

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE JAMES R. ABBEY, JR. AND  
COLLEEN ABBEY TRUST DATED  
JULY 16, 1988,  
Appellant,  
vs.  
CLASSIC DEVELOPMENT, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 43377

**FILED**

**FEB 13 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a preliminary injunction in a foreclosure action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Respondent, Classic Development, LLC, gave appellant, The James Abbey Jr. and Colleen Abbey Trust, a deed of trust to secure a promissory note in the amount of \$730,000. Classic failed to make payments under the note, and Abbey instituted a foreclosure action. Classic disputed the amount due on the promissory note and sought and obtained a preliminary injunction enjoining the foreclosure action. Abbey appealed the district court's order enjoining the foreclosure sale, arguing that the district court abused its discretion because Classic failed to demonstrate a likelihood of success on the merits. We agree with Abbey that Classic failed to demonstrate a likelihood of success on the merits, and therefore, the district court abused its discretion by granting the

preliminary injunction.<sup>1</sup> The parties are familiar with the facts, and we do not recount them in this order except as is necessary for our disposition.

The district court has discretion to grant preliminary injunctions,<sup>2</sup> and generally, we will not overturn a preliminary injunction order unless it was made in abuse of that discretion.<sup>3</sup> A preliminary injunction to preserve the status quo is usually available when the plaintiff demonstrates that the defendant's conduct, "if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy."<sup>4</sup> The plaintiff must also show that it has a reasonable probability of success on the merits.<sup>5</sup>

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<sup>1</sup>Abbey also appeals the district court's award of attorney fees to Classic. Our disposition of this appeal renders this issue moot. However, we caution the district court that, in the future, any award of attorney fees and costs may constitute error unless (1) a legal basis for the award is articulated, (2) the district court conducts an analysis under Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and (3) the awarded fees is segregated from any costs also awarded.

<sup>2</sup>Nevada Escrow Service, Inc. v. Crockett, 91 Nev. 201, 202, 533 P.2d 471, 472 (1975).

<sup>3</sup>Dixon v. Thatcher, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987); Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 562, 598 P.2d 1147, 1149 (1979).

<sup>4</sup>Dixon, 103 Nev. at 415, 742 P.2d at 1029; see also NRS 33.010; NRCP 65(b); Danberg Holdings v. Douglas Co., 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

<sup>5</sup>Dixon, 103 Nev. at 415, 742 P.2d at 1029.

Although Classic demonstrated that it will suffer irreparable harm because real property rights are involved,<sup>6</sup> Classic did not demonstrate that it had a reasonable probability of success on the merits. It stated numerous times during the preliminary injunction hearing that the underlying issue involved whether Abbey was “entitled to the difference between the \$380,000 which was the principal amount that was paid, or that was lent, and the difference between that and the \$730,000 [promissory note].”<sup>7</sup> However, Classic presented no evidence to demonstrate that this issue would be resolved in its favor. Also, Classic’s motion did not provide any specifics regarding the nature of the dispute over the note, other than to state that it disputed the amount due on the note. Thus, because the district court failed to consider whether Classic had a likelihood of success on the merits of the foreclosure action, we

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<sup>6</sup>It is well settled that real property is considered unique, and the loss of real property rights is generally considered to result in irreparable harm for which compensation damages are inadequate. Dixon, 103 Nev. at 416, 742 P.2d at 1030; Nevada Escrow Service, 91 Nev. at 203, 533 P.2d at 472.

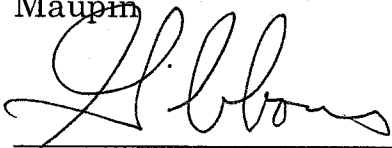
<sup>7</sup>Although Classic described the underlying issue numerous times during the preliminary injunction hearing, the district court would not permit discussion regarding the dispute over the note. In fact, the district court stated that it would not address the dispute over the note, because that issue was “getting to the very merits” of the case. In a preliminary injunction hearing, “getting to the very merits” of the case is required under Dixon. This statement by the district court evidences that it abused its discretion by failing to consider whether Classic had a likelihood of success on the merits.

conclude that it abused its discretion by granting the motion for preliminary injunction.<sup>8</sup>

Accordingly, we

ORDER the judgment of the district court REVERSED.

 J.  
Maupin

 J.  
Gibbons

 J.  
Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge  
William L. McGimsey  
Classic Development, LLC  
Clark County Clerk

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<sup>8</sup>Even if the district court had properly granted the injunction, it nevertheless abused its discretion by failing to meet the requirements of NRCP 65(c), because it required only \$100 as security. Under NRCP 65(c), a security bond is required to compensate a party for those costs and damages it might suffer if it is wrongfully enjoined or restrained. Damages, including attorney fees and costs, are limited in recovery to the amount of the security bond. Tracy v. Capozzi, 98 Nev. 120, 125, 642 P.2d 591, 594-95 (1982). Abbey sought an increase in the bond, to which the district court responded that it felt the amount was appropriate. Although it is unclear from the record the extent of the damages Abbey would suffer if wrongfully enjoined, \$100 seems an inappropriate amount of money with which to secure damages recoverable from a wrongful preliminary injunction.