IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-23-0186

DANIEL COYLE
Plaintiff and Appellee

v.

DHANLAXMI, LLC, d/b/a BUDGET INN OF DEER LODGE; ROHIT PATEL; PRAKASH GANDHI; and JOHN DOES 1-5
Defendants

and

POOJA HOSPITALITY, LLC; LAXMI GROUP, LLC
Intervenors and Appellants

APPELLANTS' OPENING BRIEF

On appeal from the Montana Third Judicial District Court, Powell County
Cause No. DV-19-26; Honorable Ray J. Dayton

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4. Did the district court abuse its discretion in failing to require Coyle to post a bond to protect Pooja Hospitality in the event it was wrongfully enjoined?

STATEMENT OF THE CASE

The district court, presented with a judgment against Dhanlaxmi, LLC ("Dhanlaxmi"), entered a temporary restraining order (TRO) against not only Dhanlaxmi, LLC, but against Dhanlaxmi's member's wife's separate limited liability companies, Pooja Hospitality, LLC ("Pooja Hospitality") and Laxmi Group, LLC ("Laxmi Group"), prohibiting them from "transferring, encumbering, or otherwise dissipating" the proceeds of the sale of real property owned by Pooja Hospitality and Laxmi Group "until such time as the Court may hold a show cause hearing on [Coyle's] motion for an injunction." Coyle never attempted to include Pooja Hospitality or Laxmi Group (collectively "Intervenors") in any of his filings or to bring claims against them, but instead improperly used the TRO process and an end-around to have Intervenors' funds be used to pay a judgment owed by Dhanlaxmi—a legally distinct entity.

Coyle's position is untenable. Coyle wants Pooja Hospitality to pay the judgment owed by Dhanlaxmi and sought an injunction to prevent Pooja Hospitality from distributing its proceeds. He then assumed without having proved—or even pleaded—that his judgment against Dhanlaxmi could be attached to Dhanlaxmi's member's wife's LLC in arguing that he will be successful on the merits of his "claim." However, at no point in the two-and-a-half years after getting the TRO imposed against Intervenors did Coyle take any steps to actually plead these claims against Pooja Hospitality or Laxmi Group. How could he ever be successful on claims he failed for over two years to even bring?

Coyle improperly sought a TRO based on the incorrect assertion that Intevenors were "defendants" and "debtors" on the judgment against Dhanlaxmi, which dramatically upset the status quo, harmed additional parties not related, and also did not meet the statutory requirements for granting a TRO, as he failed to post a bond. Moreover, Coyle is not able to seek a preliminary injunction, as his case does not fall within any of the types of cases for which a party may seek a preliminary injunction under Mont. Code Ann. § 27-19-201. Coyle also cannot show that he is entitled to a preliminary injunction as he fails the *Van Loan* test set forth by this Court. Finally, the district court abused its discretion in entering the TRO and injunction without requiring Coyle to post a security in the event the Intervenors were wrongfully enjoined, or waiving said requirement in the interests of justice. For all of these reasons, the district court abused its discretion in declining to dissolve the TRO and by converting it by statute into a preliminary injunction.

STATEMENT OF FACTS

From 2016 to 2018, Coyle worked at the Budget Inn of Deer Lodge, owned and operated by Dhanlaxmi, LLC ("Dhanlaxmi"). Dhanlaxmi has two members: Rohit Patel and Prakash Gandhi. Coyle filed a wage claim in July of 2018, alleging he had not been paid minimum wage and overtime for being, as he claimed, "on-call" twenty-four hours per day, seven days per week, with no offset for time spent sleeping or for the lodging he received as a term of his employment. (*See* Ex. 1 to Dept. of Labor Notice of Default (Mar. 22, 2019), Doc. 1). Dhanlaxmi, unrepresented by counsel at that time, did not contest the wage claim,[1] and Coyle received a favorable determination, which was entered as a judgment against Dhanlaxmi in 2019. (*Id.*)

The Budget Inn was forced to close, and as a result, Dhanlaxmi sold the motel, its only asset, at a substantial loss. Notably, Coyle consented to its release from his judgment lien, thereby acknowledging that the motel was sold at a loss. (Release of Judgment Lien (Oct. 8, 2019), Doc. 8). A debtor's hearing was held in July of 2020, where Coyle learned that Rupam Patel, the wife of one of Dhanlaxmi's members, was selling an asset owned solely by her limited liability company, Pooja Hospitality. In August of 2020, Pooja Hospitality, whose sole member was Mrs. Patel,[2] sold the Budget Inn of Missoula ("Missoula Motel").

[1] A request for redetermination was filed, apparently, by an employee of Dhanlaxmi, Bryan Hindman. While the Redetermination states he is a "manager," he was the manager of the motel; Mr. Hindman has never been a manager or member of Dhanlaxmi.

[2] (*See* Ex. A to Pl.'s Resp. to Mot. to Dissolve TRO at 3 (Oct. 19, 2020), Doc. 23 (listing Mrs. Patel as the sole member/manager)).

Coyle filed a Motion for Temporary Restraining Order and Injunction on July 31, 2020, seeking to freeze the proceeds from the sale of the Missoula Motel. (Mot. for TRO (July 31, 2020), Doc. 14). In that Motion, Coyle argued that Pooja Hospitality and Laxmi Group should be enjoined from transferring their funds "while **this action** is pending." (*Id.* at 1-2 (emphasis added)). Notably, at that time, neither Pooja Hospitality, Laxmi Group, Rohit Patel, or Prakash Gandhi were named as defendants in this action. However, Coyle repeatedly referred to Mr. Patel, Pooja Hospitality, and Laxmi Group as "defendants" and as though they had in fact been found liable for the judgment against Dhanlaxmi. For example:

- "Defendants will transfer ... assets in an attempt to evade liability for their actions." (*Id.* at 2).

- "The Court should issue a TRO and injunction to prevent Defendant [Rohit] Patel, principal of [Dhanlaxmi], from transferring … assets related to other corporations he is involved with while this action is pending." (*Id.* at 2).

- "As the parties have been acting in concert ..." (*Id.* at 7).

- "The Defendants have testified that they are selling and dissipating assets that could be used to satisfy the judgment." (*Id.* at 8).

- "[the] injunction … would assist litigants in collecting their judgment while preventing debtors from being able to hide or dissipate their assets after a judgment is entered against them." (*Id.* at 9).

Coyle incorrectly stated throughout his TRO Motion that Pooja Hospitality was a defendant or a named party, the effect of which was to support his argument that Pooja Hospitality was coordinating with Dhanlaxmi.

As a result, the district court entered the TRO against Dhanlaxmi, Pooja Hospitality, and Laxmi Group, prohibiting them from "transferring, encumbering, or otherwise dissipating any of the proceeds from the sale of the property owned by Laxmi Group, LLC or Pooja Hospitality, LLC until such time as the Court may hold a show cause hearing on [Coyle's] Motion for an injunction." (TRO at 2 (July 31, 2020), Doc. 15). The TRO also set a hearing "to show cause why a full injunction should not be issued", which was continued. (*Id*.) Notably, the district court did not require Coyle to post a security for damages in the event Pooja Hospitality or Laxmi Group were wrongfully enjoined as required under Mont. Code Ann. § 27-19-306, nor did the district court waive the requirement in the interest of justice, as Coyle had not addressed it anywhere in his Motion. (*See* Docs. 14 & 15).

On October 5, 2020, Dhanlaxmi filed a Motion to Dissolve TRO and submitted its Brief in Support of Motion to Dissolve TRO and Opposing Issuance of an Injunction. (*See* Docs. 20 & 21). On October 9, 2020, the parties stipulated to amending the TRO "pending additional briefing and final Order from the Court" and agreed that Pooja Hospitality's proceeds from the sale of the Missoula Motel were to be held in escrow until the district court could conduct a hearing on the TRO and preliminary injunction. (*See* Stipulation ¶¶ 1-2 (Oct. 9, 2020), Doc. 22).

The TRO and injunction arguments were fully briefed on November 16, 2020. (*See* Docs. 21, 23, 32). On April 6, 2021, the district court requested a status conference to clarify the status of the TRO and Coyle's motion for an injunction. (Order Requesting

Status (Apr. 6, 2021), Doc. 35). The parties timely submitted their status reports, and nothing further happened with respect to the TRO until March of 2022, when the district court set a status conference. (Order Setting Status Conference (Mar. 24, 2022), Doc. 42). The parties provided supplemental briefing, which was completed on June 20, 2022. (*See* Docs 46, 47, 49). On October 21, 2022, Dhanlaxmi filed a notice of Issue and requested a show cause hearing on the issues presented in the briefing. (Notice of Issue (Oct. 21, 2022), Doc. 51). A hearing on the Motions was set for December 6, 2022. (Order (Oct. 27, 2022), Doc. 52).

At no point during the almost two-and-a-half years between the issuance of the TRO and the Order granting the preliminary injunction did Coyle make any attempt to pursue his application for injunction and request a hearing. More significantly, during this entire two-and-a-half-year period, Coyle never filed a complaint against Pooja Hospitality or Laxmi Group, sought to amend his pleadings, or made any allegation for which Pooja Hospitality or Laxmi Group could respond to relating to their supposed liability on Dhanlaxmi's judgment. During this time, on February 1, 2021, Coyle filed a separate lawsuit against Dhanlaxmi's owners, Mr. Patel and Mr. Gandhi seeking to hold them individually liable for the judgment, which was later consolidated into this action. (*See* Order Granting Mot. to Consolidate (Aug. 10, 2022), Doc. 50). However, Coyle did not file a similar suit against Pooja Hospitality or Laxmi Group. Instead, throughout his pleadings, Coyle consistently referred to Pooja Hospitality and Laxmi Group and Rohit

Patel's wife, Rupam, as "Defendants" who he incorrectly stated time and again were all liable for the judgment against the one Defendant, Dhanlaxmi.

The district court held a show cause hearing on December 6, 2022, afterward it entered an order denying the Motion to Dissolve TRO. (Order Denying Motion to Dissolve (Dec. 9, 2022), Doc. 58 (hereinafter the "Order")). In its Order, citing to the rules regarding preliminary injunctions (as had been briefed by both parties), ruled that the TRO would remain in place "until the Court makes a ruling on the issue of attaching the MT DLI Judgment to Pooja and Laxmi." (*Id.* at 2). While it did not explicitly say so, the Order clearly granted a preliminary injunction.[3] Recognizing that Coyle had yet to assert any legal basis to attach the judgment to Pooja or Laxmi, the district court added that, in order for it to determine "the issue of attachment," it was "required to be able to make a ruling on such an issue, so all pleadings shall be brought to muster, if necessary, for the Court to act." (*Id.*).

Responding to the district court's admonishment to bring the pleadings up to muster (since Coyle wasn't going to), Pooja Hospitality and Laxmi Group filed an unopposed motion to intervene in the case to protect themselves from Coyle's wrongful attempt to attach his judgment to their property. (Mot. to Intervene (Jan. 5, 2022), Doc. 59). Intervenors were permitted to intervene and filed a Complaint against Coyle seeking declaratory judgment that they were separate entities and not liable for the judgment. (*See*

[3] As set forth in Section V, *infra*, Coyle appears to argue that he did not pursue his application for an injunction at the show cause hearing, and that no preliminary injunction was entered. Therefore, the TRO must be dismissed under Mont. Code Ann. § 27-19-318.

Order (Jan. 6, 2023), Doc. 60; Verified Compl. (Jan. 6, 2023), Doc. 61). On January 23, 2023, Coyle filed his Answer and Counterclaim, alleging for the first time a theory of liability in order to hold Intervenors liable for the judgment. (Doc. 66).

Intervenors filed a timely Motion to Amend the December 9, 2022 Order on January 6, 2023, which was deemed denied on March 7, 2023, under Mont. R. Civ. P. 59(f). (Mot. to Amend (Jan. 6, 2023), Doc. 63). Intervenors filed their timely notice of Appeal on March 22, 2023.

STANDARD OF REVIEW

A preliminary injunction is an "extraordinary remed[y], granted with caution, and in the exercise of sound judicial discretion." *Paradise Rainbows v. Fish & Game Comm'n*, 148 Mont. 412, 420, 421 P.2d 717, 721 (1966). It is the plaintiff's burden to show that he is entitled to the extraordinary relief of an injunction. *Van Loan v. Van Loan*, 271 Mont. 176, 895 P.2d 614, 617-18 (1995). The analysis of whether an injunction is appropriate "is to be narrowly interpreted. The courts cannot countenance routine, meritless, or vindictive petitions for preliminary injunctions," but only "under the most clear facts that fully satisfy the four-part test adopted above." *Id.* at 618.

Review of a grant of denial of a preliminary injunction is under the "manifest abuse of discretion standard." However, when the grant or denial of an injunction is based "solely upon conclusions of law . . . no discretion is involved" and the Supreme Court reviews the district court to determine whether its interpretation of the law was correct. *City of Whitefish v. Bd. of County. Comm'rs of Flathead County*, 2008 MT 436, ¶ 7, 347

Mont. 490, 199 P.3d 201 (citing *St. James Healthcare v. Cole*, 2008 MT 44, ¶ 21, 341 Mont. 368, 178 P.3d 696). "Generally injunctive relief is not granted where an action for monetary damages will afford an adequate remedy." *Shammel v. Canyon Resources Corp.*, 2003 MT 372, ¶ 17, 319 Mont. 132, 82 P.3d 912. A district court abuses its discretion if it exercises its discretion "based on a clearly erroneous finding of material fact, an erroneous conclusion of law, or otherwise acts arbitrarily, without conscientious judgement or in excess of the bounds of reason, resulting in substantial injustice." *Gottlob v. DesRosier*, 2020 MT 212, ¶ 7, 401 Mont. 72, 470 P.3d 194.

SUMMARY OF THE ARGUMENT

The district court abused its discretion in denying the Motion to Dissolve the TRO; the preliminary injunction entered against Laxmi and Pooja is improper must be dissolved. Coyle improperly used the TRO process as an end-around to avoid actually pleading claims against Intervenors, and improperly sought to enjoin them indefinitely from lawfully distributing their assets until his unpled claims were resolved—which they necessarily could never be.

Coyle's intent was to attach his judgment against Dhanlaxmi to entities he believed were related to Dhanlaxmi. "The TRO would remain in place long enough for the parties to have a hearing about the ability of Mr. Coyle to attach his judgment to any of the proceeds." (Doc. 14 at 9). However, Coyle cannot seek to "attach his judgment" to Pooja Hospitality's—or any person's—assets unless he names them in a lawsuit or goes through

the prejudgment attachment process. This is a fundamental issue of due process that Coyle simply ignored out of convenience. *See* Mont. Const. art. II § 17.

The question Coyle has consistently sought to avoid answering is "what liability does Laxmi Group or Pooja Hospitality have for Dhanlaxmi's judgment?" Coyle argued in the TRO Motion that Mr. Patel transferred ownership of his corporation to his spouse "for little or no consideration," but never brought a fraudulent transfer claim. Coyle argued that these other entities were intermingled with Dhanlaxmi, but never brought a piercing the corporate veil claim. Coyle assumed without proving—or even pleading—that Dhanlaxmi's judgment could simply be attached to any entity Mr. Patel or his wife own, and used the TRO process to hold up those assets indefinitely while all the while refusing to actually attempt to prove those other entities could be held liable.

The district court abused its discretion in denying the dissolution of the TRO and by entering a preliminary injunction against Intervenors, whose funds were enjoined pending a determination as to whether their funds could be attached to the judgment against Dhanlaxmi. Coyle spent years holding onto the TRO, never moving forward with his application for an injunction, without ever alleging any cause of action which could conceivable hold Intervenors liable for the judgment against Dhanlaxmi. The TRO upset the status quo, Coyle failed to demonstrate all of the factors necessary for a preliminary injunction, and the district court did not require Coyle post a bond as required by statute. For all of these reasons, the district court's Order should be reversed.

Intervenors anticipate Coyle to argue that the TRO has not converted into a preliminary injunction because there has been no hearing on the what he called the "underlying basis" of the TRO between the parties (*i.e.* between Coyle, Dhanlaxmi, Roy Patel, and Prakash Gandhi), and that therefore a temporary restraining order remains in effect—not a preliminary injunction. (*See* Motion to Dismiss (May 30, 2023)). If Coyle takes the position that, despite filing a motion for TRO and an injunction in July of 2020, there still has been no determination as to the "underlying basis" of the TRO, then the TRO must be dissolved for his failure to pursue his application.

ARGUMENT

In its Order, the district court declined to dissolve the TRO and thereby converted it into a preliminary injunction, enjoining Intervenors while the "issue of attachment" was "pending." (Doc. 58 at 2). It cited to Mont. Code Ann. § 27-19-201, where a preliminary injunction may be issued "when a party's monetary judgment may be made ineffectual by the actions of the adverse party, thereby irreparably injuring the applicant." (*Id.*) It ruled that Coyle had "alleg[ed] that all three corporations have been working in active concert with one another to avoid the [Judgment] entered against Dhanlaxmi," and that "Mr. Coyle has demonstrated to the Court that Dhanlaxmi, at the very least, was working in active concert with Pooja and Laxmi and it is appropriate to restrain them from obtaining the proceeds while the issue of attachment is pending." (*Id.* at 1-2). Finally, it stated that it would "consider an alternate surety that would protect Mr. Coyle but allow the funds to be released from the holding account. (*Id.* at 3 (emphasis added)).

As set forth below, the district court's Order was based on incorrect factual information, erroneous conclusions of law, and therefore constituted an abuse of discretion, which this Court should respectfully overturn.

I. The district court abused its discretion in granting a preliminary injunction because the TRO underlying the preliminary injunction was improper.

a. The TRO and preliminary injunction do not preserve the status quo.

The TRO restricts Dhanlaxmi, Pooja Hospitality, and Laxmi Group from "transferring, encumbering, or otherwise dissipating any of the proceeds" from the sale of Pooja Hospitality's property pending the Court's ruling on the injunction. (Doc. 15 at 2). The purpose of a preliminary injunction is limited as its function is to preserve the status quo and minimize the harm to all parties pending full trial. *Porter v. K & S P'ship*, 192 Mont. 175, 182, 627 P.2d 836, 840 (1981). When a preliminary injunction will not preserve the status quo and minimize the harm to all parties pending a trial, it should not be issued. *Knudsen v. McDunn*, 271 Mont. 61, 65, 894 P.2d 295, 298 (1995) (citing *Porter* at 181, 627 P.2d at 839).

The status quo at the time Intervenors were enjoined was that they were completely separate entities from Dhanlaxmi who were uninvolved in any lawsuit by Coyle. There were and are are at least three layers of corporate separateness between Dhanlaxmi, its member, its member's wife, its member's wife's LLC, and there was no claim for piercing their corporate separateness. Pooja Hospitality intended to sell its asset and expected to use the proceeds for other lawful purposes (*e.g.* paying off debts). Instead, it was incorrectly labeled a "Defendant" by Coyle so that the court would grant the TRO.

Thus, at the time the TRO was entered, there was no allegation, let alone determination, that Pooja Hospitality was related to Dhanlaxmi or shared any possible liability for the judgment. Coyle's incorrect and repeated references to Intervenors as "Defendants" and "debtors" throughout his Motion led the district court to believe they were liable, or at least that there was some pending action against them seeking to hold them liable, when neither was true. Nevertheless, the Court entered a TRO against Intervenors to prevent them from distributing their assets under the incorrect belief that Coyle had any entitlement to those funds.

As such, the district court was operating under a manifest error of fact in entering the TRO which improperly altered the status quo. Far from minimizing the harm to the parties, it added entirely new "parties" to the dispute and caused them harm by enjoining their assets. The district court abused its discretion in not dissolving the TRO.

b. Coyle put the cart before the horse in attempting to use the TRO process to have the district court determine his unpled piercing the corporate veil theory.

If Coyle sought to enjoin Pooja Hospitality from "dissipating any proceeds" from the sale of property, he must necessarily show he has some entitlement to those funds. Coyle clearly assumed that was entitled to funds owned by Pooja Hospitality, but never took the necessary steps to adjudicate that issue. Coyle apparently believes that he can seek those funds from Pooja Hospitality without any court ever actually determining that it is liable for any such judgment based on a piercing the corporate veil theory which had never been pled.

The issue of whether or not Coyle could be successful on the merits of a claim he never pled raises a threshold concern: a district court abuses its discretion when it adjudicates the final merits of a claim in granting a preliminary injunction. A determination that Coyle is entitled to pierce the corporate veil is beyond the scope of an injunction, which is to restrain activity pending a final outcome, not to affirmatively determine the rights and status of the parties. In *City of Whitefish v. Bd. of County Comm'rs of Flathead County*, 2008 MT 436, 347 Mont. 490, 199 P.3d 201, the district court abused its discretion in determining that the City was not entitled to a preliminary injunction against Flathead County because it determined that there was no enforceable contract and therefore the City was not likely to succeed on the merits. *Id.* ¶ 10. However, the district court in that case was not tasked with determining whether the contract was enforceable at that point—only whether the City met the standard for a preliminary injunction. *Id.* ¶ 17.

Throughout his briefing, Coyle asserted that there was an issue of whether his judgment against Dhanlaxmi can be attached to Intervenors and other defendants because they are alter egos under a piercing liability theory. (*See e.g.* Doc. 23 at 7-11).[4] Indeed, the only basis that Pooja Hospitality can be found liable for the debt of Dhanlaxmi is to pierce the corporate veils and entity separateness between (1) Dhanlaxmi and its member Rohit, (2) between Rohit and his wife, Rupam, and (3) between Rupam and her LLC,

[4] Coyle later asserted that the judgment could be attached to Dhanlaxmi's members, Mr. Patel and Mr. Gandhi, under Mont. Code Ann. § 35-8-304(3). (*See* Doc. 23 at 12). However, even assuming this argument for purposes of this Appeal, that does nothing to diminish the corporate separateness between Mr. Patel and his wife, or his wife and her limited liability company.

Pooja Hospitality. The district court, in determining that Pooja Hospitality should be enjoined from distributing its proceeds, necessarily took a step beyond what had been pled in determining that Pooja Hospitality could be liable for Dhanlaxmi's debt—piercing three layers of entity separateness without even a pleading from Coyle alleging facts to support it.

This raises concerns of due process, which Coyle fundamentally ignored for years in order to achieve the result he wanted. "No person shall be deprived of life, liberty, or property without due process of law." Mont. Const. art. II, § 17. Coyle sought a TRO to freeze Pooja Hospitality's assets while it could be determined whether he could attach his judgment to those assets. (Doc. 14 at 9). The district court's Order stated that Pooja Hospitality would be restrained from obtaining those proceeds "while the issue of attachment is pending." (Doc. 58 at 2). It bears repeating—at no point in this process had any claims ever been brought against Pooja Hospitality or Laxmi Group. There was no "action" pending against Intervenors at the time Coyle applied for a TRO which would allow him to obtain relief from them. There was no "issue of attachment" pending when the district court entered the Order involving the Intervenors for which they could possibly be held liable for the judgment against Dhanlaxmi. As set forth below, one of the elements of whether a preliminary injunction should be issued is whether the applicant would be successful on the merits. *Van Loan*, 895 P.2d at 617. Coyle necessarily could never be successful on the merits of his claim against Intervenors when he never brought any claims. Meanwhile, Intervenors are being forced to defend against claims Coyle

refused to actually bring, and have their funds unlawfully restrained for going on three years.

All of this is to say that the district court in stating there was an "issue of attachment" pending against Intervenors, who were never parties to any litigation brought by Coyle, was operating under a manifest error of fact and law, and therefore abused its discretion in not dissolving the TRO and granting the preliminary injunction.

c. The TRO did not require Coyle to post security to protect Intervenors in the event they were wrongfully enjoined.

Under Montana law, upon the grant of an injunction or restraining order, the district court "shall require a written undertaking be given by the applicant for the payment of costs and damages that may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Mont. Code Ann. § 27-19-306(1). That requirement must be fixed at a sum the judge considers proper, though it can be waived in domestic disputes or "in the interest of justice." *Id.*

However, Coyle ignored this requirement by not raising it in his Motion for TRO and Injunction. (*See* Doc. 14). As a result, the TRO did not require, or even address, the necessity that Coyle post a bond in order to protect Pooja Hospitality and Laxmi Group in the event they were wrongfully enjoined. The failure to address this requirement was a fundamental defect in the TRO. As such, the TRO was based on an erroneous conclusion of law and therefore the district court abused its discretion in denying the Motion to Dissolve.

d. In reality, the TRO is an improper prejudgment attachment.

Coyle made it clear that he was seeking a judgment against Pooja Hospitality (despite never pleading such a claim) for the amount owed under his wage claim against Dhanlaxmi. It is undisputed that Coyle does not have a judgment against Pooja Hospitality, and therefore has nothing to attach to Pooja Hospitality's assets. He admits that he seeks "to attach his judgment [against Dhanlaxmi] to any of the proceeds [of Pooja Hospitality's sale]," and that "The TRO would remain in place long enough for the parties to have a hearing about the ability of Mr. Coyle to attach his judgment to any of the proceeds." (Doc. 14 at 9).

The process for seeking to attach property before a judgment is entered has been set forth by the legislature in Mont. Code Ann. §§ 27-18-101 *et seq*., which "entitle[s] defendants to specific, systematic judicial processes before a court may divest them of their property." *Yellowstone Fed. Credit Union v. Daniels*, 2008 MT 111, ¶ 20, 342 Mont. 451, 181 P.3d 595. Here, Coyle is improperly using a TRO as an end-around to obtain a prejudgment attachment without taking the necessary steps, and more importantly, without providing Pooja Hospitality its statutory ability to challenge the so-called "allegations" Coyle made against it. "The statutes' prescriptions are not permissive. The statutes set forth the steps that the plaintiff must undertake, and what actions the district court must require of the parties, in order to seize property." *Id.* at ¶ 17. Coyle did not formally serve a summons on Pooja Hospitality and has not provided a bond. *See* Mont. Code Ann. §§ 27-18-201 to 204. Using the TRO process as an end-around to avoid the

prejudgment attachment statutes is improper, and the entry of a preliminary injunction based on this was an abuse of discretion.

II. Coyle does not meet any of the elements of a person entitled to a preliminary injunction under Mont. Code Ann. § 27-19-201.

Not only was the TRO improperly granted, based on manifest factual errors and erroneous conclusions of law, but it is clear that even if the TRO was proper, Coyle does not meet the statutory requirements of someone who is able to seek a preliminary injunction. Section 27-19-201 of the Montana Code Annotated sets forth the five types of cases for which a court may grant a preliminary injunction.[5] As is relevant here, Coyle sought the preliminary injunction under Mont. Code Ann. § 27-19-201(3), which allows a party to seek a preliminary injunction

> (3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(*See* Doc. 14 at 8 (citing *Shammel* and *Van Loan*); *see also* Doc. 23 at 4 ("a plaintiff may obtain an injunction where the plaintiff's monetary judgment may be rendered ineffectual by the actions of the defendant or the parties acting in concert with them").[6]

[5] Coyle insists that what he sought was a final injunction under Mont. Code Ann. § 27-19-102, going so far as calling Dhanlaxmi's pleadings "defective" because they analyzed it under the standard for preliminary injunctions. (*See* Doc. 23 at 4; Doc. 47 at 6-7). However, it is clear that his intent was to freeze the proceeds after closing "long enough for the parties to have a hearing about the ability of Mr. Coyle to attach his judgment to any of the proceeds." (Doc. 14 at 9). Thus, he is seeking to restrain a party from taking an action until while the matter is being adjudicated, which is the definition of a preliminary injunction.

[6] This matter applies the versions of the injunction statutes prior to the March 2023 amendments.

Boiled down to its essence, Coyle's position is that Intervenors' assets should be frozen indefinitely so that those funds will be there at the end of the day in the event the claims he never pled are someday adjudicated in his favor.

Under Montana law, a non-party can only be enjoined if it is "in active participation with" the enjoined party. Mont. Code Ann. § 27-19-105(4). However, it is never made clear how the actions "alleged" by the other entities, even if true, would make Coyle's judgment against Dhanlaxmi "ineffectual." Coyle and the district court both just assumed that (based on Coyle representing in his TRO Motion that Intervenors were "Defendants" and "debtors") that money being distributed from Pooja Hospitality to its member would mean that there would be no money at the end of the day for Dhanlaxmi to pay its debt. But Coyle cannot answer the question of why Dhanlaxmi would receive that money which it could use to pay its judgment? It is undisputed that the funds from the sale of the Missoula Motel do not belong to Dhanlaxmi. Dhanlaxmi is not a member of Pooja Hospitality, the entity who owned the Missoula Motel, and therefore would receive no benefit from the proceeds of the sale. Pooja Hospitality's sole member, Mrs. Patel, would be entitled to the proceeds at closing. However, Dhanlaxmi has no entitlement to Mrs. Patel's funds, nor is Mrs. Patel required to pay for Dhanlaxmi's judgment (nor is she alleged to have any liability to that effect). Finally, it is necessary to point out that the judgment against Dhanlaxmi was apparently already ineffectual, as conceded by Coyle in releasing Dhanlaxmi's sole asset from his judgment lien.

This brings us back to why it was necessary for Coyle to bring an actual piercing claim against Intervenors. Without some sort of piercing claim against Intervenors, Coyle cannot show that Pooja Hospitality's lawful use of its property could possibly violate his rights and make his judgment "ineffectual." Pooja Hospitality selling its asset does nothing to affect Dhanlaxmi's bottom line; the two parties are unrelated, and Dhanlaxmi has no entitlement to Pooja Hospitality's funds. There are no facts to support any claim that Dhanlaxmi is unlawfully transferring assets to other parties who are attempting to liquidate them in order to avoid a judgment. There are no facts to show that any of these other persons or entities are transferring or distributing funds that are somehow earmarked for Dhanlaxmi to use to pay the judgment. The fact that Coyle was unable to collect from Dhanlaxmi does not mean he can seek relief from somewhere else without alleging some legal basis to do so.

Thus, the question turns on what "active" participation—not past activity or prior participation—are Intervenors doing which would make the judgment against Dhanlaxmi ineffectual. Coyle relies on distinguishable case law that allows restraint of parties "in active concert" with the defendant, which are inapposite to the facts of this case. In *Rice v. C.I. Lanning,* 2004 MT 237, 322 Mont. 487, 97 P.3d 580, the district court after a trial by jury entered a permanent injunction prohibiting the son, Ross, from operating an auto repair shop on his mother's property. *Id.* ¶ 13. However, two months afterward, it was discovered that Ross's mother, Kathleen, had formed a sham corporation for her son to operate an auto repair shop on her property in order to get around the injunction. *Id.* ¶ 37.

The Court held that it was not an abuse of discretion to extend the permanent injunction to include Kathleen, as she was actively participating with Ross to help him violate the injunction.

In *Morton v. Lanier*, 2002 MT 214, 311 Mont. 301, 55 P.3d 380, the district court entered a preliminary injunction preventing the husband, Robert, from shining their house lights on the Lanier's residence. *Id.* ¶ 24. After Robert had died, his wife Joanne continued to disobey the court's directive by "obviously" choosing to continue the conduct "previously found by the court to be a nuisance," *i.e.* shining the lights on the Lanier's property. *Id.* ¶ 25. Again, finding that Joanne was actively participating with Robert in failing to follow the district court's directive as to the lights, the Court concluded that Joanne had been enjoined as well and was therefore in contempt. *Id.* ¶ 29.

Comparing the alleged conduct here (or rather, the conduct Coyle did not allege occurred here), it is clear that Intervenors are not "actively" participating with Dhanlaxmi to make Coyle's judgment ineffectual. First, Coyle's judgment had already been made ineffectual by Coyle's release of Dhanlaxmi's only asset from his judgment lien, leaving him nothing to execute his judgment upon. (*See* Doc. 8). Coyle's claim is simply that Pooja Hospitality is acting in concert with Dhanlaxmi because it sold one of its assets—an asset not owned by Dhanlaxmi.

Moreover, there is no showing that Pooja Hospitality is currently acting in concert with Dhanlaxmi other than the fact that its manager is Rohit's wife. Coyle alleges that Mr. Patel, at some point in the past, transferred Pooja Hospitality to his wife for little or

no consideration, and that the entities in the past had transferred money or paid for others' expenses. (Doc. 14 at 2-3). However, none of that shows any *active* participation in attempting to make Coyle's judgment ineffectual. Neither Dhanlaxmi or Pooja Hospitality are creating a sham corporation to evade a valid injunction (*Rice*) or acting in defiance of a court order (*Morton*). The status quo prior to the TRO was that an entity that existed before these claims were brought (Pooja Hospitality), which is owned by a different owner (Mrs. Patel) and which is not involved in the judgment, sold its sole asset. There is no showing Pooja Hospitality is legally responsible for the judgment against Dhanlaxmi, and therefore any action it is doing by lawfully distributing its own assets cannot be deemed "active" participation in trying to make a judgment ineffectual.

The district court erred in determining that Coyle had demonstrated that "Dhanlaxmi, at the very least, was working in active concert with Pooja and Laxmi." (Doc. 58). Granting a preliminary injunction based either on past conduct, which cannot be "active participation," or based on the incorrect belief that Pooja Hospitality selling its asset somehow affected Dhanlaxmi's ability to pay its judgment was an abuse of discretion, and therefore respectfully should be reversed by this Court.

III. Even if Coyle could seek a preliminary injunction, he fails the *Van Loan* test, and therefore the injunction is improper.

Because Coyle is seeking a preliminary injunction based on a monetary judgment, he bears the burden to show he satisfies the four elements of the *Van Loan* test. *Shammel*, ¶ 17 (citing *Van Loan*, 895 P.2d at 617-18). Taking the elements one by one, it is clear that when "narrowly interpreted," Coyle fails in his claim for a preliminary injunction.

First, Coyle necessarily could not have shown he was likely to succeed on the merits for the simple reason that he did not make any claims against Pooja Hospitality. Coyle confuses the issue by claiming that he must be successful because he was "successful in his complaint with the Department of Labor and received a judgment." (Doc. 14 at 8). This, of course, skips over the step wherein he alleges that Intervenors have any liability for the judgment. At every turn, Coyle simply elided over the legal distinction between Dhanlaxmi and these entities in order to avoid having to plead that he was entitled to Intervenors' assets. He repeatedly ignored that the judgment was not against Intervenors or any other Defendant. To state the obvious, he necessarily cannot be successful on claims which were never made.

Second, Coyle will not be irreparably harmed because he is only seeking monetary damages, and therefore he can be adequately remedied by monetary damages. This Court has been clear that monetary damages—even when there exists the chance a judgment will be ineffectual—does not constitute "irreparable harm." *See Van Loan*, 895 P.2d at 618-19. Coyle's sole argument is that if Pooja Hospitality were to lawfully use the proceeds of its sale, "Mr. Coyle would be left with no ability to enforce his judgment against Dhanlaxmi, LLC." (Doc. 14 at 3). Even if this were true, that is not a basis for a preliminary injunction and fails the second element. "[T]hat harm which can be remedied with an award of money is not considered irreparable harm." *Id.* at 619. Consistent with the principle of restraint in granting preliminary injunctions, there is no need to resort to equity when a legal remedy exists.

Third, the injury to Intervenors greatly outweighs the harm to Coyle. Not only does case law hold that Coyle will not be irreparably harmed because he is only seeking monetary damages, but Coyle is incorrect that any harm to Pooja Hospitality is "nominal." (*See* Doc. 14 at 9). Intervenors, because Coyle improperly called them "Defendants" and "debtors" in his TRO Motion, have been unable to lawfully use their proceeds, and will continue to have their assets frozen until Coyle has the opportunity to adjudicate the claims he never brought. Intervenors have lost significant investment opportunity in having their funds withheld for going on three years, potential interest on that sum, and perhaps most significantly, they have lost ability to use those funds to pay off other debts. For almost three years, because it was improperly enjoined, Pooja Hospitality has been unable to lawfully use approximately $160,000 of its own funds because, according to Coyle, it might be liable for Dhanlaxmi's judgment, despite the fact he never presented any legal basis to hold a third party liable.

Finally, public policy supports upholding corporate separateness. Even prior to the enactment of the Montana Limited Liability Company Act, the policy of protecting corporate separateness goes back over one hundred years; it existed "to encourage trade and industry by enabling natural persons to make profitable investment by availing themselves of the skill, experience and personal fitness of others, without incurring personal liability for the obligations incurred in the management of the business of the corporation." *Barnes v. Smith*, 48 Mont. 309, 316, 137 P. 541, 543 (1913). This policy has been further cemented by the Montana Legislature's passing of the Montana LLC

Act: "The intent of the LLC form of organization is to provide a corporate-styled liability shield with pass-through tax benefits of a partnership." *White v. Longley*, 2010 MT 254, ¶ 34, 358 Mont. 268, 244 P.3d 753 (citing Mont. Code Ann. § 35-8-101, Official Comments).[7]

This injunction skewers the protections afforded to LLC members—much less members of unrelated LLCs—and renders these statutory protections meaningless.[8] This injunction allows a party who has a judgment against an LLC to restrain the lawful use of property not just from the members of the LLC (who are legally distinct and not liable for the debts of the LLC), but also the members spouses,[9] and those spouses LLCs—all without any allegation that those entities can be held liable for the original LLC's judgment. "A manifest abuse of discretion is one that is obvious, evident, or unmistakable." *Rice*, ¶ 33 (citing *Shammel*, ¶ 12). It is clear that the injunction entered in this case cannot, as a matter of law, be an equitable result under these facts.

Coyle's basis for a preliminary injunction is wholly insufficient as a matter of law. Moreover, the district court did not address whether Coyle had satisfied his burden to meet all four elements—it did not analyze the *Van Loan* test at all. The district court's conclusions of law were erroneous and it abused its discretion in granting the preliminary

[7] *See Abrahim & Sons v. Equilon Enters.*, 33 Fed.App'x 315 (9th Cir. 2002) ("With most LLCs, the members own and control the entity. However, the entity remains separate and distinct from its members. Otherwise, there would be no way to limit the liability of an LLC's members, and the purpose behind the LLC would be destroyed.")

[8] Montana public policy also favors the free use of one's property. "[A]n essential element of the right of private property is the right use or dispose it . . ." *Thompans v. Lincoln Natl. Ins. Co*., 114 Mont 521, 533, 138 P.2d 951 (1943).

[9] "A husband or wife, solely on the basis of being a spouse, is not answerable for the acts of the other spouse or liable for the debts contracted by the other spouse." MCA § 40-2-106.

injunction without a finding that Coyle had satisfied his burden of proving all four elements of the *Van Loan* test (now codified in Mont. Code Ann. § 27-19-201 (2023)).

IV. The district court abused its discretion in failing to require Coyle to post a bond to protect Intervenors from the harm suffered because of this improper injunction.

The district court completely failed to address Coyle's requirement to post a bond. In fact, the court clearly misapprehended whose responsibility it was to post a bond, given its holding that it would consider alternative security from Pooja Hospitality. (Doc. at 3). Section 27-19-306(1) says upon the grant of a TRO or an injunction, Coyle **shall** provide a written undertaking to cover the damages that Intervenors would suffer if wrongfully enjoined. While this requirement can be waived in the interest of justice, Coyle never argued or asked the court to waive this requirement, and the district court made no analysis of the bond issue except to incorrectly place the burden on Intervenors to provide security. Moreover, after the December 6, 2022 show cause hearing, the district court could require a new undertaking in the same or different sum to be given "by the party who obtained the order"—which is Coyle, not Intervenors. Mont. Code Ann. § 27-19-307. The preliminary injunction, which does not require or even address Coyle's requirement to post security, is therefore based on an erroneous conclusion of law. Coyle did not argue that he should not have to post a bond, or even raise the statute to the court.

Intervenors have been restrained from the lawful use of their property for almost three years. Besides Coyle's wholly conclusory and incorrect statements that Intervenors are "Defendants" liable for the underlying wage claims, it is undisputed that the property

being enjoined does not belong to Dhanlaxmi. Intervenors could have used those funds to pay off debts, invest in other businesses or opportunities, or otherwise lawfully use those property as they saw fit. If and when it is adjudicated that Intervenors have no liability for the debt of Dhanlaxmi, they will have suffered over three years of lost opportunity to invest their lawful proceeds or pay off debts because they were wrongfully enjoined. This is the explicit purpose of requiring a bond, and Coyle did not even attempt to argue that it should be waived in the interests of justice of this case.

Therefore, the district court clearly abused its discretion, and should be overturned to require Coyle post a bond in an amount sufficient to cover three years of lost investment opportunity and reasonable attorney's fees in defending itself in this action.

V. In his Motion to Dismiss, Coyle argues that he did not pursue his application for preliminary injunction at the December 6, 2022 show cause hearing, and therefore the TRO must be dissolved under Mont. Code Ann. § 27-19-318.

As a final matter, Coyle appears to have argued himself into a corner and admitted that the TRO should be dissolved. Coyle filed a Motion to Dismiss this appeal on May 30, 2023. (Mot. to Dismiss and Br. in Support (May 30, 2023) ("Motion to Dismiss"). The gravamen of his argument was that the TRO in that case had not been converted into a preliminary injunction—it remained a TRO, which is not appealable under Mont. R. App. P. 6. In that Motion, Coyle summarily argued that no "hearing on the underlying basis of the TRO between the parties" had occurred, meaning that the TRO was not converted into a preliminary injunction. (*Id.* at 5). This, of course, is despite the fact that the district court held a show cause hearing on December 6, 2022, the purpose of which

(as set forth in the original Order granting the TRO) was "to show cause why a full injunction should not be issued." (Doc. 15 at 2). As is clear from the district court's denying the dissolution of the TRO based on Coyle's arguments regarding preliminary injunctions, the December 6, 2022 hearing was clearly intended as a show cause hearing on his application for a preliminary injunction. However, in order to argue that the district court's order is not appealable, Coyle asserts that the TRO has not been converted into a preliminary injunction.

Accordingly, the Court should immediately remand this matter to the district court with instructions to dissolve the TRO because Coyle apparently admits he did not pursue his application for a preliminary injunction. As a matter of law, a temporary restraining order must be dissolved after the show cause hearing unless converted into a preliminary injunction:

> At the hearing, the party who obtained the temporary restraining order shall proceed with the application for an injunction, or if the party does not do so, the judge shall dissolve the temporary restraining order.

Mont. Code Ann. § 27-19-318. Coyle filed a Motion for Temporary Restraining Order and Injunction on July 31, 2020. (Doc. 14). However, he seems to argue that he did not proceed with his application for a preliminary injunction, as "no hearing on the underlying basis of the TRO has occurred." (Motion to Dismiss at 5). If the show cause hearing on his application for a preliminary injunction did not occur on December 6, 2022, then he failed his obligation under Mont. Code Ann. § 27-19-318.

Applications for injunctions must be heard without delay. Simply put, if Coyle, as he now seems to argue, did not pursue his application for a preliminary injunction as of the December 6, 2022 show cause hearing, then it must be dissolved as a matter of law. As such, the Court should immediately remand this matter to the district court with instructions to dissolve the TRO.

CONCLUSION

At almost every step of the process, there is some error of fact or law which, individually and in sum, lead to the inevitable conclusion that the district court abused its discretion in denying the Motion to Dissolve the TRO and by converting it into a preliminary injunction. Coyle sought a TRO against a party claiming he was entitled to some relief he never pled. Coyle never requested that the bond requirement be waived, and the district court failed in entering a TRO without requiring Coyle to post security. Throughout his pleadings, Coyle insisted that he was seeking a final injunction against Pooja Hospitality instead of a preliminary injunction, failing to realize that Pooja Hospitality had no obligation to him. Coyle repeatedly cited to past information to allege that other entities were in "active" participation with Dhanlaxmi to prevent Dhanlaxmi paying a judgment which was, as Coyle admits, already ineffective. He cannot, as a matter of fact or law, be successful on the merits of his claim against Intervenors when he never made any claims against them. The district court did not require Coyle post a bond to protect Intervenors in the event they were wrongfully enjoined, and granted the

preliminary injunction without making any finding as to whether Coyle had met his burden under the *Van Loan* test.

Intervenors should never have been enjoined from the lawful use of its proceeds. There has been no determination—and at the time the TRO and preliminary injunction were entered, there wasn't even any allegation—that anyone other than Dhanlaxmi is liable for the judgment. The procedural and factual errors in this case, based on Coyle's incorrect statements of fact and incorrect legal positions, are evident, and the district court clearly abused its discretion in not dissolving the TRO and converting it into a preliminary injunction. Accordingly, the Court should reverse the district court's Order and remand with instructions to dissolve the TRO.

Additionally, or in the alternative, given Coyle's apparent insistence that he did not pursue his application for an injunction in a timely manner, the Court should remand this matter with instructions to dissolve the TRO under Mont. Code Ann. § 27-19-318.

Respectfully submitted this 20th day of June, 2023.

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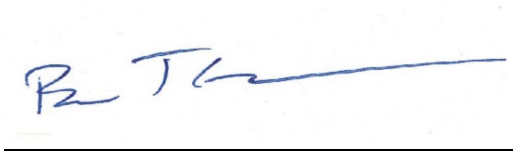
CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rules of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word is 8,555 words, excluding caption, certificate of service and certificate of compliance.



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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Cotner Law, PLLC, hereby certify that on June 20, 2023, a true and correct copy of the foregoing was filed with the Montana Supreme Court. Additionally, a copy was provided to the following through the Montana Court Filing System:

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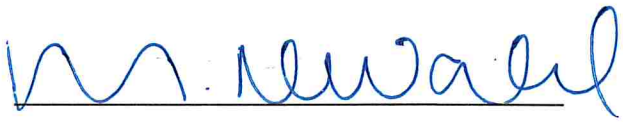

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I, Brian Geer, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 06-20-2023:

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