retain it until full justice has been done the parties.

242 S.W.2d at 553 (emphasis added).

In the instant case, however, Respondent never made any finding that Radiant was entitled to injunctive relief at any time, much less on the day Radiant filed the Petition. Consequently, a complete reading of Missouri Cafeteria shows that Radiant's citation of the opinion is out of context and misleading. The Missouri Cafeteria opinion does not support Radiant's position; rather, it demonstrates the validity of Dr. Leonardi's position that equitable jurisdiction in injunction cases does not attach until the court finds an equitable violation.

Radiant's only remaining authority for its contention regarding when equity attaches in cases involving a request for injunctive relief is a volume of American Jurisprudence—27A Am.Jur. 2d *Equity* § 87. This volume, however, does not cite any Missouri law, deals only with general statements of broad equitable principles, and does not address the attachment of equity in the specific context of a request for injunctive relief. See 27A Am.Jur. 2d *Equity* § 87; see also Pittman v. Faron, 315 S.W.2d 836 (Mo. Ct. App. 1958) (citing the general proposition that equitable

jurisdiction occurs at the time of filing, but not discussing the attachment of equitable jurisdiction in the specific context of a request for injunctive relief).

In the instant case, the only equitable claim involved is a request for injunctive relief, and equity does not attach in such a case until there is a finding of an equitable violation or granting of equitable relief. See Krummenacher v. Western Auto Supply, Inc., 217 S.W.2d 473 (Mo. banc 1949); (Relators' Substitute Brief at 27-29) (discussing Krummenacher and other cases). Accordingly, the Respondent acted in excess of her jurisdiction in applying the equitable clean-up doctrine to deny Dr. Leonardi the right to a jury without any finding of an equitable violation or granting of equitable relief.

B. Radiant's failure to address or misunderstanding of the issues raised by Dr. Leonardi indicates the faulty reasoning underlying Radiant's position and the irrelevance of the cases upon which Radiant relies.

As indicated in the points relied on and the related argument in Dr. Leonardi's brief, the crux of his argument is that where the only claim for equitable relief is a request for an injunction, the equitable clean-up doctrine is inapplicable when the trial court in the underlying action has not found any equitable violation or granted any equitable relief. Radiant does not address this issue, and instead

chooses to address its brief to the distinct and more general issue of "whether a circuit court may retain jurisdiction over ancillary legal claims pursuant to the equitable clean-up doctrine when the court has expressly found that a viable claim remains." (Respondent's Substitute Brief at 14.) Accordingly, Radiant's brief generally fails to squarely address the issues raised in this appeal.

Radiant's brief relies almost exclusively on State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. banc 1978) ("Willman II") as the allegedly dispositive decision on the issues in the instant case, and claims that it cannot be distinguished. As Dr. Leonardi extensively discussed in his brief, Willman II and the other cases Radiant cites in support of its view of the equitable clean-up doctrine are notably different from the instant case, and also fail to address the narrow issue before this Court. (See Relators' Substitute Brief at 34-40) (distinguishing Willman II because it did not involve the denial of a request for equitable relief, injunctive or otherwise; rather, the court ruled in favor of the plaintiff/relator on his suit in equity, and granted damages in lieu of injunctive relief).

Radiant addresses only one minor point of Dr. Leonardi's entire argument related to the relevant Missouri case law on the narrow issues framed in Dr. Leonardi's brief, and Radiant's argument demonstrates its misunderstanding of Dr. Leonardi's position. Dr. Leonardi is not arguing, as Radiant suggests, that the expiration of the CTCAs *ipso facto* precludes any possibility of equitable relief.

Rather, Dr. Leonardi is simply arguing that the fact that the CTCAs had expired or were shortly going to expire further demonstrates that the essence of Radiant's claim was now legal damages, as the Respondent acknowledged in her January 17, 2003 Order. (Relators' Substitute Brief; App. at A5-6.) ("It is well settled that injunctive relief is inappropriate where there appears to be an adequate remedy at law.")

C. Radiant's analysis of Krummenacher and declaration that it cannot be reconciled with Willman II is erroneous.

In Radiant's brief, it failed to accord proper respect to this Court's holding in Krummenacher v. Western Auto Supply, Inc., 217 S.W.2d 473 (Mo. banc 1949). In essence, Radiant analyzed this Court's holding in Krummenacher, and found that it did not fit with Radiant's view of the equitable clean-up doctrine. Then, instead of trying to read the cases together, Radiant simply disregarded Krummenacher as a case that it alleged could not be reconciled with Willman II. (Respondent's Substitute Brief at 24.) This faulty analysis ignores the obvious differences between Willman II and Krummenacher and the continued validity and relevance of each holding when applied to the appropriate situation.

In Krummenacher, the only claim for equitable relief was a request for an injunction, and the Court never found any equitable violation or equitable relief; thus, equity did not attach, and the Court lacked jurisdiction to render a judgment

on purely legal issues. See Krummenacher, 217 S.W.2d at 475. In Willman II, however, the court ruled in favor of the plaintiff on his equitable claim, even though it ultimately determined that equitable relief was not sufficient and granted damages in an exercise of its equitable power; thus, equity attached. See Willman II, 574 S.W.2d at 422. Simply stated, this distinction is exactly the point that Dr. Leonardi argues. As Krummenacher indicates, where the request for injunctive relief is the only equitable claim, and it is denied, equity does not attach, and the court cannot entertain legal issues without a jury. But where the court does grant equitable relief in an injunction case, such as in Willman II, equity does attach, and the court can proceed to hear incidental legal issues.

Radiant is also incorrect in its contention that Krummenacher and Sapp & Garrett, 284 S.W.2d 49 (Mo. Ct. App. 1955), are inapposite to the instant case because both cases involved the "outright denial" of injunctive relief. (Respondent's Substitute Brief at 24.) Radiant's argument apparently turns on what it considers to be the essential distinction between a case involving a court's "outright denial" of injunctive relief and the instant case involving a court's failure to grant injunctive relief. This argument simply has no support. To the contrary, as this Court proclaimed in Krummenacher, the "Court of Appeals held that **a court of equity does not have jurisdiction to render a judgment for a plaintiff on legal issues in the absence of a finding that some equitable right of the**

plaintiff has also been violated. [The Missouri Supreme Court approves] this holding. It is supported by the decisions of this court." 217 S.W.2d at 475 (citing cases) (emphasis added); see also Sapp, 284 S.W.2d at 52 ("The rule in this state is well settled that a court of equity does not have jurisdiction to render a judgment for the plaintiff on legal issues in the absence of a finding that some equitable right of the plaintiff has also been violated."); Thornbrugh v. Poulin, 679 S.W.2d 416, 418 (Mo. Ct. App. 1984) (stating that where the trial court granted the plaintiff's request for a preliminary injunction, and the defendants' argued that the court wrongfully denied its right to a jury trial, such argument "might have had some validity if their request for equitable relief had been denied, as was the case in Sapp v. Garrett.").

D. Radiant's arguments do not adequately address or resolve Dr. Leonardi's policy concern that, under Radiant's view of the equitable clean-up doctrine, a party can always deprive an opposing party of the right to a jury trial by simply including a request for injunctive relief in its petition.

Under Radiant's view of the equitable clean-up doctrine, any time a plaintiff wants to deprive a defendant of the right to a jury trial, it can do so by simply including a request for injunctive relief in its pleadings, no matter how unlikely the prospect that such relief would be granted or how frivolous the request, and

without regard for whether the trial court denies the request at either the preliminary or final stages of the injunction proceedings.

Radiant argues that this concern is unfounded, and that any potential for manipulation is already adequately addressed by the clean-up doctrine because "a court may not exercise equitable jurisdiction over ancillary legal claims if 'the facts relied on to sustain the equity jurisdiction fail of establishment.'" (Respondent's Substitute Brief at 31) (citing Willman II). Thus, Radiant argues, "the assertion of a baseless equitable claim—which will never find favor with the court—cannot result in the deprivation of the right to a jury trial." (Respondent's Substitute Brief at 31.) This bare conclusion is illogical, and does not explain how a defendant's right to a jury trial will be protected if the plaintiff files a baseless claim. For example, assuming *arguendo* that Radiant's claim for injunctive relief is baseless, how exactly does the equitable clean-up doctrine serve to protect Dr. Leonardi's right to a jury trial? The current status of the litigation in the instant case indicates that it does not.

Radiant goes on to assert that Dr. Leonardi's concerns "are further alleviated by the fact that any spurious claims for equitable relief may be challenged in a motion to dismiss or a motion for summary judgment." (Respondent's Substitute Brief at 31.) This argument puts the cart before the horse, ignoring an essential element of Dr. Leonardi's position.

Dr. Leonardi's argument is that in a case where the only equitable claim is a request for injunctive relief, equity does not attach until the trial court finds an equitable violation; until that time the equity court simply does not have jurisdiction to deny a defendant the right to a jury trial. It is preposterous to contend that when a party is facing the deprivation of its constitutional right to a jury trial by an equity court acting in excess of its jurisdiction, that party's remedy is to resort to the burden and expense of filing a motion to dismiss or motion for summary judgment. The obvious remedy is simply to schedule the permanent injunction for a hearing prior to a trial on the legal claims.

Radiant's argument also leads to a result that is contradictory to Radiant's arguments regarding the preservation of judicial resources. In the instant case, the parties had a preliminary injunction hearing before the Respondent involving a full day of evidence, plus the submission of numerous exhibits and depositions. Radiant's entire policy argument is based on judicial efficiency, but Radiant now suggests that instead of simply proceeding to a hearing on the permanent injunction prior to a trial on the legal claims, the parties should submit additional pleadings and briefs directed to dismissal and summary judgment, and the Respondent should hold additional hearings on these motions.

In any event, in the instant case Dr. Leonardi did in fact file a Motion for a Ruling on the Merits of Radiant Research Inc.'s Equitable Claims, requesting that

the Respondent (1) set this matter for a trial on the merits of Radiant's equitable claims and deem all of the evidence it received at the preliminary injunction hearing to be before it at the trial on the merits; or, (2) in the alternative, and upon the consent of Radiant, deem all of the evidence it received at the preliminary injunction hearing to be before it at a trial on the merits of Radiant's equitable claims, and thereafter adopt its findings from the preliminary injunction hearing as its findings in the trial on the merits of Radiant's equitable claims. Radiant vigorously opposed this motion, and the Respondent refused to undertake either of these options, thereby depriving Dr. Leonardi of a hearing on the merits of Radiant's equitable claims, which hearing is the functional equivalent of a motion for summary judgment.

This is the very type of situation that this Court in Krummenacher warned against when it held that in an injunction case, a court in equity must first find an equitable violation before it can render a judgment on any legal issues—"To hold otherwise would permit a plaintiff to ambush a defendant in that a plaintiff could plead a cause of action in equity and also seek legal damages and then fail to prove that he was entitled to any equitable relief. He would thereby deprive defendant of a trial by a jury." 217 S.W.2d at 475.

In the instant case, the Respondent denied Radiant's request for a preliminary injunction, and Radiant subsequently opposed Dr. Leonardi's motion

for a ruling on the merits of the permanent injunction. Under the Respondent's application of the equitable clean-up doctrine, Dr. Leonardi now finds himself deprived of his right to a jury trial. Radiant is thus simply incorrect in its assertion that the equitable clean-up doctrine and the filing of dispositive motions afford sufficient protection to safeguard a defendant's right to a jury trial.

One question that leaps from the circumstances of this case is why Radiant would request a permanent injunction in its Petition, yet oppose a motion to schedule a hearing or otherwise rule on the motion. The answer is clear—Radiant is trying to use the equitable system of the Circuit Court to deny Dr. Leonardi his constitutional right to a jury trial.

As Dr. Leonardi has extensively briefed, and as his position on the various hypothetical situations indicates, the granting of this writ will preserve the proper application of the equitable clean-up doctrine in injunction cases, prevent the improper application of the doctrine where there has been no finding of an equitable violation or granting of equitable relief, and prevent the potential abuses of the doctrine as described in Krummenacher. (See Relators' Substitute Brief at 42-46.)

E. Dr. Leonardi's counterclaims are not incidental to Radiant's claims for equitable relief.

As Radiant acknowledges, Missouri courts apply the equitable clean-up doctrine to hear legal counterclaims "when the issues related to the claims for legal relief are **identical** to the issues presented by the equitable claims, or where disposition of legal issues is **necessary** to resolve equitable claims." (Respondent's Substitute Brief at 26) (citing cases) (emphasis added).

Radiant's argument that Dr. Leonardi's Counterclaim for breaches of the covenant of good faith and fair dealing raises the "same issue" (the enforceability of the non-compete provisions of the CTCAs) as Radiant's claims constitutes a severe misunderstanding of Dr. Leonardi's Counterclaims, which in fact raise entirely separate claims with a distinct factual basis.

For example, Dr. Leonardi's Counterclaims, which do not seek any equitable relief, involve a completely different timeframe and set of circumstances than Radiant's claims. While Dr. Leonardi's Counterclaims involve Radiant's repeated breaches of the covenant of good faith and fair dealing **during the relationship between the parties**, Radiant's claims relate to alleged breaches of a restrictive covenant **after the termination of the relationship** between Radiant and Dr. Leonardi. Thus, Dr. Leonardi's Counterclaims will involve different witnesses,

different documents, and a different set of circumstances, and will involve different damages. Rather than being incidental to or interrelated with Radiant's claims, the legal issues raised in Dr. Leonardi's Counterclaims constitute entirely separate claims, and it is not necessary to resolve such claims to resolve Radiant's request for injunctive relief.

F. Radiant's argument regarding the alleged improper motive of Dr. Leonardi in bringing this writ is baseless.

Radiant claims that, in seeking this writ of prohibition, Dr. Leonardi is attempting to evade his duties and obligations under the noncompete provisions of the CTCAs, and engaging in "subversive tactics" for the "purpose of delay so as to undermine the effectiveness of an equitable remedy in this case." This is absurd, and a review of the history of the instant case cannot possibly lead to this conclusion.

Dr. Leonardi terminated the CTCAs by letter dated November 1, 2001. (Answer of Radiant Research, Inc. to Relators' Petition for Writ of Prohibition, ¶5.) Radiant filed its Petition in the instant case on February 11, 2002. Instead of promptly seeking a temporary restraining order or preliminary injunction, Radiant proceeded to engage in ten months of discovery, and the hearing on the preliminary injunction was not held until December 16, 2002. Thus, the one-year restrictive covenants contained in the CTCAs had already expired or were shortly going to

expire at the time the Respondent entered her January 17, 2003 Order[2] (which is the order appealed from in the instant case). If any party is guilty of delay, it is Radiant; as the Respondent stated in her January 17, 2003 Order, Radiant never requested a temporary restraining order and did not seek to enjoin Dr. Leonardi until eleven months after filing its Petition. (Relators' Substitute Brief; App. at A5-6.)

Furthermore, Radiant does not indicate how any delay could possibly benefit Dr. Leonardi. Regardless of the existence of any viable claims for injunctive relief, Dr. Leonardi still faces Radiant's request for damages asserted in Radiant's legal claims.

G. Dr. Leonardi properly filed the first writ of prohibition with the Court of Appeals.

Radiant claims in a footnote, without citation to any authority, that by filing and prosecuting this writ of prohibition in the Court of Appeals, Dr. Leonardi has "tacitly concede[d] that the constitution is not the basis for [his] claims." (Respondent's Substitute Brief at 14, n.2.) This statement reveals Radiant's

[2] In fact, the Respondent acknowledged that at the time of her January 17, 2003 Order, the restrictive covenants were either concluded or well underway. (Relators' Substitute Brief; App. at A5-6.)

apparent misunderstanding of the issues. Both the Supreme Court and the Court of Appeals may issue and determine original remedial writs. Mo. Const. art. V, § 4. Generally, a relator should first seek a writ of prohibition from the court of appeals before applying to the Supreme Court. State ex re. Clayton Greens Nursing Center, Inc. v Marsh, 634 S.W.2d 462, 464 (Mo. banc 1982). Although the Supreme Court has exclusive appellate jurisdiction in all cases involving "a statute or provision of the constitution of this state," Mo. Const. art. V, § 3, this case is a challenge of a trial court's actions in excess of its jurisdiction and resulting infringement on a party's constitutional right to a jury trial. When constitutional issues are raised, but no construction of the constitution is called for, the Court of Appeals has appellate jurisdiction over a matter. See McClard v. Morrison, 281 S.W.2d 592, 594 (Mo. Ct. App. 1955). Thus, Dr. Leonardi acted properly in originally prosecuting this writ in the Court of Appeals.

H. Dr. Leonardi's writ of prohibition is founded on the proposition that the Respondent exceeded her jurisdiction.

Radiant contends that the basis for this writ of prohibition is that "Relators suggest that Respondent's finding was erroneous." (Respondent's Substitute Brief at 34.) This is a misunderstanding of Dr. Leonardi's argument. As Radiant has repeatedly stated, the basis for this writ of prohibition is that the Respondent exceeded her jurisdiction by ruling that all legal issues will not be tried to a jury, but

rather to the Respondent sitting in equity. A writ of prohibition is the appropriate remedy to prevent lower courts from acting without or in excess of their jurisdiction, State ex rel. Douglas Toyota v. Keeter, 804 S.W.2d 750, 752 (Mo. banc 1991), and prohibition is the proper remedy when a trial court improperly denies the right to a trial by jury. State ex rel. Diehl v. O'Malley, 95 S.W.3d 82, 84 n.2 (Mo. banc 2003); State ex rel. Estill v. Iannone, 687 S.W.2d 172, 175 (Mo. banc 1985).

CONCLUSION

Dr. Leonardi respectfully requests that this Court make absolute the preliminary writ of prohibition issued in this case; that this Court thereby preclude Respondent from taking any further action in this case other than to vacate the March 21, 2003 Order and Judgment, resolve all equitable claims currently pending before the court prior to deciding whether Respondent has jurisdiction to hear evidence on the legal claims set forth in the Petition and Counterclaims, and set all legal claims for trial before a jury in the event that Respondent denies Radiant's request for a permanent injunction; that this Court direct Respondent not to deny a jury trial in the absence of a finding that there has been an equitable violation; and that this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that two copies of the foregoing and one copy of the disk were served by (____) U.S. Mail, postage prepaid; (____) fax; (____) Federal Express; and/or (__X__) hand delivery this **22nd** day of December, 2003, to

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CERTIFICATE OF COMPLIANCE WITH

RULE 84.06(C) AND RULE 84.06(G)

The undersigned certifies that the foregoing brief includes the information required by Missouri Supreme Court Rule 55.03; that it complies with the limitations contained in Missouri Supreme Court Rule 84.06(b); and that according to the word count function on Microsoft Word by which it was prepared, it contains 4,739 words of proportional type, excluding the cover, signature block, Certificate of Service, this Certificate of Compliance, and the appendix.

The undersigned further certifies that the diskette filed herewith containing the Relator's Brief in electronic form complies with Missouri Supreme Court Rule 84.06(g), and that it has been scanned for viruses and is virus free.

Respectfully submitted,

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