

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Tuesday the 9th day of June, 2015.*

Commonwealth of Virginia, ex rel.

Ellen Bowyer, in her official capacity

as County Attorney for the County of Amherst,

Petitioner,

against

Record No. 150619

Circuit Court No. CL15009373-00

Sweet Briar Institute, et al.,

Respondents.

From the Circuit Court of Amherst County
Upon a Petition for Review

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the circuit court erred to the extent it exercised its discretion while using an erroneous legal conclusion.

I. FACTS AND PROCEEDINGS

In March of 2015, Sweet Briar Institute, the charitable corporation that operates Sweet Briar College, announced that substantial financial problems required closing the College. This announcement occasioned multiple lawsuits, but the current matter involves only the suit filed on behalf of the Commonwealth by Ellen Bowyer, the County Attorney for the County of Amherst, Virginia.¹ As it is the Commonwealth's interests that are being asserted as the party to the suit, we refer to the Commonwealth rather than Bowyer as the plaintiff-petitioner. The defendants-respondents to the

¹ The parties briefed and argued the issue of the County Attorney's statutory authority to assert the Commonwealth's interests in this matter. We do not presently rule upon that issue.

Commonwealth's suit and appeal are Sweet Briar Institute, the Chairman of the College's Board of Directors Paul G. Rice, and the College's Interim President James F. Jones, Jr. For the sake of simplicity, we refer to these defendants-respondents collectively as "Sweet Briar Institute."

The proceedings in this case, and indeed in all of the cases filed in response to the announcement of the College's closing, are ongoing. The parties are engaged in widely publicized, closed-door negotiations. The legal issues are still evolving, and the factual record underpinning the parties' allegations and defenses has yet to be fully developed. In short, the controversy of the College's scheduled closing is far from over, and all agree that the ultimate merits of the controversy are not, at least for today, squarely before this Court.

Instead, what is before this Court is a preliminary matter: a temporary injunction. In the proceedings below, the Commonwealth filed a motion for a temporary injunction to restrain Sweet Briar Institute from engaging in certain actions that would facilitate the closure of the College while the Commonwealth pursued its lawsuit. After considering the parties' arguments and briefs, the circuit court granted in part and denied in part the motion for a temporary injunction. The Commonwealth timely appealed this action to a Justice of this Court under Code § 8.01-626. That Justice referred the matter to a three-Justice panel, as is this Court's custom and practice. Thereafter, the panel referred the case to the full Court.

II. DISCUSSION

A temporary injunction allows a court to preserve the status quo between the parties while litigation is ongoing. Iron City Sav. Bank v. Isaacsen, 158 Va. 609, 625, 164 S.E. 520, 525 (1932); Claytor v. Anthony, 56 Va. (15 Gratt.) 518, 527 (1860) (monographic note) ("[T]he proper purpose of [a temporary] injunction [is] to preserve the present status until a full hearing on the merits shall be had."). Granting or denying a temporary injunction is a discretionary act arising from a court's equitable powers. See Manchester Cotton Mills v. Town of Manchester, 66 Va. (25 Gratt.) 825, 827 (1875).

It appears from the record that the circuit court's action regarding the temporary injunction was predicated, at least in part, upon the legal conclusion that the law of trusts cannot apply to a corporation. This legal conclusion was erroneous. The law of trusts can apply to a corporation. Jimenez v. Corr, 288 Va. 395, 411, 764 S.E.2d 115, 122 (2014) ("When . . . a trust exists, it is not a separate legal entity being referred to, but a fiduciary relationship between already existing parties, be they real persons or other legal entities."); Restatement (Second) of Trusts § 96(1) (1959) ("The extent of the capacity of a corporation to take and hold property in trust is the same as that of a natural person except as limited by law."); Restatement (Third) of Trusts § 33(1) (2003) ("A corporation has capacity to take and hold property in trust except as limited by law, and to administer trust property and act as trustee to the extent of the powers conferred upon it by law."); see also, e.g., Code § 64.2-706(C) (establishing rules governing the principal place of administration for certain

"corporate trustee[s]"). The charitable, non-profit, or non-stock status of a corporation does not alter this legal principle. See Dodge v. Trustees of Randolph-Macon Woman's College, 276 Va. 10, 17, 661 S.E.2d 805, 809 (2008) (holding that Randolph-Macon Woman's College was not subject to the Uniform Trust Code because the College was not a trustee of a trust to which the Uniform Trust Code applies, and not simply because the College is a non-stock charitable corporation).

Accordingly, the circuit court erred to the extent it exercised its discretion in acting upon the motion for a temporary injunction based upon this erroneous legal conclusion. Lawlor v. Commonwealth, 285 Va. 187, 213, 738 S.E.2d 847, 861 (2013). It is important to emphasize, however, that our holding today does not rule upon the legal status of any particular party to this litigation.

On appeal from a lower court's action regarding a temporary injunction, this Court has the authority to substantively act upon a party's motion for a temporary injunction initially filed with a lower court. See Nichols v. Central Va. Power Co., 143 Va. 405, 410-12, 130 S.E. 764, 765-66 (1925). But in this case the circuit court is best positioned to ascertain in the first instance, without being guided by an erroneous legal conclusion, the appropriate disposition of the Commonwealth's motion for a temporary injunction.

It is important to observe that a temporary injunction requires consideration of the requesting party's allegations and the veracity and magnitude of the asserted harm. See Deeds v. Gilmer, 162 Va. 157, 269-70, 174 S.E. 37, 81-82 (1934) (appropriate to consider the substance of, and adequacy of factual support for, the plaintiff's allegations when ruling upon a request for issuance of a temporary

injunction); Wood v. City of Richmond, 148 Va. 400, 408, 138 S.E. 560, 563 (1927) (appropriate to consider assertions made by way of affidavits when ruling upon a temporary injunction application). No single test is to be mechanically applied, and no single factor can be considered alone as dispositive. Instead, a court must consider the totality of the circumstances and decide whether equity counsels for the temporary preservation of the status quo. Code § 8.01-628 ("No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity."). Cf. Preferred Sys. Solutions, Inc. v. GP Consulting, LLC, 284 Va. 382, 401, 732 S.E.2d 676, 686 (2012) ("The granting of [a permanent] injunction is an extraordinary remedy and rests on sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case." (internal quotation marks, citation, and alteration omitted)).

III. CONCLUSION

With these principles in mind, we remand this case to the circuit court for further proceedings.² The circuit court's April 28, 2015 order granting in part and denying in part the motion for a temporary injunction is extended until June 24, 2015 for further consideration by the circuit court in light of this order.

² Given our holding on the potential applicability of trust principles, we do not reach the Commonwealth's assignment of error 2 regarding whether the Charitable Solicitations Act, Code § 57-48 et seq., provided the circuit court authority to temporarily enjoin the closing of the College.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamisto

Clerk