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

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

Plaintiff Radiant Research, Inc. ("Radiant") brought suit in the Circuit Court of the County of St. Louis against Relators to enforce the terms of nine Clinical Trial Consulting Agreements ("CTCAs") between Radiant and Relator Craig L. Leonardi. In this action, Radiant seeks to enjoin Leonardi from continuing to breach a post-termination non-competition covenant contained in eight of the CTCAs, and seeks damages resulting from Leonardi's breach of the CTCAs and his tortious interference with Radiant's other contractual and business relationships. (Petition for Injunctive Relief and Damages, Exhibit 1.)[1/]

On December 16, 2002, Respondent heard evidence on Radiant's motion for preliminary injunction. On January 17, 2003, Respondent denied Radiant's motion for preliminary injunction, indicating uncertainty about the "protectable interest" and "irreparable harm" issues, and about the effectiveness of an injunction to "reinstate" Radiant with respect to the customer relationships which Relators misappropriated (the "January 17 Order"). (January 17 Order, Relators' Appendix attached to Relators's Substitute Brief ("App.") at A3.) Nowhere in the January 17 Order, however, did Respondent make any ruling on Radiant's claim for a

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1/ Unless otherwise noted, all exhibit references are to the exhibits attached to Relators' Petition for Writ of Prohibition filed in the Court of Appeals, Eastern District.

permanent injunction. (January 17 Order, App. at A3.) Moreover, at no time during the litigation have Relators moved to dismiss or sought summary judgment on Radiant's claim for permanent injunctive relief.

Thereafter, Respondent set the matter for trial without a jury, scheduled for May 14-15, 2003, to hear further evidence on the merits of Radiant's remaining claims, including its claims for permanent injunctive relief and damages. (Order, Exhibit 7.)

On February 14, 2003, Relators filed a Motion for a Ruling on the Merits of Radiant's Equitable Claims ("Motion for Ruling"), requesting that Respondent dispose of Radiant's equitable claim for a permanent injunction either by (1) holding a separate interim hearing on the permanent injunction before the May 14-15 trial on the merits of the remaining claims; or by (2) retroactively consolidating the hearings on the preliminary and permanent injunctions, and adopting the January 17 Order denying preliminary relief as a determination of the merits of the permanent injunction. (Motion for Ruling, ¶ 21, Exhibit 8.) Radiant filed a memorandum in opposition to the motion. (Plaintiff's Opposition to Defendants' Motion for a Ruling on the Merits of Plaintiff's Equitable Claims, Exhibit 9). On March 4, 2003, the parties argued Relators' Motion for Ruling. After hearing oral argument, Respondent requested the parties to submit additional

briefing regarding the applicability of the equitable clean-up doctrine. (Order, Exhibit 10.)

Both Radiant and Relators filed additional briefing on the equitable clean-up doctrine, and, on March 21, 2003, Respondent denied Relators' Motion for Ruling. (the "March 21 Order," App. at A7.) Respondent held that "[t]he denial of Radiant's request for a preliminary injunction does not dispose of its request for a permanent injunction. Therefore, Radiant's request for equitable relief as well as a request for damages remains before the Court…. [T]his Court retains jurisdiction under the equitable clean-up doctrine…." (March 21 Order, App. at A7.)

Relators filed a Motion to Reconsider the March 21 Order. On April 2, 2003, after hearing further oral argument, Respondent denied the Motion to Reconsider and reaffirmed the March 21 Order. (Order, Exhibit 15.)

Relators then sought a writ of prohibition from the Eastern District Court of Appeals seeking to vacate Respondent's March 21 Order. The Eastern District issued a preliminary order in prohibition, and after dispensing with further briefing from the parties, the court made its preliminary order in prohibition absolute. See State of Missouri ex rel. Leonardi v. Sherry, No. ED82789, 2003 Mo. App. LEXIS 899 (Mo. Ct. App. June 17, 2003). (App. at A9).

On July 2, 2003, Radiant filed its Motion for Rehearing, or in the Alternative, to Transfer to the Supreme Court, and Incorporated Suggestions, and

on August 13, 2003, the Eastern District denied the motion. Radiant then filed an Application for Transfer to the Missouri Supreme, which this Court granted on September 30, 2003.

POINTS RELIED ON

I. Relator is not entitled to an order prohibiting Respondent from exercising continued jurisdiction over the entire controversy, because Respondent did not abuse her discretion by asserting continued equitable jurisdiction under this Court's holding in State ex rel. Willman v. Sloan, in that Respondent had acquired equitable jurisdiction at the time the suit was filed, and Radiant's claim for a permanent injunction remains pending (Responds to Relators' Points Relied on I, II and IV).

State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. banc 1978).

Willman v. Beheler, 499 S.W.2d 770 (Mo. banc 1973).

Custom Muffler and Shocks, Inc. v. Gordon P'ship, 3 S.W.3d 811 (Mo. App. 1999).

II. Relators are not entitled to an order prohibiting Respondent from exercising continued jurisdiction over the entire controversy under the doctrine of equitable clean-up, because the doctrine of equitable clean-up provides for efficient and economic use of judicial resources, and Respondent's continued exercise of equitable jurisdiction over the incidental legal claims will avoid duplicative and unnecessary efforts. (Responds to Relators' Point III)

State ex rel. Cohen v. Riley, 994 S.W.2d 546, 549 (Mo. banc 1999).

Missouri Supreme Court Rule 92.02(c)(3).

Jackes-Evans Mfg. Co. v. Christen, 848 S.W.2d 553 (Mo. App. 1993).

Straatman v. Straatman , 780 S.W.2d 710 (Mo. App. 1989)

III. Relators are not entitled to the extraordinary remedy of a writ of prohibition, because: (1) Respondent did not abuse her discretion or exceed her jurisdiction by refusing to empanel a jury for the purpose of deciding ancillary legal claims where Respondent reserved fro final determination the merits of Radiant's remaining claim for permanent injunctive relief; and (2) Relators have employed the writ process as a strategic device for precluding enforcement of the noncompete provisions of the Clinical Trial Consulting Agreements.

State ex rel. Douglas Toyota III, Inc. v. Keeter, 804 S.W.2d 750 (Mo. banc 1991).

State ex rel. McDonnell Douglas Corp. v. Gaertner, 601 S.W.2d 295 (Mo. App. 1980)).

State ex rel. Noranda Aluminum, Inc. v. Rains, 706 S.W.2d 861 (Mo. banc 1986).

State ex rel. Mo. Gaming Comm'n v. Kinder, 896 S.W.2d 514 (Mo. App. 1995).

STANDARD OF REVIEW

Issuance of a writ of prohibition is an extraordinary remedy and "is to be used with great caution and forbearance and only in cases of extreme necessity." State ex rel. Douglas Toyota III, Inc. v. Keeter, 804 S.W.2d 750, 752 (Mo. banc 1991). Id. The essential function of a writ of prohibition "is to correct or prevent inferior courts and agencies from acting without or in excess of their jurisdiction." Id. (citing State ex rel. McDonnell Douglas Corp. v. Gaertner, 601 S.W.2d 295, 296 (Mo. Ct. App. 1980)). Thus, "[o]ne court should not substitute its judgment or discretion for that of another court properly vested with jurisdiction and exercising its discretion within the legitimate boundaries of that jurisdiction." Id.

A writ of prohibition may only be issued in three limited situations: (1) where the trial court lacks personal or subject matter jurisdiction; (2) where there is a clear excess of jurisdiction or abuse of discretion by the trial court; or (3) where there is no adequate remedy by appeal. State ex rel. Noranda Aluminum, Inc. v. Rains, 706 S.W.2d 861, 862 (Mo. banc 1986); State ex rel. Mo. Gaming Comm'n v. Kinder, 896 S.W.2d 514, 516 (Mo. App. 1995).

ARGUMENT

I. Relator is not entitled to an order prohibiting Respondent from exercising continued jurisdiction over the entire controversy, because Respondent did not abuse her discretion by asserting continued equitable jurisdiction under this Court's holding in State ex rel. Willman v. Sloan, in that Respondent had acquired equitable jurisdiction at the time the suit was filed, Radiant's claim for a permanent injunction remains pending (Responds to Relators' Points Relied on I, II and IV).

Relator would have this Court believe that this case poses unresolved questions of constitutional magnitude.[2/] In fact, resolution of this case involves simply the straightforward application of well-settled law. The narrow question presented by this case is 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 equitable claim remains. This Court answered this question in the affirmative in State ex rel. Willman v. Sloan, 574 S.W.2d 421 (Mo. banc 1978).

2/ Relators, themselves, tacitly concede that the constitution is not the basis of their claims. They filed and prosecuted their petition for a writ of prohibition in the Missouri Court of Appeals.

Willman represents this Court's most recent and comprehensive explication of the doctrine of equitable clean-up. In the underlying Willman litigation, the plaintiff physician sought to enjoin his medical partner from breaching a five-year non-compete provision in their partnership agreement. See Willman v. Beheler, 499 S.W.2d 770 (Mo. banc 1973). While the trial court refused to enforce the restrictive covenant, this Court, on direct appeal, determined that the non-compete provisions were enforceable. Id. at 777. This Court declined, however, to issue an injunction because the five-year restrictive period had almost run, reasoning that the practical effect of enjoining defendant's activities would not provide plaintiff with sufficient relief. Id. at 778. This Court then concluded that the "only feasible way" to enforce the non-compete provision was to remand the case to determine whether plaintiff could prove any damage as a result of defendant's breach, holding: "Once having acquired jurisdiction equity will retain it, under a prayer for general relief . . . to administer full and complete justice, within the scope of pleadings and evidence, between the parties." Id.

Just days before the hearing on remand was scheduled to take place, the trial court granted the defendant's request for a jury trial on the issue of what damages, if any, plaintiff suffered as a result of the breach. The plaintiff then sought a writ to prohibit the trial judge from empanelling a jury. See Willman. Similar to Relators in the present case, the defendant in Willman argued that because the only

issue remaining on remand related to damages arising from breach of the non-compete provision, the case was converted from a suit in equity to a suit at law for damages, thereby entitling him to a jury trial. 574 S.W.2d at 422. Reiterating the fundamental rule that "equity will retain jurisdiction of a cause once it has acquired it in order to afford full relief," this Court rejected the defendant's argument and made absolute its provisional rule of prohibition. 574 S.W.2d at 422-23. The Court determined that, even though the injunction had been denied, the trial court could exercise its equitable jurisdiction to award monetary damages.

In reaching its decision in Willman, this Court explained that the only exception to the general rule – that equity retains jurisdiction once it has been acquired – applies when the facts relied on to sustain the equity jurisdiction fail of establishment. Id. at 422-23. The exception applies only where (1) the sole relief sought is legal; or (2) plaintiff's equitable claims are dismissed or found adversely to plaintiff (for example, when equitable issues are settled after filing but before trial). Id. This Court concluded there was no basis for applying the exception in Willman – even though the Court had earlier declined to issue an injunction and held that damages should be plaintiff's sole remedy. See Willman, 574 S.W.2d at 423.

This case cannot be distinguished from Willman. Although Respondent declined to issue a preliminary injunction, she has never found that Radiant's claim

for permanent injunction "fails of establishment." To the contrary, the March 21 Order specifically states the "denial of Radiant's request for a preliminary injunction [did] not dispose of its request for a permanent injunction." (March 21 Order, App. at A7.) As such, Radiant's equitable claim remains viable, and Respondent properly retained equitable jurisdiction to "administer full and complete justice." Willman, 499 S.W.2d at 778. See also Siesta Manor, Inc. v. Cmty. Fed. Sav. and Loan Ass'n., 716 S.W.2d 835 (Mo. App. 1986) (trial court properly exercised equitable jurisdiction to award money damages even though it declined to set aside foreclosure sale); Kopp v. Franks, 792 S.W.2d 413 (Mo. App. 1990) (trial court properly exercised equitable jurisdiction to award damages after denying request for specific performance); Dunning v. Alfred H. Mayer Co. , 483 S.W.2d 423 (Mo. App. 1972) (same); Straatman v. Straatman, 780 S.W.2d 709 (Mo. App. 1989) (error for trial court to rule on equitable claims but not legal claims arising from same set of facts).

Radiant's remaining claim for permanent injunctive relief has been neither dismissed nor denied. To the contrary, Respondent's March 21 Order specifically reserved the question for future decision. (March 21 Order, App. at A7.) As such, the rule of law articulated in Willman controls, and under this rule Relator is not entitled to an order granting a jury trial on the incidental legal claims.

In Custom Muffler and Shocks, Inc. v. Gordon Partnership, 3 S.W.3d 811, 817 (Mo. App. 1999), the court of appeals properly applied Willman and found there was no right to a jury trial because a viable claim for permanent injunction remained. Plaintiffs in Custom Muffler sought declaratory judgment, a prescriptive easement, and preliminary and permanent injunctions to resolve a dispute regarding ownership and use of a vacant lot. The trial court granted plaintiffs' request for a preliminary injunction, and after a trial on the merits of the remaining issues, granted preliminary injunctive relief. On cross-appeal, defendant argued that the trial court erred in denying his request for a jury trial because once the preliminary injunction was granted, all equitable issues in the case were resolved and the only issues remaining were legal issues relating to certain easement claims. Id. at 817. The court rejected that argument, holding that "plaintiffs still sought the equitable remedy of a permanent injunction … and because once a court of equity asserts its jurisdiction, it will retain jurisdiction until it decides all of the issues adequately and fairly between the parties." Id. (citations omitted).

In the present case, Custom Muffler controls, along with Willman. The facts here are even more compelling. There has been no showing that Respondent could not or would not entertain all the issues at the permanent injunction hearing. She retained jurisdiction to do so, expressly reserving the question for future decision.

(March 21 Order, App. at A7.) Thus, under the equitable clean-up doctrine as articulated by this Court in Willman and applied in Custom Muffler, Respondent properly exercised her equitable jurisdiction to find that Relators do not have a right to a jury trial on Radiant's remaining claims for permanent injunction and damages.

Relators suggest that Willman is inapposite because this suit in equity was transformed into a suit for legal damages once the period of the restrictive covenants in the CTCAs expired. They are mistaken. Missouri courts have long-recognized that if an aggrieved party is entitled to equitable relief, but the grant of equitable relief is impossible or impractical due to the passage of time, a court sitting in equity may nevertheless proceed to adjust the rights and obligations of the parties through the grant of a traditionally legal remedy. See Willman, 574 S.W.2d at 422-23 (when an injunction to enforce the terms of a covenant not to compete would not provide sufficient relief because of the passage of time, the trial court could grant monetary damages in lieu of equitable relief under the clean-up doctrine); see also Missouri Cafeteria v. McVey, 242 S.W.2d 549, 553-54 (Mo. banc 1951) (the fact that an injunction was not justified at the time of trial did not deprive trial court of the equitable jurisdiction it had acquired on the day the suit was filed); Siesta Manor, 716 S.W.2d at 839 (where trial court found that foreclosure sale was inequitable, but declined to set the sale aside due to

subsequent transfers of the property, the court could award legal relief in the form of damages under the equitable clean-up doctrine); 27A AM JUR 2d *Equity* § 106 (1996) ("In pursuance of the rule that equity jurisdiction attaches as of the time of the commencement of the action, it has been held that although the sole ground upon which the plaintiff was permitted to invoke the jurisdiction of equity may no longer exist because of events which have transpired after the commencement of the action, that fact alone will not deprive the court of the jurisdiction which had attached at the beginning of the suit, so long as there remains any injury to be redressed, although as to the injury there may be an adequate remedy at law."); 30A C.J.S. *Equity* § 79 (1992) ("If plaintiff is [at the time of the commencement of the action] entitled to the aid of equity the jurisdiction will not be defeated by subsequent events which render equitable relief unnecessary or improper, or where plaintiff has established his equity by the need for equitable relief has ceased pending suit or has become impossible, as distinguished from improper. This rule is applicable . . . where the change of circumstances arises from lapse of time, rendering the specific relief unsuitable or inequitable.").

Relators further suggest that because they sought a writ prior to Respondent's ruling on the merits of Radiant's claim for permanent injunctive relief, Willman does not apply. Once again, they are mistaken. As the Willman Court explained, "equity will retain jurisdiction of a cause once it has acquired it in

order to afford full relief." 574 S.W.2d at 422. In this case, Respondent acquired equitable jurisdiction over the underlying action at the time suit was filed. See Missouri Cafeteria, 242 S.W.2d at 555 (noting that 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"); 27 A AM JUR 2d § *Equity* § 87 ("To confer equitable jurisdiction, the relief requested in the complaint or petition must generally be equitable in character. . . . If the petition states facts entitling the plaintiff to both legal and equitable relief, the pleading has invoked the equitable powers of the court."). Therefore, under Willman's clear explication of the clean-up doctrine, Respondent could exercise jurisdiction over related legal claims unless and until "the [f]acts relied on to sustain the equity jurisdiction fail of establishment." 574 S.W.2d at 423. As Respondent expressly found that Radiant's claim for permanent injunctive relief remains viable (March 21 Order, App. at A7), this limited exception is not applicable.

Relators nonetheless attempt to read an additional exception into the Willman analysis, which would prohibit continued equitable jurisdiction over pendant legal claims if the court has not expressly found that equitable relief is warranted. Relators' contention is entirely incompatible with Willman and common sense. Under Willman, once a court has acquired equitable jurisdiction, it may exercise jurisdiction over pendant legal claims unless and until the facts relied

on to support equity jurisdiction "fail of establishment." Id. at 472. Acquisition of equitable jurisdiction occurs at the time of filing – not upon a conclusive finding that the plaintiff is entitled to judgment awarding equitable relief. See Missouri Cafeteria, 242 S.W.2d at 555 (noting that defendants' written renunciation of future wrongful conduct did not "deprive the trial court of the equitable jurisdiction it had acquired the day the suit was filed") (emphasis added); Pittman v. Faron, 315 S.W.2d 836 (Mo. App. 1958) ("The test of equitable jurisdiction is based upon the issues at the time the action is commenced. . . ."); 27A AM. JUR. 2D *Equity* § 87 ("[E]quitable jurisdiction is generally determined at the time of filing. . . ."); 27 A AM. JUR. 2D *Equity* at § 86 ("To confer equitable jurisdiction, the relief requested in the complaint or petition must generally be equitable in character. . . . If the petition states facts entitling the plaintiff to both legal and equitable relief, the pleading has invoked the equitable powers of the court.").

In this case, Respondent acquired equitable jurisdiction at the time the suit was filed. See e.g., Missouri Cafeteria, 242 S.W.2d at 555. She has not dismissed Radiant's request for a permanent injunction, nor has she found adversely to Radiant on this claim. As such, Respondent did not exceed her jurisdiction by ruling that the equitable clean-up doctrine permitted jurisdiction over the incidental legal issues under this Court's decision in Willman. 574 S.W.2d at 423.

A holding in favor in of Relators would not only be contrary to Willman, it would defy reason. By seeking a writ of prohibition at this point in the proceedings, Relators are essentially asking this Court to hold that a court in equity may not retain jurisdiction over equitable and ancillary legal claims before awarding equitable relief. Such a holding would turn the entire doctrine of equitable clean up on its head, as a court could never sustain equity jurisdiction long enough to make even the initial determination as to whether it properly had jurisdiction under the doctrine.

Relators' circular reasoning does not, and cannot, reflect the state of the law. Under this Court's decision in Willman and all cases in accord, a court must necessarily be permitted to retain jurisdiction over incidental legal claims until the court resolves the equitable issues. See State ex rel. Wayside Waifs, Inc. v. Williamson, 3 S.W.3d 390, 394 (Mo. App. 1999) ("[E]quity will still retain jurisdiction of the suit until the court resolves the equitable issues. If they are rejected, so that only the legal issues remain, then the counterclaim will be determined by a jury at law. . ."") (emphasis added). A contrary holding would lead to a patently absurd result, for it would render the doctrine utterly unworkable.

Not surprisingly, Relators have cited no case holding that a court sitting in equity must surrender jurisdiction over ancillary legal claims prior to the court's disposition of all equitable claims. In fact, the cases relied upon by Relators are

wholly inapposite, as these cases involved the outright denial of all equitable relief. See Krummenacher, 206 S.W.2d 991 (Mo. banc 1947) (where trial court denied any equitable relief, court erred in proceeding to render a judgment on legal claims); Sapp v. Garrett, 284 S.W.2d 49 (Mo. App. 1955) (same). [3/]

In this case, as in Willman, Respondent can award monetary damages in lieu of a grant of injunctive relief, as she has never found that Radiant's claim for permanent injunctive relief "fails of establishment." Under Willman, a court in equity retains jurisdiction to grant legal damages, even if it declines to grant

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[3/] Krummenacher cannot be reconciled with this Court's decision in Willman. Krummenacher involved a suit in equity for the abatement of a continuing nuisance by injunction, which also sought related money damages. 206 S.W.2d at 991. The trial court, without explanation, denied the plaintiff's request for injunctive relief, but proceeded to award money damages. Id. at 992. The Court held that because the trial court had denied equitable relief, the court lacked jurisdiction to render a judgment on purely legal issues – even though the court had granted legal damages in lieu of equitable relief. See id. at 933. This holding is directly contrary to Willman, in which this Court determined that under the doctrine of equitable clean-up, a court sitting in equity retained jurisdiction to award monetary damages, despite the fact that no equitable relief had been granted. 547 S.W.2d at 423.

equitable relief, where "equity requires this form of relief in the circumstances." See Willman, 574 S.W.2d at 423. As the Willman Court explained:

> [W]e . . . determined that since an injunction would be ineffective, the best manner by which the restrictive covenant could alternatively be enforced was damages, and remanded for a determination of whether damages in fact resulted from the breach and the extent of them. In so holding, we cited extensively cases holding that a court of equity may retain jurisdiction of a case to grant damages where equity requires this form of relief in the circumstances. . . . The clear implication was that the court on remand was to retain equity jurisdiction of the cause. As such, defendant would not be entitled to a jury trial.

Id. at 423 (emphasis added).

Thus, in Willman, this Court determined that the trial court, sitting without a jury, could award damages in lieu of equitable relief where damages were necessary to afford complete relief. Under Relators' interpretation of the equitable clean-up doctrine, however, a court cannot properly exercise jurisdiction over incidental claims for monetary damages if it declines to grant some form of equitable relief. This is clearly not the holding of Willman.

Respondent's exercise of equitable jurisdiction properly extends not only to Radiant's claims for monetary damages, but also to Relators' counterclaims.

Under the equitable clean-up doctrine, a court may exercise equitable jurisdiction over "legal issues incident to the entire case." Linville v. Wilson, 628 S.W.2d 422, (Mo. App. 1982); see also Washington Univ. Med. Ctr. Redevelopment Corp. v. Wolfgram, 730 S.W.2d 289, 291 (Mo. App. 1987) ("[O]nce a court of equity gains jurisdiction over a matter, it will retain jurisdiction over the entire matter and may resolve incidental legal issues without a jury in order to render full relief."). Missouri courts have applied this maxim when the issues related to 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. See Wolfgram, 730 S.W.2d at 291; Meyer v. Lofgren, 949 S.W.2d 80, 84-85 (Mo. App. 1997). For example, in Wolfgram, the Eastern District held that because the appellants' counterclaim for breach of contract raised issues identical to appellee's claim for specific performance, the court properly exercised jurisdiction over the counterclaims under the equitable clean-up doctrine. 730 S.W.2d at 291. Similarly, in Lofgren, the Western District determined that the issue of the existence of a partnership, which was "part and parcel of the equitable proceeding," was incidental to the claim for an equitable accounting. 949 S.W.2d at 84-85.

Like the defendants in Wolfgram, Relators have asserted counterclaims for breach of contract and breach of the implied covenant of good faith and fair

dealing. (Exhibit 2, Counts I, III and IV.) These counterclaims raise the same issues as those underlying Radiant's claim for permanent injunctive relief – that is, the enforceability of the non-compete provisions of the CTCAs.

Even if the issues are not strictly identical, they are plainly incidental to Radiant's claim for injunctive relief. Where a grant of equitable relief is dependent upon resolution of legal issues, the legal issues are incident to a request for equitable relief and may be adjudicated by a court in equity. See Lofgren, 949 S.W.2d at 85; 30A C.J.S. *Equity* § 72 (noting that for an equity court to retain jurisdiction over legal matters, "the subject to be adjudicated must be something incidental [to the ground of equitable jurisdiction], or so closely connected therewith as to render its determination necessary to a final decision of the whole controversy between the parties"); 30A C.J.S. *Equity* § 74 (stating that legal matters must be "germane to, or grow out of, the matter of equitable jurisdiction and . . . not distinct legal rights not affected by the adjudication of the equitable questions involved"). In this case, Relators' counterclaims are really in the nature of asserted defenses to Radiant's claim for injunctive relief. Relators' counterclaims are, therefore, sufficiently interrelated to justify Respondent's continued exercise of equitable jurisdiction over these claims.

II. Relators are not entitled to an order prohibiting Respondent from exercising continued jurisdiction over the entire controversy under the doctrine of equitable clean-up, because the doctrine of equitable clean-up provides for efficient and economic use of judicial resources, and Respondent's continued exercise of equitable jurisdiction over the incidental legal claims will avoid duplicative and unnecessary efforts. (Responds to Relators' Point III)

The concern for expeditious and efficient use of judicial resources during injunction proceedings is evidenced by Missouri Supreme Court Rule 92.02(c).[4/] Rule 92.02(c)(3) provides as follows:

> At any time the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application for a preliminary injunction. Any evidence received upon an application for a preliminary injunction admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial.

4/ "The pertinent language of Rule 92.02(c)(3) is taken directly from Rule 65 of the Federal Rules of Civil Procedure. . . ." State ex rel. Cohen v. Riley, 994 S.W.2d 546, 549 (Mo. banc 1999) (Wolff, J., concurring).

Because "evidence produced in support of and in opposition to [a] motion for preliminary injunction may well be the same evidence that would be heard on the trial on the merits for permanent injunctive relief," consolidation under this rule serves to eliminate any duplicative effort. State ex. rel. Cohen v. Reilly, 994 S.W.2d 546, 550 (Wolff, J., concurring). Clearly, this consideration was the motivating force behind the rule's adoption.

Despite the clear directives of Willman and the policy underlying Rule 92.02(c), Relators contend that, under the equitable clean-up doctrine, a court may not exercise continued jurisdiction over ancillary legal claims unless the court has ruled favorably for plaintiff on the equitable claims. This contention both ignores the law of this State and severely limits the applicability of the equitable clean-up doctrine, resulting in the frequent and unnecessary waste of judicial resources.

The effect of Relators' interpretation of the equitable clean-up doctrine is to require trial courts to act immediately either to consolidate and decide all equitable claims on the merits or to decline equitable jurisdiction without the benefit of a full presentation by the parties. For example, any time a motion for preliminary injunction is denied (as in this case), the trial court would lose equitable jurisdiction to resolve the remaining issues in the case, including claims for relief in equity. Put another way, absent issuance of a preliminary injunction, no case involving equitable claims for permanent injunction and attendant claims for

damages will ever be decided by the court; all will go to a jury. Even more striking is the impact on cases in which a temporary restraining order is sought. Under Relators' reasoning, in all cases where the trial court declines to issue a temporary restraining order, all remaining claims (including claims for preliminary and permanent injunction) will be tried to a jury. The only other option for the trial court is to empanel an advisory jury in all cases which involve equitable and ancillary legal claims - - just in case the court does not grant injunctive relief. In sum, the evisceration of the principles of equitable jurisdiction as advocated by Relators is neither in accord with the law nor practicable.

Nor does this Court's recognition in Rule 92.02(c)(3) of the right to trial by jury, as Relators suggest, undermine the rule's obvious import. True, the rule expressly requires that it "be so construed and applied as to save to the parties any rights they may have to a trial by jury." Rule 92.02(c)(3). However, by "carefully preserv[ing] a possible separate claim for damages," Jackes-Evans Mfg. Co. v. Christen, 848 S.W.2d 553, 557 (Mo. App. 1993), the rule does not evidence an intention to provide a jury trial on all ancillary legal claims. Rather, the rule acknowledges that where all equitable claims have been defeated, a court may not decline to grant a jury trial on remaining legal issues.

Relators insist that only a severe curtailment of the equitable clean-up doctrine will assure that litigants do not attempt to deprive an opponent of a jury

trial by advancing a contrived equitable claim. This concern is simply unfounded, as any potential for manipulation is already adequately addressed by the clean-up rule. Under the clean-up doctrine, a court may not exercise equitable jurisdiction over ancillary legal claims if the "facts relied on to sustain the equity jurisdiction fail of establishment." Willman, 574 S.W.2d at 422. Thus, the assertion of a baseless equitable claim – which will never find favor with the court – cannot result in a deprivation of the right to a jury trial. See 27A AM JUR 2D *Equity* § 106 ("Historically, the court could not retain the case for the purpose of administering incidental relief if the facts which were relied on to sustain equity jurisdiction were not proven. . . . This rule was intended to prevent a litigant from depriving an opponent of advantages incident to an action at law, such as the constitutional right of trial by jury, by a pretended claim to equitable relief."). Relators' 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. Such a motion would permit the court to assess the validity of any suspect equitable claims prior to conducting the trial on the merits, thereby avoiding any unnecessary litigation. [5/]

[5/] Relators' concerns are not even implicated in this case. By expressly finding that the denial of a preliminary injunction did not dispose of Radiant's request for a permanent injunction, Respondent implicitly found that Radiant's request for

There is no compelling reason for this Court to adopt the position urged by Relators. It is directly contrary to existing law and serves no end but to undermine fundamental principles of preservation of judicial resources.

As the court of appeals has stated:

> In cases where both legal and equitable relief is sought, the rule that once equity jurisdiction is established the court, without the aid of a jury, may determine the legal issues incident to the entire case is especially appropriate. … Otherwise, a waste of scarce judicial time and resources as well as an unnecessary increase in litigation expense results.

Straatman v. Straatman , 780 S.W.2d at 710-711 (citations omitted). The equitable clean-up doctrine provides for efficient and economic use of judicial resources. In this case, Respondent has already heard a significant portion of the relevant evidence at the preliminary injunction hearing. She is familiar with the parties, the

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permanent injunctive relief was not a mere ploy to deprive Relators of their right to a jury trial. Where, as here, the court has specifically determined that a colorable equitable claim remains, any concerns regarding potential manipulation of the system are necessarily eliminated.

consulting agreements at issue, and the central legal issues of the underlying action. There is simply no reason to deprive Respondent prematurely of equitable jurisdiction over the entire controversy.

III. Relators are not entitled to the extraordinary remedy of a writ of prohibition, because: (1) Respondent did not abuse her discretion or exceed her jurisdiction by refusing to empanel a jury for the purpose of deciding ancillary legal claims where Respondent reserved for a final determination the merits of Radiant's remaining claim for permanent injunctive relief; and (2) Relators have employed the writ process as a strategic device for precluding enforcement of the non-compete provisions of the Clinical Trial Consulting Agreements.

Issuance of a writ of prohibition is an extraordinary remedy and "is to be used with great caution and forbearance and only in cases of extreme necessity." State ex rel. Douglas Toyota III, Inc. v. Keeter, 804 S.W.2d 750, 752 (Mo. banc 1991). Id. The essential function of a writ of prohibition "is to correct or prevent inferior courts and agencies from acting without or in excess of their jurisdiction." Id. (citing State ex rel. McDonnell Douglas Corp. v. Gaertner, 601 S.W.2d 295, 296 (Mo. Ct. App. 1980)). Thus, "[o]ne court should not substitute its judgment or

discretion for that of another court properly vested with jurisdiction and exercising its discretion within the legitimate boundaries of that jurisdiction." Id.

A writ of prohibition may only be issued in three limited situations: (1) where the trial court lacks personal or subject matter jurisdiction; (2) where there is a clear excess of jurisdiction or abuse of discretion by the trial court; or (3) where there is no adequate remedy by appeal. State ex rel. Noranda Aluminum, Inc. v. Rains, 706 S.W.2d 861, 862 (Mo. banc 1986); State ex rel. Mo. Gaming Comm'n v. Kinder, 896 S.W.2d 514, 516 (Mo. App. 1995).

Here, Respondent neither exceeded her jurisdiction nor abused her discretion. Respondent is authorized to exercise continued jurisdiction over incidental legal claims unless and until the facts necessary to sustain equity jurisdiction "fail of establishment." Willman, 574 S.W.2d at 472. There has been no such finding in this case. To the contrary, Respondent specifically reserved this question for future decision. (March 21 Order, App. at A7.) Furthermore, she acted well within her discretion in finding that, based on the evidence, Radiant's claim for permanent injunctive relief remains viable.

Relators suggest that Respondent's finding was erroneous. Even if Relators were correct, however, Respondent did not exceed her jurisdiction. See In re Marriage of Neal, 699 S.W.2d 92, 95 (Mo. App. 1995) ("Where a trial judge has jurisdiction over the person and subject matter and jurisdiction to enter the order

complained or, that the order is erroneous does not establish that there was a lack of jurisdiction."); Valdez v. Thierry, 963 S.W.2d 459, 461 (Mo. App. 1998) (a trial court that erroneously applies the law does not deprive itself of jurisdiction; the remedy for an alleged mistake of law is direct appeal). Assuming, arguendo, that Respondent misapplied law or fact, her error must be remedied on direct appeal. See State ex rel. Douglas Toyota III, Inc. v. Keeter, 804 S.W.2d 750, 752 (Mo. banc 1991) (a court may not use prohibition as a vehicle to "substitute its judgment or discretion for that of another court properly vested with jurisdiction and exercising its discretion within the legitimate boundaries of that jurisdiction").

As a matter of fundamental fairness, this Court should not exercise its discretion to issue a writ of prohibition. By prematurely seeking a writ of prohibition, Relators have succeeded in their attempt to evade their duties and obligations under the non-compete provisions. Relators have expressed concern that the affirmation of Respondent's order will permit parties to manipulate the system. By filing and pursuing a premature writ petition, however, Relators are engaging in this exact behavior. Relators should not be permitted to misuse the extraordinary remedy of prohibition for the purpose of delay so as to undermine the effectiveness of an equitable remedy in this case. This Court should not sanction Relators' subversive tactics by exercising its discretionary authority to issue a writ of prohibition.

CONCLUSION

Respondent respectfully requests that this Court quash the preliminary writ of prohibition issued in this case, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent via first class mail on this ___ day of December, 2003 to:

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(C) AND RULE 84.06(G)

The undersigned hereby certifies that the foregoing document includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(g). The word count function of Microsoft Word indicates that the document contains 7,219 words, excluding the cover page, the certificate of service, this certification of compliance, the signature block and the appendix.

The undersigned further certifies that the floppy disk filed with this Court which contains Respondents brief in electronic form complies with Rule 84.06(g) and has been scanned for viruses and is virus-free.

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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

RESPONDENT'S APPENDIX

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