

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL B. STEWART,
INDIVIDUALLY AND AS TRUSTEE OF
THE MICHAEL B. STEWART TRUST;
EMPIRE GROUP, LLC; EMPIRE
FOODS, LLC; EMPIRE FARMS, LLC;
EMPIRE ENERGY, LLC; ORIENT
FARMS, LLC; SUNDANCE FARMS,
LLC; AND GNV ENTERPRISES, LLC,
Appellants,

vs.

INTERMOUNTAIN FEDERAL LAND
BANK ASSOCIATION, FLCA.,
Respondent.

No. 45749

FILED

NOV 29 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a preliminary injunction in a deficiency action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Empire Foods operated a garlic and onion dehydration facility in Empire, Nevada. Respondent Intermountain Federal Land Bank Association loaned Empire \$13,800,000, which was secured with a deed of trust and a security agreement in Empire's grower contracts. Empire subsequently declared bankruptcy, and Intermountain foreclosed on Empire's dehydration plant and real and personal property. Following foreclosure, Intermountain contended that there was a deficit of \$6,300,000 and filed a deficiency action against Empire.

Intermountain later sought a preliminary injunction against Empire to protect Intermountain's purported interest in Empire's oral grower contract with appellant Orient Farms. The district court concluded that Intermountain would suffer irreparable harm if the

injunction did not issue and that Intermountain had a reasonable likelihood of success on the merits of the issue of whether it had a security interest in the garlic crop. Therefore, the district court issued the injunction, requiring Orient to sell the dehydrated garlic and to place the proceeds from the sale with the receiver pending resolution of the suit. Empire appealed.

We will not overturn the district court's grant of a preliminary injunction unless the district court abused its discretion.¹ When the district court's findings are supported by substantial evidence, there is no abuse of discretion, and its findings will be upheld.²

A preliminary injunction is 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."³ An injunction is proper, and the required showing of hardship lessened, when an injunction is sought to preserve a fund in controversy until the parties' rights can be determined on the merits in a

¹Dixon 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).

²Nelson v. Peckham Plaza Partnerships, 110 Nev. 23, 25, 866 P.2d 1138, 1138 (1994).

³Dixon, 103 Nev. at 415, 742 P.2d at 1029.

final hearing.⁴ The plaintiff must also show that it has a reasonable probability of success on the merits.⁵

We conclude that the district court did not abuse its discretion by granting the preliminary injunction. The district court correctly concluded that Intermountain would suffer irreparable harm if the injunction did not issue. Without the injunction, the proceeds from the sale of the garlic crop could be disbursed prior to resolution of the merits of the instant action, which would leave Intermountain with no recovery should Intermountain succeed on its deficiency action.

The district court also correctly concluded that Intermountain has a reasonable likelihood of success on the merits because Intermountain and Empire's security agreement covers all grower contracts Empire enters into. Because of Empire's federal court representations, we conclude that substantial evidence supported the district court's finding that Empire did not abandon its grower contract with Orient.⁶


⁴Rhodes Co. v. Belleville Co., 32 Nev. 230, 238, 106 P. 561, 561 (1910).

⁵Dixon, 103 Nev. at 415, 742 P.2d at 1029.

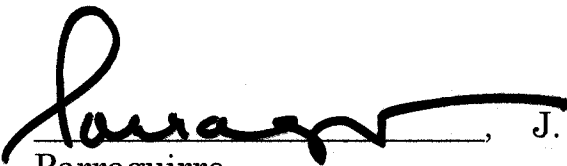
⁶We have carefully considered appellants' other arguments and conclude that they are without merit.

Accordingly, we conclude that the preliminary injunction to preserve the proceeds from the sale of the garlic crop pending resolution on the merits was properly issued, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Robert Eisenberg, Settlement Judge
Robison Belaustegui Sharp & Low
Epstein, Englert, Staley & Coffey
McDonald Carano Wilson LLP/Reno
Washoe District Court Clerk