

I. BACKGROUND

Martin Graf is the sole shareholder of Graf Ford, Lincoln, Mercury, Inc., a dealership in Del Rio, Texas. The dealership's agreement with Ford provides that if Graf Ford proposes to transfer the dealership, Ford shall have a right of first refusal to purchase the dealership on the same terms and conditions that the proposed buyer agreed to, "regardless of whether the proposed buyer is qualified to be a dealer." A Ford representative testified that this provision's purpose, and the purpose of similar provisions in other standard Ford-dealership agreements, is "to be able to put into business dealers who [Ford feels] are qualified whenever [Ford has] the opportunity."

In 1999, Hanan and Gil Butnaru contracted to buy the Graf dealership. They also contracted to buy the real property upon which the dealership was located. Graf and J.M. Barton owned the property. Graf told the Butnarus about Ford's right of first refusal. In addition, both agreements were conditioned upon Ford's approving Hanan Butnaru as an authorized dealer and warranted that neither agreement conflicted with any prior agreement to which Graf or Barton were parties.

In September 1999, Graf told Ford that he intended to sell the dealership to the Butnarus. The Butnarus then filed a Prospective Dealer Application with Ford, seeking approval as an authorized dealer. A month later, Ford informed Graf that it intended to exercise its right of first refusal and offered to pay the Butnarus' reasonable expenses incurred in negotiating the purchase and sale agreements. On the same day, Ford assigned its right of first refusal to an existing Ford dealer. Ford and Graf agreed that Ford would indemnify Graf against damages arising from Ford's exercising its right of first refusal and that Graf would cooperate with Ford in defending any action challenging the right.

The Butnarus sued Graf, GrafFord, and Barton, anticipating their breaching the purchase and sale agreements, and sued Ford for tortiously interfering with the agreements. They claim Ford tortiously interfered because Ford's right of first refusal violated the Texas Motor Vehicle Commission Code, which prohibits a manufacturer from denying or preventing a dealership transfer to a qualified applicant. *See* TEX.

REV. CIV. STAT. art. 4413(36), §§ 5.02(b)(8), 5.01B(c)(1), (c)(2).¹ Thus, the Butnarus sought a declaration that Ford's right of first refusal was unenforceable and a declaration of the parties' rights and obligations under the agreements. They also requested a temporary injunction to prevent Ford or its assignees from exercising its right of first refusal during the suit. Ford opposed this request and filed a plea to the jurisdiction. Ford argued that the Board has exclusive jurisdiction to determine whether a manufacturer has violated the Code's provisions. The trial court denied Ford's plea and granted the injunction.

Ford sought interlocutory review of the trial court's temporary injunction. The court of appeals held that the trial court did not have jurisdiction over the Butnarus' claims, "to the extent their claims are based on violations of the [Code]," because the Code grants the Board exclusive jurisdiction over alleged Code violations. 18 S.W.3d 762, 767. The court also held that the Code does not violate the Texas Constitution's open-courts provision, which prohibits the Legislature from unreasonably abrogating well-established common-law claims. The court explained that the Code merely confers new statutory rights on motor vehicle dealers and leaves "all others in the same position they previously occupied." 18 S.W.3d at 768. Therefore, the court concluded that "the Butnarus can sue Ford . . . for tortious interference with contract, breach of contract, and declaratory relief. They simply cannot base those causes of action on [Code] violations . . ." 18 S.W.3d at 768. The court then remanded the non-Code claims and, holding that the Butnarus did not establish that their legal remedy was inadequate, dissolved the trial court's temporary injunction. 18 S.W.3d at 769-71.

After the court of appeals issued its decision, the assignee of Ford's right of first refusal applied to the Board for a transfer of Graf's dealership license. The Butnarus filed a complaint with the Board to prevent the transfer. The administrative law judge held a pre-hearing conference on whether the Board had

¹ Unless otherwise indicated, "the Code" refers to the Texas Motor Vehicle Commission Code, and "the Board" refers to the Motor Vehicle Board. See TEX. REV. CIV. STAT. art. 4413(36).

jurisdiction to resolve this dispute and whether the Butnarus have standing to object to the transfer. The administrative law judge, based on the court of appeals' decision in this case, issued a proposal for decision recommending that the Board not exercise jurisdiction over the complaint based on the Butnarus' purported lack of standing. The record does not indicate whether the Board adopted the administrative judge's recommendation.

In the meantime, the Butnarus petitioned this Court for review. Typically, jurisdiction over an order granting or denying a temporary injunction is final in the courts of appeals. *See* TEX. GOV'T CODE § 22.225(b)(4). However, because the court of appeals' decision here conflicts with another court of appeals' decision, this Court has jurisdiction. *See* TEX. GOV'T CODE § 22.225(c). Specifically, the court of appeals' holding that the Code does not violate the Texas Constitution's open-courts provision conflicts with *David McDavid Nissan, Inc. v. Subaru, Inc.*, 10 S.W.3d 56, 68 (Tex. App.—Dallas 1999), *reversed*, ___ S.W.3d ___ (Tex. 2001). In *David McDavid Nissan, Inc.*, the court of appeals held that the Board's exclusive jurisdiction abrogates a plaintiff's common-law claims without reasonably substituting another remedy and thus contravenes the open-courts provision. 10 S.W.3d at 68. We granted the Butnarus' petition, as well as the petition in *David McDavid Nissan, Inc.*, to resolve this conflict.

In *David McDavid Nissan, Inc.*, we held that the Legislature did not grant the Board exclusive jurisdiction to resolve disputes under the Code unless the Code expressly requires the Board to decide a particular issue. ___ S.W.3d at ___. Rather, the trial court and the Board may share jurisdiction over some issues. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___. We further held that the Board has primary jurisdiction over certain issues within the Code's subject matter and, consequently, the trial court should abate its proceedings pending the Board's resolving those issues. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___. And, finally, we held that, because the Code did not abrogate McDavid's common-law claims, it did not violate our Constitution's open-courts provision. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___.

We must now decide, as we did in *David McDavid Nissan, Inc.*, whether the trial court should have deferred to the Board under the primary jurisdiction doctrine and abated its proceedings. We must also decide whether the trial court abused its discretion by issuing a temporary injunction, preventing Ford or its assignees from exercising Ford's right of first refusal.

II. PRIMARY JURISDICTION

A. STANDARD OF REVIEW

When a trial court denies or grants a motion for dismissal or abatement based on the primary jurisdiction doctrine, we review its decision de novo. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___. This standard applies because whether an agency has primary jurisdiction is a question of law. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___. Accordingly, we review the primary jurisdiction questions in this case without deference to the trial court's decision. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___; *see also Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1998) (questions reviewed de novo are reviewed without deference to the trial court's decision).

B. APPLICABLE LAW

Under the primary jurisdiction doctrine, courts consider whether the doctrine's policies justify a trial court's deference to the agency's expertise and responsibility to develop regulatory policy. *Cash Am. Int'l Inc. v. Bennett*, 35 S.W.3d 12, 18 (Tex. 2000). Two main policies underlie the primary jurisdiction doctrine: (1) an agency is typically staffed with experts trained in handling the complex problems in the agency's purview; and (2) great benefit is derived from an agency's uniformly interpreting its laws, rules, and regulations, whereas courts and juries may reach different results under similar fact situations. *Gregg v. Delhi-Taylor Oil Corp.*, 344 S.W.2d 411, 413 (Tex. 1961); *see also United States v. Western Pac. R.R. Co.*, 352 U.S. 59, 64 (1956). Accordingly, courts should defer to an agency when enforcing a claim

requires resolving issues within that agency's special competence. *Cash Am. Int'l Inc.*, 35 S.W.3d at 18. Courts should also defer to an agency when uniform ruling is essential to carry out the regulatory scheme's purposes. *Cash Am. Int'l Inc.*, 35 S.W.3d at 18; *Kavanaugh v. Underwriters Life Ins. Co.*, 231 S.W.2d 753, 755 (Tex. Civ. App.—Waco 1950, writ ref'd).

C. ANALYSIS

The Butnarus argue their claim is for common-law tortious interference and, as such, falls within the trial court's presumed jurisdiction. They contend that, because the Board does not have power to grant them relief under the Code, the Board's jurisdiction should not affect their claims' proceeding in district court.

The court of appeals rejected this argument. It concluded that, because alleged Code violations fall within the Board's exclusive jurisdiction, the trial court cannot decide claims based on Code violations. Despite recognizing that the Board does not have authority to give the Butnarus, as prospective dealers, any relief, the court concluded that "[w]hen a cause of action and the remedy for its enforcement are derived not from the common law but from a statute, the statutory remedy is mandatory and exclusive." 18 S.W.3d at 767. Thus, the court held that if the Butnarus sought common-law relief in district court, they could not base their claims on Code violations. 18 S.W.3d at 767. The court reached this holding on what it perceived as the Legislature's intent:

It is more logical to conclude that the legislature's failure to provide a remedy to prospective dealers means that the [Code] was not intended to protect or to confer any rights upon prospective dealers. The fact that the legislature provided remedies for existing dealers indicates that its goal was to confer a benefit or protection on dealers. The legislature apparently made a public policy decision that motor vehicle dealers, unlike other franchisees, are entitled to significant control in determining who their successors will be.

18 S.W.3d at 767.

This holding is premised upon the court of appeals' concluding that the Board has exclusive jurisdiction over alleged Code violations. However, in *David McDavid Nissan, Inc.*, we decided this is

not so. Unless the Code expressly requires the Board to decide a particular issue, the Board does not have exclusive jurisdiction. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___. The Board may, however, have primary jurisdiction over certain issues within the Code’s subject matter. *David McDavid Nissan, Inc.*, ___ S.W.3d at ___; *see also Cash Am. Int’l Inc.*, 35 S.W.3d at 18; *Kavanaugh*, 231 S.W.2d at 755. Here, we conclude that the Board does have primary jurisdiction over certain issues related to the Code.

In enacting the Code, the Legislature made certain conduct of automobile manufacturers unlawful, including a manufacturer’s failing “to give effect to or attempt to prevent any sale or transfer” of a dealership “except as provided by Section 5.01B.” TEX. REV. CIV. STAT. art. 4413(36), § 5.02(b)(8); *see generally* TEX. REV. CIV. STAT. art. 4413(36), § 5.02(b) (listing twenty-seven unlawful acts and omissions). Section 5.01B sets out the procedure and standards for dealership sales and transfers. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B. Under that section, a dealer applies to a manufacturer in writing to transfer a dealership. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(a). Within sixty days, the manufacturer must determine whether the prospective transferee is qualified or provide written notice that the transferee is not acceptable. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(b). If the manufacturer rejects an application, it must include a statement explaining the material reasons why. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(b). The manufacturer cannot unreasonably reject a prospective transferee who is moral and who otherwise meets the manufacturer’s predetermined, written standards, if any, about a transferee’s business experience and financial qualifications. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(c).

A licensed dealer, in this case Graf Ford, has a statutory remedy under the Code if the manufacturer unreasonably denies its transfer application. The dealer may file a protest with the Board. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(d). The issue would be whether the prospective transferee is qualified. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(e). The burden is on the manufacturer to prove the prospective transferee’s inadequacy. TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(d).

However, a dealer under the Code includes licensed dealers—not prospective transferees. *See* TEX. REV. CIV. STAT. art. 4413(36), § 1.03(7). Thus we agree with the court of appeals that a prospective transferee simply has no statutory mechanism to protest a manufacturer’s denial of a transfer under section 5.01B when that transferee believes the manufacturer wrongfully rejected the transfer.

But the Butnarus are not necessarily protesting Ford’s rejecting them as prospective transferees. Rather, they argue that rights of first refusals contravene the Code’s provisions and, accordingly, are void and unenforceable. *See* TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(c) (prohibiting a manufacturer from unreasonably denying a dealership transfer); TEX. REV. CIV. STAT. art. 4413(36), § 1.04 (making an agreement to waive the terms of the Code void and unenforceable). Section 5.01B may not be the only statutory mechanism by which the Butnarus could seek agency review of Ford’s actions. The Butnarus may also be able to bring an enforcement action under section 3.05. “Whenever the Board has reason to believe, *through receipt of a complaint* or otherwise, that a [Code] violation . . . has occurred or is likely to occur, the Board shall conduct an investigation[,]” and if the investigation reveals a Code violation, the Board “shall institute proceedings as it deems appropriate to enforce [the Code].” TEX. REV. CIV. STAT. art. 4413(36), § 3.05(a) (emphasis added). Accordingly, even if the Board does not think the Butnarus, as prospective transferees, have the ability to protest a transfer and a denial of a transfer under other Code provisions, the Butnarus may benefit from filing an enforcement action. Indeed, a fundamental issue underlying the Butnarus’ tortious-interference claim is whether a contractual right of first refusal violates the Code’s mandate that a prospective dealer not be rejected absent specific reasons. Because the Board’s expertise and experience interpreting and applying the Code would provide needed guidance to the courts, we conclude that the Board should be given the opportunity to decide this fundamental question. *See David McDavid Nissan, Inc.*, ___ S.W.3d at ___; *Cash Am. Int’l Inc.*, 35 S.W.3d at 18; *Kavanaugh*, 231 S.W.2d at 755.

Thus, we conclude that the Board has primary jurisdiction to determine whether a right of first refusal violates the Code. The trial court should abate its proceedings until the Board has the opportunity to decide this issue. *See David McDavid Nissan, Inc.*, ___ S.W.3d at ___.

III. TORTIOUS-INTERFERENCE CLAIM

The court of appeals concluded that the Butnarus could maintain their common-law claims, but, because the Board exclusively determines Code violations, the court refused to allow the Butnarus to “base those causes of action on [Code] violations.” 18 S.W.3d at 768. We disagree. The trial court should abate this case to give the Board the opportunity to initially consider the right of first refusal issue. The trial court may, thereafter, consider the case, including the Code violation issue, giving appropriate regard to the Board’s determination, whatever it may be.

The Butnarus allege that Ford, by attempting to exercise its right of first refusal, tortiously interfered with their agreements with Graf, Graf Ford, and Barton to purchase the dealership and the underlying property. They argue that this interference was unjustified because, although a contractual right of first refusal typically justifies an interference, the Code voids this contractual provision by prohibiting a manufacturer from unreasonably denying a dealership transfer. *See* TEX. REV. CIV. STAT. art. 4413(36), § 5.01B(c). According to the Butnarus, Ford’s right of first refusal allows Ford to reject a transferee for any reason and is thus inconsistent with the Code’s mandate that any denial of a dealership transfer must be reasonable. And, the Butnarus point out, the Code expressly provides that “[a]n agreement to waive the terms of [the Code] is void and unenforceable.” TEX. REV. CIV. STAT. art. 4413(36), § 1.04.

To succeed on their tortious-interference claim, the Butnarus must show: (1) a contract exists between Graf Ford and the Butnarus and between Barton and the Butnarus; (2) Ford willfully and intentionally interfered with those contracts; (3) the interference proximately caused the Butnarus damage; and (4) the Butnarus suffered actual damage or loss. *See Texas Beef Cattle Co. v. Green*, 921 S.W.2d

203, 210 (Tex. 1996); *Holloway v. Skinner*, 898 S.W.2d 793, 795-96 (Tex. 1995). Ford may defeat liability by showing, as an affirmative defense, that its conduct was privileged or justified. See *ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426, 431 (Tex. 1997); *Texas Beef Cattle Co.*, 921 S.W.2d at 210.

The privilege or justification defense is based on either the interferer's exercising (1) its own legal rights, or (2) a good-faith claim to a colorable legal right, even though that claim ultimately proves to be mistaken. *Prudential Ins. Co. of Am. v. Financial Review Servs., Inc.*, 29 S.W.3d 74, 80 (Tex. 2000); *Texas Beef Cattle Co.*, 921 S.W.2d at 211. Privilege or justification can be proved by showing that the interference was done "in a bona fide exercise of [the interferer's] own rights" or that the interferer "has an equal or superior right in the subject matter to that of the other party." *Murray v. Crest Constr., Inc.*, 900 S.W.2d 342, 344 (Tex. 1995).

Generally, justification is established as a matter of law when the acts the plaintiff complains of as tortious are merely the defendant's exercise of its own contractual rights. *Prudential Ins. Co.*, 29 S.W.3d at 81; *ACS Investors, Inc.*, 943 S.W.2d at 431. However, a party may not exercise an otherwise legitimate right by resort to illegal or tortious means. *Prudential Ins. Co.*, 29 S.W.3d at 81. As we noted in *Prudential Insurance Co.*:

Methods tortious in themselves are of course unjustified and liability is appropriately imposed where the plaintiff's contract rights are invaded by violence threats and intimidation, defamation, misrepresentation, unfair competition, bribery and the like.

29 S.W.3d at 81 (quoting KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 129, at 992 (5th ed. 1984)). Thus, when a party's justification defense is based on alleged rights under an illegal contract, the party's interfering actions are not justified. See RESTATEMENT (SECOND) OF TORTS § 767 cmt. c ("Conduct specifically in violation of statutory provisions or contrary to established public policy may for that reason make an interference improper."); see also *Mobile Mech. Contractors Ass'n v. Carlough*, 456 F. Supp. 310, 330 (S.D. Ala. 1978) ("The violation of a federal statute . . . cannot constitute

‘justification’ as a defense to the tort of interference with another’s business.”), *aff’d in part and reversed on other grounds*, 664 F.2d 481 (5th Cir. 1981); *Kurker v. Hill*, 689 N.E.2d 833, 838 (Mass. App. Ct. 1998) (“For purposes of [tortious-interference claims], ‘improper means’ may consist of a violation of a statute or common law precept.”); *Ettenson v. Burke*, 17 P.3d 440, 449 (N.M. Ct. App. 2000) (noting that “the violation of the statute may have value as evidence of [the interferer’s] improper motive” in a tortious-interference claim).

Here, the court of appeals mischaracterizes the Butnarus’ pleadings. They are not claiming Code violations to obtain remedies otherwise not available to them under the Code. They are not even protesting Ford’s rejecting their application. Rather, they are relying on Ford’s exercising its right of first refusal, which allegedly violates the Code, to establish Ford’s lack of justification. The district court is the proper forum to bring this common-law, tortious-interference claim. And, the Butnarus may base their claim on Ford’s conduct allegedly violating the Code.

IV. TEMPORARY INJUNCTION

A. APPLICABLE LAW

A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993); *Electronic Data Sys. Corp. v. Powell*, 508 S.W.2d 137, 139 (Tex. Civ. App.—Dallas 1974, no writ). A temporary injunction is an extraordinary remedy and does not issue as a matter of right. *Walling*, 863 S.W.2d at 57. To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and

irreparable injury in the interim. *Walling*, 863 S.W.2d at 57; *Sun Oil Co. v. Whitaker*, 424 S.W.2d 216, 218 (Tex. 1968); *Fasken v. Darby*, 901 S.W.2d 591, 592 (Tex. App.—El Paso 1995, no writ); *Henderson v. KRTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.—Houston [1st Dist.] 1992, no writ). An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Canteen Corp. v. Republic of Tex. Props., Inc.*, 773 S.W.2d 398, 401 (Tex. App.—Dallas 1989, no writ); *Minexa Ariz., Inc. v. Staubach*, 667 S.W.2d 563, 567 (Tex. App.—Dallas 1984, no writ).

Whether to grant or deny a temporary injunction is within the trial court's sound discretion. *Walling*, 863 S.W.2d at 58; *State v. Walker*, 679 S.W.2d 484, 485 (Tex. 1984). A reviewing court should reverse an order granting injunctive relief only if the trial court abused that discretion. *Walling*, 863 S.W.2d at 58. The appellate court must not substitute its judgment for that of the trial court and determine that the trial court abused its discretion by granting injunctive relief unless the trial court's action was so arbitrary that it exceeded the bounds of reasonable discretion. *Davis v. Huey*, 571 S.W.2d 859, 861-62 (Tex. 1978); *Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 551 (Tex. App.—Dallas 1993, no writ). Moreover, the appellate court should draw all legitimate inferences from the evidence in a manner most favorable to the trial court's judgment. *Rugen*, 864 S.W.2d at 551.

B. ANALYSIS

The trial court temporarily enjoined Ford or its assignees from exercising its right of first refusal during the suit. The court of appeals dissolved the temporary injunction, agreeing with Ford's contention

that the Butnarus did not establish an inadequate legal remedy. 18 S.W.3d at 769. In so concluding, the court of appeals noted that generally a court will not enforce contracts by injunction because a suit for damages is deemed to be an adequate remedy. 18 S.W.3d at 769.

The Butnarus respond twofold. First, they argue that they were not required to show an inadequate legal remedy because an alleged statutory violation relieves a movant of that burden. *See Furr v. Hall*, 553 S.W.2d 666, 672 (Tex. Civ. App.—Amarillo 1977, writ ref'd n.r.e.). They assert that courts have a duty to enjoin statutory violations. *See Priest v. Texas Animal Health Comm'n*, 780 S.W.2d 874, 876 (Tex. App.—Dallas 1989, no writ). Second, the Butnarus argue that they have otherwise established the temporary-injunction elements. They contend they have shown a probable right to recovery and an inadequate legal remedy. On the second element, they argue that Ford's exercising its right of first refusal would deprive them of the opportunity to purchase two unique assets: real property and the dealership located on the property. *See, e.g., Home Sav. v. Van Cleave Dev. Co.*, 737 S.W.2d 58, 59 (Tex. App.—San Antonio 1987, no writ) (noting that “each and every piece of real estate is unique” and that “is certainly an element to be considered in deciding whether there [will be] irreparable damages”); *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197, 1205 (2d Cir. 1970) (noting “the [plaintiffs] want to sell automobiles, not to live on the income from a damages award”).

1. Statutory Violation

The Butnarus' reliance on *Furr* is misplaced. *Furr* does not generally propose that an alleged statutory violation relieves the plaintiff's burden to show an inadequate legal remedy. Rather, the *Furr* court applied a specific statute giving the party the right to an injunction and concluded that a party relying

on a statutory right to an injunction need not prove an inadequate legal remedy. *Furr*, 553 S.W.2d at 672.

In so holding, the court relied on *Republic Insurance Co. v. O'Donnell Motor Co.*, which explains:

The general rule at equity is that before injunctive relief can be obtained, it must appear that there does not exist an adequate remedy at law. This limitation, however, has no application where the right to relief is predicated on a statutory ground other than on the general principles of equity.

289 S.W. 1064, 1066 (Tex. Civ. App.—Dallas 1926, no writ).

Because, in attempting to enjoin Ford's conduct, the Butnarus rely not on a statutory right but on general equitable principles, *Furr* does not apply. Accordingly, the Butnarus were not relieved of their burden to establish, in addition to the other temporary-injunction elements, an inadequate legal remedy.

2. Temporary-Injunction Elements

In the trial court, the Butnarus alleged that Ford's exercising its right of first refusal would tortiously interfere with the Butnarus' contract to purchase the real property and the contract to purchase the dealership. They further contended that their right to purchase the real property and dealership would be lost if Ford exercised its right of first refusal, and, therefore, injunctive relief was necessary to preserve the status quo.

At the temporary injunction hearing, the Butnarus presented the following evidence: (1) their agreement with Graf and Barton to purchase the real property, (2) their agreement with Graf and Graf Ford to purchase the dealership, (3) Graf Ford's agreement with Ford containing the right of first refusal that allegedly violates the Code, (4) the Code provisions that allegedly prohibit Ford's right of first refusal provision, and (5) the Butnarus' dealership application to Ford detailing their business experience and

financial qualifications. Additionally, Hanan Butnaru testified about his agreements with Graf, Graf Ford, and Barton to purchase dealership and the real property in Del Rio. He stated that in planning to establish a dealership, he was only looking within a 100-mile radius of San Antonio, which includes Del Rio. He also explained, and the agreements entered in evidence showed, that the Butnarus agreed to pay \$1.2 million for the real property and only \$500,000 for the dealership.

Based on the Butnarus' allegations and this evidence, the trial court granted the temporary injunction. The trial court stated in the order that the Butnarus would be irreparably harmed if Ford exercises its right of first refusal "in that the issues and rights sought to be adjudicated will become moot and [the Butnarus] will have lost the opportunity to purchase the Dealership and the Real Property."

The court of appeals, however, dissolved the temporary injunction after concluding that the Butnarus did not establish an inadequate legal remedy:

The Butnarus are not interested in the real property for its own resources or aesthetics. Their interest in the property results solely from the fact that the dealership is located on it. Thus, their true complaint relates to their inability to purchase the dealership. The uniqueness of the real property is therefore irrelevant to the adequacy of their legal remedy.

18 S.W.3d at 769. The court of appeals' holding is predicated upon its assumptions that the real property is neither unique nor pertinent to this dispute and that the Butnarus are only interested in purchasing the dealership.

We agree with the court of appeals that, generally, a court will not enforce contractual rights by injunction, because a party can rarely establish an irreparable injury and an inadequate legal remedy when damages for breach of contract are available. *Canteen Corp.*, 773 S.W.2d at 401; *Chevron U.S.A., Inc.*

v. Stoker, 666 S.W.2d 379, 382 (Tex. App.—Eastland 1984, writ dismiss'd). But under an abuse of discretion standard, the court of appeals cannot overrule the trial court's decision unless the trial court acted unreasonably or in an arbitrary manner, without reference to guiding rules or principles. *Beaumont Bank v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *Davis*, 571 S.W.2d at 861-62. Moreover, the court of appeals cannot substitute its judgment for the trial court's reasonable judgment even if it would have reached a contrary conclusion. *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992); *Beaumont Bank*, 806 S.W.2d at 226. The trial court does not abuse its discretion if some evidence reasonably supports the trial court's decision. *Davis*, 571 S.W.2d at 862.

The evidence shows this is a case involving two contracts: a contract to purchase land and a contract to purchase a business. There is some evidence that the Butnarus desired valuable land located at this specific Del Rio location. Thus, the evidence before the trial court supports its conclusion that this dispute is about the right to purchase real property worth at least \$1.2 million and not just the dealership itself. *See Home Sav.*, 737 S.W.2d at 59 (upholding temporary injunction in dispute involving land worth \$1.5 million). And a trial court may grant equitable relief when a dispute involves real property. *See Bennett v. Copeland*, 235 S.W.2d 605, 609 (Tex. 1951); *E. I. DuPont de Nemours & Co. v. Zale Corp.*, 462 S.W.2d 355, 359-60 (Tex. Civ. App.—Dallas 1970, writ refused n.r.e.); *Burnett v. Mitchell*, 158 S.W. 800, 801-02 (Tex. Civ. App.—Fort Worth 1913, writ refused). Thus, the trial court's conclusion that the Butnarus do not have an adequate legal remedy was not arbitrary and unreasonable and was not made without reference to guiding rules and principles. And, because the trial court's determination was

not an abuse of discretion, the court of appeals should not have substituted its judgment for that of the trial court. *Beaumont Bank*, 806 S.W.2d at 226.

Ford contends that the court of appeals could have also determined that the Butnarus did not establish a probable right to recovery. We disagree. The trial court could reasonably conclude, based on the Butnarus' allegations and the evidence previously discussed, that the Butnarus had a probable right to recovery. *See Sun Oil Co.*, 424 S.W.2d at 218 (stating that the temporary injunction applicant is not required to establish that it will prevail on final trial and need only plead a cause of action and show a probable right to the relief sought). Because this conclusion was not "so arbitrary as to exceed the bounds of reasonable discretion," *CRC-Evans Pipeline Int'l, Inc. v. Myers*, 927 S.W.2d 259, 262 (Tex. App.—Houston [1st Dist.] 1996, no writ), the trial court did not abuse its discretion in finding a probable right to recovery.

Accordingly, we conclude that there is evidence to support the trial court's decision to issue the temporary injunction. *See Davis*, 571 S.W.2d at 862. Thus, the trial court did not abuse its discretion, and we reverse the court of appeals' order dissolving the temporary injunction.

IV. CONCLUSION

A fundamental issue underlying the Butnarus tortious-interference claim falls within the Board's primary jurisdiction. Accordingly, the trial court should abate its proceedings until the Board has an opportunity to decide that issue. The trial court may, thereafter, consider the case, including the right of first refusal claim, giving appropriate consideration to the Board's determination, whatever it may be.

Furthermore, the trial court did not abuse its discretion in issuing a temporary injunction prohibiting Ford or its assignees from exercising its right of first refusal. Accordingly, we reverse the court of appeals' judgment and its order dissolving the temporary injunction, and we remand the cause to the trial court for further proceedings.

James A. Baker, Justice

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