

Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

Prometheus and the Gift of Fire: *In re Syed*

BY DONALD HYUN KIOLBASSA AND EMILY HOLMES

THROUGHOUT HUMANITY, WE have passed down stories teaching the lessons of choosing between the greater of two “Goods.” The protagonist is faced with a challenge that can only be solved by choosing a “good” outcome, but only at the sacrifice of another “good.”

For example, one of the more famous stories which illustrates this principle is *Prometheus and the Gift of Fire*. In this story, Prometheus (a Titan) must either obey Zeus, the king of the gods, or help humanity with the gift of fire.

A difficult decision. Help humanity or listen to your boss.

Prometheus decided to help humanity by stealing fire and gifting it. However, this gift came at the expense of betraying Zeus. For the record, Zeus sentenced Prometheus to eternal torment for this betrayal.

Similarly, the court in *In re Syed*, B.R. 23-08362, 2024 WL 846320 (Bankr. N.D. Ill. Feb. 28, 2024) was faced with the challenge of choosing between two good

choices. The court should either respect a judgment of eviction or uphold Chapter 13 bankruptcy rules.

Let us begin with the facts.

The debtors owned a condo for which they stopped paying the homeowner's association (HOA) monthly fees and accrued a liability to the HOA of approximately \$21,179.14. The HOA sought to evict the debtors. However, before the HOA could secure possession, the debtors filed for Chapter 13 bankruptcy protection.

This is a tricky fact pattern because the sanctuary of bankruptcy is an important American institution. However, you are protecting the debtor at the expense of the HOA, and the credibility of a legitimate eviction order.

Let us continue with some rules.

First, the rules of the HOA. Generally, when you purchase a condo, you are

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ALERT!!

ILLINOIS HAS DEVELOPED A RENTAL ASSISTANCE PROGRAM for fiscal year 2025. \$75 million is available from the state! Applications opened on September 20, 2024. These funds should help landlords and tenants and lower the current eviction case numbers. IHDA administers the program. Let your clients know about it! ■



The Boy Who Cried Wolf: A Look Into Preliminary Injunction Law in Illinois

BY DONALD HYUN KIOLBASSA AND EMILY HOLMES

THE PRELIMINARY INJUNCTION

is an important arrow in the quiver of the powers of the judiciary. A preliminary injunction gives the judge the power to stop a party from an action while the parties are waiting on a final judgment.

A party should request a preliminary injunction when there is a risk that the other party can do ongoing harm during the litigation process. It is a shield to mitigate further damages.

However, sometimes this shield can be turned into a sword. A court should not grant a preliminary injunction lightly. A court must exercise patience and restraint when deciding whether a preliminary injunction is the right power because you never know when discretion can turn into abuse.

Ladies and gentlemen of jury, I submit to you that the case of *O'Malley as Tr. Under Tr. Agreement Dated January 1, 2006 v. Adams as Tr. of Almyra M. Prather Revocable Tr. Agreement Dated December 15, 1967*, 2024 IL App (5th) 240094 is similar to the story of the boy who cried wolf. It shows us what happens when a court breaks from *stare decisis* and abuses its discretion by granting an overly broad preliminary injunction.

The facts surrounding the decision of *O'Malley as Tr. Under Tr. Agreement Dated January 1, 2006 v. Adams as Tr. of Almyra M. Prather Revocable Tr. Agreement Dated December 15, 1967*, 2024 IL App (5th) 240094 are complicated and exhausting. The litigation was ongoing for more than nine years.

Originally, starting as an adverse possession case, this decision covers the limited scope of preliminary injunction law in Illinois.

The facts of the case are as follows: O'Malley Trust (Plaintiff) filed a claim for adverse possession against Prather Trust

(Defendant). The Plaintiff owned 100% of the surface rights of a farm, but the Plaintiff and the Defendant each owned equal 50% shares of the underlying mineral rights of the farm. The Plaintiff argued that they should own 100% of the mineral rights of the farm.

The Defendant Cried Wolf

The Defendant filed an answer on the adverse possession complaint and ended up winning a summary judgment. However, the Defendant then filed counterclaims against the Plaintiff for selling the mineral rights (in which the Defendant owned a 50% interest) without their knowledge or consent.

The Defendant Cried Wolf Again

Unrelated to this action, the Plaintiff attempted to sell their 100% interest in the surface rights of the farm, which the Defendant had no interest in.

Although the Defendant had no ownership interest in the surface rights, the Defendant requested that the court provide a preliminary injunction freezing the proceeds of the sale.

The Defendant argued that their counterclaim in the mineral rights case gave them a "claim" under the Fraudulent Transfer Act. The trial court agreed and granted a preliminary injunction on the proceeds of the surface rights in which the Defendant had no ownership interest.

The Plaintiff now appeals the trial court's decision.

The appellate court began by illustrating Illinois preliminary injunction law. The court maintained:

A preliminary injunction is an extraordinary provisional remedy that is granted to preserve the status quo until the case can be decided on the merits. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.*, 195 Ill. 2d 356, 365, 254 Ill. Dec.

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