

BOSNA I HERCEGOVINA
FEDERACIJA BOSNE I HERCEGOVINE
ZENIČKO-DOBOJSKI KANTON
OPĆINSKI SUD U VISOKOM
Broj: 41 0 P 048176 14 P
Visoko, 12.12.2014.. godine

Općinski sud u Visokom, sudija Igbala Mustafić, u pravnoj stvari predлагаča-tužitelja Općine Visoko zastupane po Općinskom pravobranilaštvu Visoko protiv protivnika- tuženog 1) Đorda Bajića sina Milana iz Maurovića,trenutno nastanjen u USA ,124 Frost Street,Portland,Maine 04102,radi sticanja bez osnova,VSP 39.510,78 KM , donio je dana 12.12.2014. godine

R J E Š ENJE

Određuje se privremena mjera osiguranja kojom se zabranjuje protivniku osiguranja da otudi,optereti ili raspolaže nakretninama označenim kao k.č.br.1150,k.č.1155/1 ,k.č.1151/1,k.č.1156 upisane u z.k.ul.br.49 K.O.Radovlje i k.č.1099 upisana u z.k.ul.47 K.O.Radovlje u vrijednosti koja je dovoljna za osiguranje potraživanja predlagatelja oiguranja / glavnica 39.510,78 KM +kamata/

Nalaže se zk.uredu ovog suda da izvrši zabilježbu zabrane raspolaganja u zemljишnim knjigama na nekretinama označenim kao k.č.br.1150,k.č.1155/1 ,k.č.1151/1,k.č.1156 upisane u z.k.ul.br.49 K.O.Radovlje i k.č.1099 upisana u z.k.ul.47 K.O.Radovlje

Privremena mjera osiguranja ostaje na snazi do naredne odluke suda o mjeri osiguranja.

O b r a z l o ž e n j e

Tužitelj je podnio tužbu protiv tuženog i prijedlog za određivanje privremene mjere osiguranja.

U tužbi je navedeno da je Općinski suda u Visokom presudom broj 41 0 P 005615 11 P 2 od 10.11.2011.godine i tužena Općina Visoko je istom obavezana da tužitelju isplati štetu u iznosu od 123.272,50 KM sa zakonskom zateznom kamatom počev od dana podnošenja tužbe.

Kantonalni sud u Zenici je donio presudu dana 12.02.2012.godine.

Po navedenim presudama pokrenut je izvršni postupak pod brojem 41 0 I 036475 12 I ,41 0 I 036473 i 41 0 I 036139 12 I i tužitelj je namiren za iznos od 39.510,78 KM

Međutim prvostepena i drugostepena presuda su po Reviziji preinačene tako što se tužbeni zahtjev u sjelosti odbija.

Imajući u vidu da je tužitelj neosnovano naplatio iznos od 39.510,78 KM to tužitelj i podnosi tužbu.

U prijedlogu za određivanje privremene mjere izneseno je sve što je naprijed izloženo pa je tužitelj shodno čl. 269.st.1,čl.271 st.1 i čl.276 ZPP-a i podnio ovaj

Odlučujući o prijedlogu za određivanje privremene mjere osiguranja doneseno je rješenje kao u dispozitivu iz slijedećih razloga:

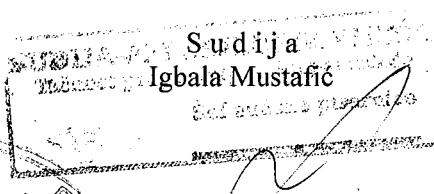
Odredbom člana 269. stav 1. tačka 1. Zakona o parničnom postupku propisano je da se mjera osiguranja može odrediti ako predlagatelj osiguranja učini vjerovatnim postojanje potraživanja ili prava, a stavom 2. određeno je da se mjera osiguranja može odrediti ako postoji opasnost da bi bez takve mjere protivnik osiguranja mogao spriječiti ili znatno otežati ostvarenje potraživanja, posebno time što će svoju imovinu otuđiti, prikriti, opteretiti ili na drugi način njom raspolagati, odnosno promjeniti postojeće stanje stvari, ili na drugi način štetno uticati na prava predлагаča osiguranja.

Članom 278. stav 1. istog Zakona o parničnom postupku određeno je da na prijedlog predлагаča osiguranja istaknut sa prijedlogom za određivanje mjere osiguranja, sud može odrediti privremenu mjeru osiguranja bez prethodnog obavještavanja i saslušanja protivnika osiguranja, ako predlagač osiguranja učini vjerovatnim da je mjeru osiguranja osnovana i hitna i da bi se drugačijim postupanjem izgubila svrha mjeru osiguranja.

U konkretnom slučaju iz dokaza priloženih uz tužbu utvrđeno je da je tužitelj, odnosno predlagač osiguranja učinio vjerovatnim postojanje svog prava ,a i opasnost da bi njegove nekretnine mogle biti otuđene.

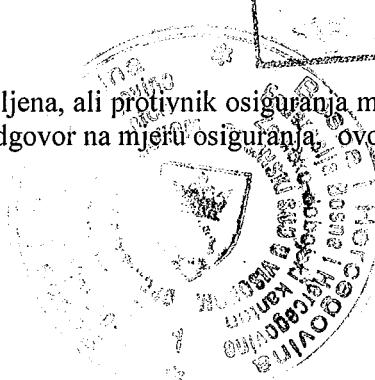
Cijeneći navode predlagača i priložene dokaze, slijedi da je predlagač učinio vjerovatnim da je predložena privremena mjeru osnovana i hitna, te da bi se drugačijim postupanjem izgubila svrha mjeru osiguranja.

Zbog toga je doneseno rješenje kao u dispozitivu.



Pravna pouka:

Protiv ovog rješenja žalba nije dozvoljena, ali protivnik osiguranja može u roku od 3 dana od dana dostavljanja rješenja dostaviti odgovor na mjeru osiguranja, ovom sudu.



BOSNIA AND HERZEGOVINA
FEDERATION OF BOSNIA AND HERZEGOVINA
ZENICA-DOBOJ CANTON
MUNICIPAL COURT IN VISOKO
Number: 41 0 P 048176 14 P
Visoko, 12 December 2014

THE MUNICIPAL COURT IN VISOKO, Judge Igbala Mustafic, in the legal matter of unjust enrichment between the applicant- plaintiff the Municipality of Visoko, represented by the Municipal Attorney of the Municipality of Visoko, versus the opponent- defendant 1) Đordo Bajić son of Milan from Maurovići, currently residing in the USA, 124 Frost Street, Portland, Maine 04102, the value of dispute being BAM 39,510.78, on the 12th day of December 2014, hereby issues the following

O R D E R

We hereby issue the temporary restraining order prohibiting the opposing party to alienate, encumber or dispose of the real property registered as cadastral plot no. 1150, cadastral plot no. 1155/1, cadastral plot no. 1151/1, cadastral plot no. 1156 entered in the Land Registry file 49 of the Cadastral Municipality of Radovlje and cadastral plot no. 1099 Land Registry file no. 47 the Cadastral Municipality of Radovlje in the amount sufficient to cover the claim of the plaintiff/applicant /the principal of BAM 39,510.78+interests/ .

The Land Registry Office of this Court is hereby ordered to register the temporary restraining order prohibiting alienation, encumbering or disposal of the real property registered as cadastral plot no. 1150, cadastral plot no. 1155/1, cadastral plot no. 1151/1, cadastral plot no. 1156 entered in the Land Registry file 49 of the Cadastral Municipality of Radovlje and cadastral plot no. 1099 Land Registry file no. 47 the Cadastral Municipality of Radovlje.

This temporary restraining order on the aforementioned property shall remain in force until the Court issues the next decision relating to this safeguard measure.

R e a s o n i n g

The plaintiff has filed a lawsuit against the defendant as well as an application for the temporary restraining order on property.

The lawsuit stipulates that the Municipal Court in Visoko made a ruling number 41 0 P 005615 11 P 2 of 10 November 2011, which ruling bound the defendant, the Municipality of Visoko, to pay to the plaintiff damages in the amount of BAM 123,272.50 together with the penalty interest calculated from the day the lawsuit was filed.

The Cantonal Court in Zenica upheld the aforementioned ruling on 12 February 2012.

In accordance with the said rulings the enforcement proceedings number 41 0 I 036475 12 I , 41 0 I 036473 and 41 0 I 036139 12 I have been carried out and the plaintiff was paid the amount of BAM 39,510.78.

However, both the first instance and the second instance rulings have been reversed upon Revision in the way that the lawsuit was dismissed in its entirety.

Having in mind that the plaintiff in the original lawsuit has been unjustly enriched by BAM 39,510.78, the plaintiff hereinabove has filed this lawsuit.

Everything aforementioned has been included in the application for the temporary restraining order on property, therefore under Article 269 (1), Article 271 (1) and Article 276 of the CPC the plaintiff has filed this

The temporary restraining order on property has been issued based on the following grounds:

Provisions of Article 269 Paragraph 1 Point 1 of the Civil Procedure Code stipulate that the restraining order on property can be issued if the applicant for the order proves the existence of interest or claim in the property, and Paragraph 2 provides that the restraining order can be issued if there is danger that without such order the opponent of the order/defendant could prevent or seriously hinder the plaintiff from realizing its claims by alienating, concealing, encumbering or disposing the real property in any other way, or by changing the current condition of the property, or that the defendant can in any other way adversely affect the rights of the applicant for the temporary restraining order.

Article 278 Paragraph 1 of the said Civil Procedure Code stipulates that upon the motion filed by the applicant together with the application for the restraining order, the Court can issue the temporary restraining order on property without prior notification and hearing of the opponent of the order if the applicant proves that the restraining order is well founded and urgent and if acted differently the whole purpose of the order would be lost.

In this concrete case it has been established based on the presented evidence that the plaintiff/applicant for the restraining order has proved the existence of its claim as well as the danger that the real property could be alienated.

Having examined the allegations of the application and the evidence presented, we concluded that the applicant has proven that the temporary restraining order on property is well founded and urgent, and that if we acted differently the whole purpose of the order would be lost.

Therefore we have issued the Order hereinabove.

Judge
Igbala Mustafic
-signature affixed-
(STAMP AFFIXED)

Note:

This Order cannot be appealed, however the opponent of the temporary restraining order on property can within three days from reception thereof file a written response to the order to this Court.

(STAMP AFFIXED)

I hereby certify to the best of my knowledge and ability that this is a true and correct translation of the original text written in the Bosnian language.

Number: VII-42/15

Visoko, 5 March 2015

Tomo Maltar, certified court interpreter/translator for English.

