October 1965

Equity-Injunction - Unverified Complaint Held Insufficient to Support a Temporary Injunction Order

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Recommended Citation
Eugene K. Friker, Equity-Injunction - Unverified Complaint Held Insufficient to Support a Temporary Injunction Order, 42 Chi.-Kent L. Rev. 198 (1965).
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol42/iss2/15

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public employees, even those in positions not peculiarly governmental, have no right to strike against their employer nor to picket in support of such a strike, a decision bound to have a restrictive affect on future attempts to strike by public employees. While public employees may still make grievances known to their employer through their union, this decision does indicate that perhaps the only effective means available to public employee unions of enforcing their demands for better working conditions and salaries is through organized efforts to effect legislation in their interests.

ROBERT J. JOHNSON

EQUITY-INJUNCTION—UNVERIFIED COMPLAINT HELD INSUFFICIENT TO SUPPORT A TEMPORARY INJUNCTION ORDER.—In Phelan v. Wright, 54 Ill. App. 2d 178, 203 N.E.2d 587 (1st Dist. 1964), the Illinois Appellate Court was confronted with the problem of whether an unverified complaint, not supported by a verified petition or affidavit, was sufficient to support the issuance of a temporary injunction. The court held that it was an abuse of the trial court's discretion to issue a temporary injunction on an unverified complaint.

In the Phelan case, the plaintiffs filed their unverified complaint for an injunction, alleging that the defendant was in violation of certain provisions of a partnership agreement, to which the defendant was a party. The defendant subsequently filed a motion to dismiss the complaint.

After hearing arguments of counsel on the merits of defendant's motion to dismiss, the trial court denied the motion and ordered that the temporary injunction issue. The defendant filed an interlocutory appeal to the Illinois Appellate Court. On Appeal, held: Reversed. Verification is a fundamental requirement for a complaint seeking a temporary injunction and defendant's motion to dismiss neither disposed of this requirement nor amounted to a waiver of it. The court reasoned that the trial court abused its discretion in denying the motion and in issuing the temporary injunction.

It has long been settled that the granting of temporary injunctions is largely a matter of the trial court's discretion,¹ and that great caution must be exercised.² The reviewing court must consequently determine whether the trial court properly exercised its discretionary powers. In the

DISCUSSION OF RECENT DECISIONS

The case of Sunset Hills Homeowners Ass’n v. Karel, the Illinois Appellate Court said:

... The primary purpose of a temporary injunction is to preserve the status quo for further proceedings, and unless the reviewing court finds that the Chancellor has abused his discretion, the order will not be set aside.4

Due to the extraordinary character of the injunctive remedy it is essential that the face of the complaint clearly show the need for the remedy. In order to establish this need, the facts upon which the injunction is sought must be alleged with certainty and precision, and verification on information and belief is insufficient.5 Thus, where application for a preliminary injunction is made on the face of the complaint, it is necessary that the complaint must be verified by affidavit.6

Having decided that verification is essential where the complaint, on its face, seeks a temporary injunction, the Illinois Appellate Court next turned to the question of whether the defendant’s motion to dismiss the complaint disposed of the requirement of verification or amounted to a waiver. The plaintiffs contended that verification was unnecessary and immaterial since the defendant admitted the truthfulness of the allegations contained in the complaint by his motion to dismiss. This line of reasoning was used in the case of Decker v. West7 where the plaintiff similarly sought to restrain the defendant from violating provisions of a partnership agreement. In that case the Illinois Appellate Court affirmed the issuance of an injunction stating that:

Under the authorities, by filing his demurrer, appellant thereby admitting all the well pleaded facts, it was immaterial whether the verification was sufficient or insufficient.8

However, in Villareal v. Trevino, the Illinois Appellate Court has recently held that under modern practice a motion to dismiss does not serve as a binding admission of the allegations contained in the complaint. The court said:

A motion to strike a pleading for want of sufficiency admits the facts averred for the purpose of the motion and no more. Plaintiffs would have us treat it as if it were a judicial admission, binding throughout the case. All such a motion does is to assert hypothetically that if all the facts set forth in the complaint are accepted as true, they still do not state a cause of action.10

4 Id. at 485, 189 N.E.2d at 45.
8 Id. at 599.
10 Id. at 83, 173 N.E.2d at 585.
In the instant case, the Illinois Appellate Court viewed the Villareal case as controlling and held that the defendant's motion to dismiss was an admission of the allegations contained in the complaint for the purpose of argument only. Plaintiff's complaint charged that the defendant was and continues to be in a position to divert business from the plaintiffs. The defendant could not be considered to have admitted the verity of such an allegation by his motion to dismiss.

By its decision in the Phelan case, the Illinois Appellate Court continues to assert that the discretionary power possessed by the trial court in granting temporary injunctions is not to be controlled by technical legal rules. However, the court has wisely held that verification of the complaint by affidavit or petition is one technical rule that the chancellor cannot overlook. The exercise of injunctive power requires great caution and deliberation and should not be exercised in doubtful cases. Therefore, it is necessary that the complaint for a temporary injunction clearly show a prima facie need for such relief. In Phelan, the court justifiably held that it is essential to such a showing that the allegations contained in the complaint be supported by a verified petition or affidavit.

EUGENE K. FRIKER

CRIMINAL LAW—SUPPRESSION OF EVIDENCE—THE OWNER OF LEASED PROPERTY DOES NOT HAVE STANDING TO OBJECT TO THE USE OF EVIDENCE OBTAINED AS A RESULT OF AN ILLEGAL SEARCH OF THE LEASED PROPERTY NOR IS HE EXEMPT FROM ESTABLISHING STANDING UNLESS THE OFFENSE CHARGED IS UNLAWFUL POSSESSION OF THE GOODS SEIZED.—In the recent case of People v. DeFilippis, 54 Ill. App. 2d 137, 203 N.E.2d 627 (1st Dist. 1964), the Appellate Court of Illinois held that the owner of leased property did not have "standing" to object to the use of evidence which was obtained as a result of an illegal search of the leased property in violation of the Constitution.¹ The court also held that the only exception to the rule, requiring a defendant to establish his "standing" before he can object to the use of evidence obtained as a result of an illegal search and seizure, arises when the proof of possession of the seized goods would also contribute proof of the crime charged.

In the DeFilippis case, FBI agents, acting without a warrant, entered a garage, arrested four of the defendants, and seized radios which were alleged to be stolen property. The fifth defendant, DeFilippis, was later

¹ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Ill. Const. art. II § 6 is substantially the same.