MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Saxony Town Homes, L.P., an Indiana limited partnership and Golden Manor, L.P., an Indiana limited partnership,

Appellants-Defendants,

v.

Herman & Kittle Properties, Inc.,

Appellee-Plaintiff.

October 5, 2021

Court of Appeals Case No. 21A-PL-281

Appeal from the Lake Superior Court

The Honorable John M. Sedia, Judge

Trial Court Cause No. 45D01-2011-PL-788

Mathias, Judge.

[1] Saxony Town Homes, L.P. and Golden Manor, L.P.'s (collectively "the General Partners") appeal the Lake Superior Court's denial of their request for a preliminary injunction against their property manager, Herman & Kittle General Partners, Inc. ("H&K"). The General Partners argue that H&K's continued management of its apartment complexes constitutes a trespass that is causing irreparable harm to the General Partners' mission to provide affordable and safe low-income housing for their residents.

[2] Concluding that the General Partners did not establish that they were entitled to a preliminary injunction, we affirm.

Facts and Procedural History

[3] Golden Manor Apartments is an eighty-unit low-income senior housing property in Hammond, Indiana. Saxony Town Homes is a sixty-eight-unit low-income family property that is also located in Hammond. The General Partners entered into development contracts with H&K, and other limited partners, for the purpose of developing, financing, designing, and constructing Golden Manor in 2006 and Saxony in 2008.[1] The two properties were developed to participate in the federal government's Low Income Housing Tax Credit program.

[1] The other limited partners are not involved in this appeal.

[4] H&K's development fee for each property was partially paid when construction began, and the balance due was to be drawn from the rental income generated by both properties. H&K also entered into partnership agreements with the General Partners to receive an incentive management fee for each property.

[5] In addition to establishing H&K's compensation for developing and managing Golden Manor apartments, Article XI of the 2006 partnership agreement provides in relevant part:

> The Partnership shall not enter into any Management Agreement or modify, terminate or extend any Management Agreement . . . unless (i) it shall have obtained the Consent of the Investor Limited Partner to the identity of the Management Agent and the terms of the Management Agreement or the modification, termination or extension thereof, (ii) such Management Agreement or modified or extended Management Agreement provides that it is terminable without penalty by the Partnership on 30 days' notice by the Partnership and (iii) the Lenders shall have consented, to the extent required under the Project Documents, to the new or modified Management Agreement.

Appellants' App. Vol. VI, p. 130.

[6] Also in 2006, Golden Manor, L.P. and H&K entered into a management agreement under which H&K would provide management services for Golden Manor apartments. The termination provisions listed in paragraph 14 of that agreement provide:

> Termination: This Agreement shall terminate on the earlier to occur of the following:

> (a) That date which is three (3) years after the date this document is executed by the owner. Thereafter, the term of this Agreement will be automatically renewed for continual one-year periods, unless terminated in accordance with any other provisions of this Section 14.
>
> (b) Written notification by Owner to Management Entity in the event that Management Entity commits malfeasance or gross misconduct with respect to its obligations hereunder.
>
> (c) Either Owner or Management Entity shall have the right to terminate this Agreement for cause upon (i) written notice to the defaulting party describing such cause and (ii) failure by the defaulting party to cure such cause within sixty (60) days of receipt of such written notice.

Id. at 194–95.

[7] In 2008, Saxony, L.P. and H&K entered into a partnership agreement that permitted the general partner to remove the management agent

> for any intentional misconduct by the Management Agent or its negligence in the discharge of its duties and obligations as Management Agent (subject to the fulfillment and expiration of any notice and/or opportunity to cure provisions of the Management Agreement), including, without limitation, for any action or failure to take any action which:
>
> (i) violates in any material respect any provision of the Management Agreement entered into with the Partnership and approved by the Project Lenders, if required, and/or any material provision of the Project Documents and/or the Loan Documents applicable to the Apartment Complex, or the Project Lenders' approved management plan for the Apartment Complex;
>
> (ii) violates in any material respect any provision of this Agreement or any provision of applicable law; or

> (iii) causes the Apartment Complex to be operated in a manner which if continued would give rise to an event which would cause or would likely cause a recapture of Tax Credit . . . .

Appellants' App. Vol. IV, p. 204.

[8] Also in 2008, Saxony, L.P. and H&K entered into a management agreement in which H&K agreed to provide management services for Saxony apartments. The termination provisions listed in paragraph 14 of that management agreement provide:

> This Agreement shall terminate on the earlier to occur of the following:
>
> (a) That date which is three (3) years after the date this document is executed by the owner. Thereafter, the term of this Agreement will be automatically renewed for continual one-year periods, unless terminated in accordance with any other provisions of this Section 14;
>
> (b) Written notification by Owner to Management Entity in the event Management Entity commits malfeasance or gross misconduct with respect to its obligations hereunder;
>
> (c) Ninety (90) days following delivery of written notice from Owner to Management Entity terminating this Agreement for no cause, provided that (i) each of the limited partners of Owner consents in writing to such termination for no cause, and (ii) neither Management Entity, nor any Affiliate thereof, including, without limitation, Herman Associates, Inc., an Indiana corporation, has, at the time of such termination, any outstanding loans to Owner of any nature whatsoever, or is otherwise entitled to receive any fees unpaid as of the date of such termination; and

> (d) One hundred twenty (120) days following delivery of written notice from Management Entity to Owner stating that Management Entity terminates this Agreement.

Id at 51-52.

[9] In an addendum executed the same day as the management agreement, Saxony, L.P. and H&K agreed,

> (a) In the event Agent fails to perform any of its duties under the Agreement hereunder or to comply with any of the provisions thereof or hereof, Owner shall notify Agent in writing and Agent shall have ten (10) days thereafter within which to cure such default to the reasonable satisfaction of Owner. Notwithstanding the foregoing, if the default cannot be cured within such ten (10) day period, Agent shall have such additional time as may be reasonably necessary to cure the same provided that Agent demonstrates to the continuing satisfaction of Owner that it is diligently pursuing all necessary actions to cure such default and that the same will be cured within a reasonable time without damage or expense to Owner. Failure to cure the default within the permitted time to cure shall constitute grounds for immediate termination of the Agreement by the Owner without further notice to the Agent.
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> ***
>
> (d) Owner will terminate this Agreement if HUD or the City of Hammond directs the Owner to do so.
>
> ***
>
> [] The Agreement shall have an initial term of two (2) years, and shall be renewed automatically thereafter for successive additional terms of two (2) years each, provided, however, that either party shall have the right to terminate the Agreement upon thirty (30) days written notice.

Appellants' App. Vol. V, pp. 53–54.

[10] H&K continued as the management agent for the General Partners beyond the management agreements' initial terms. In 2013, however, issues arose between H&K and the General Partners concerning H&K's management responsibilities. H&K has alleged that when Maria Carmen Paniagua was installed as the General Partners' President, she began interfering with H&K's ability to perform its management duties. Appellant's App. Vol. II, pp. 29–30. Paniagua was also the executive director of the Hammond Housing Authority. And the Hammond Housing Authority entered into a contract with Golden Manor, L.P. for maintenance services.[2] H&K has alleged that, since 2013, the Hammond Housing Authority has been the sole provider of maintenance for the General Partners' properties, while H&K continued to otherwise manage both apartment complexes.

[11] In November 2019, Paniagua sent a letter to H&K expressing Saxony, L.P.'s intent to terminate their management agreement without cause pursuant to the terms of the addendum to the management agreement. Appellants' App. Vol. IV, p. 60. H&K maintained that Saxony, L.P. could not terminate the management agreement for two reasons. First, H&K argued that paragraph 14(c) of the management agreement permitted termination only if the limited partners consented in writing; H&K maintained it had not been provided with

[2] H&K alleges that Paniagua executed a similar contract between the Hammond Housing Authority and Saxony, but there is no copy of that alleged contract in the record.

written consent. *Id* at 62. Second, H&K argued that the same contract provision permitted termination only if H&K was not entitled to unpaid fees; H&K asserted it was entitled to unpaid fees, including developer fees. *Id*.

[12] In September 2020, Paniagua sent a letter to H&K expressing Golden Manor, L.P.'s intent to terminate their management agreement for cause. The letter stated that H&K had committed "malfeasance or gross misconduct" in discharging its management duties. *Id.* at 64–65. Specifically, the letter asserted that Golden Manor apartments' current condition violated a Hammond Municipal Ordinance, and Paniagua included correspondence from the Hammond City Council describing the property's defects. *Id*. In response, H&K claimed that Golden Manor, L.P.'s attempt to terminate the management agreement was invalid because nearly every defect involved either (1) maintenance issues that were the responsibility of the Hammond Housing Authority under the 2013 Maintenance Agreement, or (2) capital-replacement issues that were the responsibility of Golden Manor, L.P. *Id*. at 70. Therefore, H&K disputed Golden Manor, L.P.'s claim that it had committed "malfeasance or gross misconduct" in the discharge of its management duties.

[13] On November 13, H&K filed a complaint against the General Partners alleging breach of the management agreements, anticipatory breach of the development consulting agreements, and a request for declaratory judgment that the General Partners' purported termination of the management agreements was invalid and unenforceable. H&K asked the trial court to order specific performance of the

management agreements by requiring the General Partners to retain H&K as the management agent. Appellants' App. Vol. II, p. 43-44.

[14] On January 6, 2021, the General Partners filed an answer, a counterclaim, and a request for a preliminary injunction. The General Partners requested a declaratory judgment concerning their rights to terminate the management agreements and alleged that H&K had breached those agreements in several respects. The General Partners also claimed that H&K's continued presence on the apartment complexes constituted trespass. Finally, the General Partners requested a preliminary injunction, claiming that H&K's continued occupation and mismanagement of the two properties was causing irreparable harm to the General Partners' low-income-housing mission and the properties' tenants.

[15] The trial court held an evidentiary hearing on the General Partners' request for a preliminary injunction on February 10, 2021. After the General Partners presented their evidence, H&K asked the trial court to deny the motion for preliminary injunction, arguing that the General Partners had not met their burden of proving that they were entitled to injunctive relief. The trial court agreed and denied the General Partners' request.

[16] The next day, the trial court issued a written order denying the General Partners' request for a preliminary injunction and found:

> Golden and Saxony provide subsidized housing to low-income residents. Each executed Low-Income Tax Credit Management Agreements with [H&K] under which [H&K] served as the manager of Golden's and Saxony's properties. Golden and

Saxony each served [H&K] with notices terminating each of their Agreements with [H&K] as a result of what Golden and Saxony determined were deficiencies by [H&K] in the management of their properties. [H&K] rejected the terminations and filed this action in which they ask that the court declare, among other things, that the terminations were not justified under the Agreements and to prevent Golden and Saxony from ejecting [H&K] as property manager. Golden and Saxony then filed their Verified Motion for Preliminary Injunction which seeks an order to direct [H&K] to immediately vacate their properties and turn over all records, books and funds regarding them.

Trial Rule 65 governs the issuance of a preliminary injunction by a court. To obtain a preliminary injunction, the moving party has the burden of showing by a preponderance of the evidence that:

> (1) [movant's] remedies at law were inadequate, thus causing irreparable harm pending resolution of the substantive action;
>
> (2) it had at least a reasonable likelihood of success at trial by establishing a prima facie case;
>
> (3) its threatened injury outweighed the potential harm to appellant resulting from the granting of an injunction; and
>
> (4) the public interest would not be disserved.

In addition, Trial Rule 65(C) requires ". . . the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."

The grant or denial of a preliminary injunction rests within the sound discretion of the trial court, *Apple Glen Crossing, Inc. v. Trademark Retail, Inc*. 784 N.E. 2d 484, 487 (Ind. 2003). If an adequate remedy at law exists, injunctive relief should not be granted, *Roberts Hair Designers, Inc. v. Pearson*, 780 N.E.2d 858,

863 (Ind. 2002). The trial court is charged with the responsibility of determining whether the legal remedy is as full and adequate as the equitable remedy, *Robert's, id*. at 863. A legal remedy is adequate only where it is as practical and efficient to the ends of justice and its prompt administration as is the remedy in equity, *Robert's, id*. at 864, *Pathfinder Communs. Corp v. Macy*, 795 N.E. 2d 1103, 1115. The power to issue a preliminary injunction should be used sparingly, and such relief should not be granted except in rare instances in which the law and facts are clearly within the moving party's favor. *Barlow v. Sipes*, 744 N.E.2d 1, 5 (Ind. Ct. App. 2001), *trans. denied*.

Golden and Saxony have presented evidence of deplorable conditions at their facilities including dangerous and unstable balconies, roaches, mold, dirty carpets, filthy trash rooms, flooding, inoperable elevators, lack of COVID sanitary practices, overcharging rent to the low-income residents and a lack of continuity of management. They also assert that [H&K] is a trespasser, holding out after having been given notice to vacate.

The testimony revealed that most of these issues have been ongoing for at least two years, and some for eight years, and that, at some point, responsibility for maintenance was taken out of the hands of [H&K]. This evidence of ongoing issues goes against a finding of immediate and irreparable harm. *When taken with the testimony adduced at the hearing, it is not clear as to whether or not the provisions of the lengthy and complex Agreements and the documents associated with them would deem [H&K] a trespasser holding over a place upon [H&K] the sole responsibility for the deplorable conditions at these facilities.* As a result, Golden and Saxony have not made a prima facie case. There is doubt, at this stage of the litigation, that Golden and Saxony have a reasonable likelihood of prevailing on the merits.

Golden and Saxony have an adequate remedy at law: eviction and money damages payable from [H&K] if they are able to prove, after a full trial on the merits of the case, that [H&K] wrongfully remained on the

> *real estate and bore the sole responsibility for the numerous deficiencies set forth at the hearing*.
>
> Certainly, something needs to be done for the residents of Golden's and Saxony's properties to correct the deplorable conditions that the testimony revealed. Preliminary injunctive relief in favor of Golden and Saxony before this dispute can be tried on its merits is not the appropriate remedy, particularly when the problems that plague these properties have gone on for many years without any legal remedy being sought or uncertainty who is exactly responsible for what under the Agreements and whether or not responsibilities were shifted over the years.

Id. at 14–17 (emphasis added). In a footnote to its order, the trial court also concluded, "Golden and Saxony, and not those who reside there, have failed to prove entitlement to injunctive relief. The deplorable conditions to which their residents are exposed, as presented by indirect testimony under oath, at best may make out a case on behalf of Golden and Saxony that the public interest would not be disserved if injunctive relief were granted." *Id*. at 17.

[17] The General Partners now appeal.

Standard of Review

[18] "The grant or denial of a preliminary injunction rests within the sound discretion of the trial court, and our review is limited to whether there was a clear abuse of that discretion." *Ind. Fam. & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind. 2002) (citing *Harvest Ins. Agency, Inc. v. Inter-Ocean Ins. Co.*, 492 N.E.2d 686, 688 (Ind. 1986)). "Furthermore, due to the provisional nature of a preliminary injunction . . . a review of a grant or denial of a

preliminary injunction should be confined to the law applied by the trial court, and this Court should evaluate only the merits of arguments reached by the trial court." *State v. Econ. Freedom Fund*, 959 N.E.2d 794, 801 (Ind. 2011).

[19] When adjudicating a motion for a preliminary injunction, the trial court is required to make special findings of fact and state its conclusions thereon. Ind. Trial Rule 52(A). On review, our court must determine if the trial court's findings support the judgment. *Id.* The trial court's judgment will be reversed only when clearly erroneous. *Id.* Findings of fact are clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support them. *Id.* We consider the evidence only in the light most favorable to the judgment and construe findings together liberally in favor of the judgment. *Id.*

[20] Finally, because the trial court denied their request for a preliminary injunction, the General Partners appeal from a negative judgment and must therefore

> demonstrate that the trial court's judgment is contrary to law. A judgment is contrary to law only if the evidence in the record, along with all reasonable inferences, is without conflict and leads unerringly to a conclusion opposite that reached by the trial court. In conducting our review, we cannot reweigh the evidence or judge the credibility of any witness, and must affirm the trial court's decision if the record contains any supporting evidence or inferences.

Infinity Prods., Inc. v. Quandt, 810 N.E.2d 1028, 1032 (Ind. 2004) (quoting *DiMizio v. Romo*, 756 N.E.2d 1018, 1021 (Ind. Ct. App. 2001), *trans. denied*).

Proceeding under this highly deferential standard of review, we now consider the General Partners' claims of error.

Discussion and Decision

[21] "Preliminary injunctions are generally used to preserve the status quo as it existed before a controversy, pending a full determination on the merits of the dispute." *Stoffel v. Daniels*, 908 N.E.2d 1260, 1272 (Ind. Ct. App. 2009). The status quo is the "last, actual, peaceful and non-contested status which preceded the pending controversy." *N. Ind. Pub. Serv. Co. v. Dozier*, 674 N.E.2d 977, 987 (Ind. Ct. App. 1996) (citation omitted). Granting a preliminary injunction "is therefore necessary only when harm to the movant is likely to occur before trial and the harm threatened would impair the court's ability to grant an effective remedy. The harm is said to be irreparable because it is of a type which the court will not be able to remedy following a final determination on the merits." *Ind. State Bd. of Pub. Welfare v. Tioga Pines Living Ctr., Inc.*, 637 N.E.2d 1306, 1315 (Ind. Ct. App. 1994). Thus, a trial court should exercise its authority to issue a preliminary injunction "sparingly, and such relief should not be granted except in rare instances in which the law and facts are clearly within the moving party's favor." *Barlow v. Sipes*, 744 N.E.2d 1, 5 (Ind. Ct. App. 2001), *trans. denied*.; *see also Econ. Freedom Fund*, 959 N.E.2d at 801 ("A preliminary injunction is not a final judgment but rather 'an extraordinary equitable remedy' that should be granted 'in rare instances.'") (citation omitted).

[22] Indeed, a party seeking a preliminary injunction must prove the following by a preponderance of the evidence: (1) the remedies at law are inadequate, resulting in irreparable harm if the injunction is not issued; (2) there is a prima facie case of reasonable likelihood of success at trial; (3) the threatened injury outweighs the threatened harm an injunction may inflict on the opposing party; and (4) the injunction would not disserve public interest. *Barlow*, 744 N.E.2d at 5. If the party fails to satisfy any of the four requirements, granting an injunction to that party constitutes an abuse of discretion. *See, e.g., Curley v. Lake Cnty. Bd. of Elections and Registration*, 896 N.E.2d 24, 33 (Ind. Ct. App. 2008), *trans. denied*.

[23] Here, the trial court's order denying the General Partners' request for a preliminary injunction addressed only the first two of the four requirements listed above. The court concluded that the General Partners failed to establish that its remedies at law are inadequate, and that the General Partners failed to make a prima facie showing of a reasonable likelihood of success at trial. Appellants' App. Vol. II, pp. 14-17. In reaching those conclusions, the trial court observed that the deplorable conditions at the two properties "have been ongoing for at least two years, and some for eight years[,]" which "goes against a finding of immediate and irreparable harm." *Id.* at 16. The court also found that it was "not clear as to whether or not the provisions of the lengthy and complex Agreements . . . would deem [H&K] a trespasser holding over or place upon [H&K] the sole responsibility for the deplorable conditions at these facilities." *Id.* And the court determined that the General Partners have "an adequate remedy at law: eviction and money damages payable from [H&K] if

they are able to prove . . . that [H&K] wrongfully remained on the real estate and bore the sole responsibility for the numerous deficiencies set forth at the hearing." *Id*. For the reasons that follow, we conclude that the General Partners have not established that the evidence unerringly leads to opposite conclusions than those reached by the trial court.

Trespass

[24] The General Partners argue that H&K's continued occupation of the Golden Manor apartments and Saxony apartments constitutes a trespass. It is well settled that "[a] trial court may issue an injunction in order to prevent a continued trespass." *Ballard v. Harman*, 737 N.E.2d 411, 417 (Ind. Ct. App. 2000). To prove a trespass claim, the plaintiff must establish that (1) the plaintiff possessed the land when the alleged trespass occurred, and (2) the trespassing defendant entered the land without a legal right to do so. *See KB Home Ind. Inc., v. Rockville TBD Corp.*, 928 N.E.2d 297, 308 (Ind. Ct. App. 2010). The General Partners bore the burden of presenting substantial evidence at the injunction hearing establishing that they had a reasonable likelihood of success at trial on their trespass claim. *See IHSAA v. Martin*, 731 N.E.2d 1, 7 (Ind. Ct. App. 2000), *trans. denied*.

[25] The General Partners contend that they terminated H&K's management agreements for the Golden Manor apartments and Saxony apartments as allowed under the terms of those agreements. H&K disagrees with the General Partners' interpretation of the agreements' termination provisions and argues

that it has a continued contractual right to maintain its presence at the two properties.[3]

[26] When a court is asked to interpret a contract, the court must determine the intent of the parties when they made the agreement. *Tender Loving Care Mgmt., Inc. v. Sherls*, 14 N.E.3d 67, 72 (Ind. Ct. App. 2014). The court examines the plain language of the contract, reads it in context and, whenever possible, construes it so as to render every word, phrase, and term meaningful, unambiguous, and harmonious with the whole. *Id*. Construction of the terms of a written contract is generally a pure question of law. *Id*. If, however, a contract is ambiguous, the parties may introduce extrinsic evidence of its meaning, and the interpretation becomes a question of fact. *Broadbent v. Fifth Third Bank*, 59 N.E.3d 305, 311 (Ind. Ct. App. 2016), *trans. denied*. "A word or phrase is ambiguous if reasonable people could differ as to its meaning." *Id*.

[27] First, we consider the termination provisions in the relevant contracts between Saxony, L.P. and H&K. In January 2008, the parties entered into a partnership

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[3] The General Partners rely on *Aberdeen Apartments v. Cary Campbell Realty All., Inc.*, 820 N.E.2d 158 (Ind. Ct. App. 2005), *trans. denied*, to support its argument that it is entitled to an injunction. In that case, we held that "[t]he trial court's denial of the Apartments' motion for a preliminary injunction denies the Apartments their right to exclude trespassers from their property. As with all rights afforded to citizens, our property rights must be closely safeguarded from unwarranted infringements. Here, the denial of the Apartments' property rights is unwarranted." *Id*. at 166. A salient fact that distinguishes *Aberdeen Apartments* from the circumstances here is H&K's contractual right to be present on the properties at issue. The General Partners acknowledge the distinction but argue that "continuation of a contract for personal services cannot be mandated by equitable intervention of the court because one injured by the breach of such contract has an adequate legal remedy." Appellants' Br. at 21 (quoting *Wagler v. Excavating Corp. v. McKibben Const., Inc.*, 679 N.E.2d 155, 158 (Ind. Ct. App. 1997)). But H&K is not seeking equitable intervention of the court; the General Partners sought the injunction. And, like H&K, the General Partners have an adequate legal remedy for the alleged breach of the agreements at issue in this appeal.

agreement. The agreement names Saxony, L.P. as the general partner and H&K as both the "Administrative Special Limited Partner" and the management agent. Appellants' App. Vol. IV, p. 138. The partnership agreement provides that the general partner can remove the management agent "for any intentional misconduct by the Management Agent or its negligence in the discharge of its duties and obligations as Management Agent." *Id.* at 204.

[28] The parties also entered into a management agreement. And that agreement allows Saxony, L.P. to terminate H&K's management services without cause with ninety-day written notice provided that

> (i) each of the limited partners of Owner consents in writing to such termination for no cause, and (ii) neither Management Entity, nor any Affiliate thereof, including, without limitation, Herman Associates, Inc., an Indiana corporation, has, at the time of such termination, any outstanding loans to Owner of any nature whatsoever, or is otherwise entitled to receive any fees unpaid as of the date of such termination[.]

Appellants' App. Vol. V, p. 45. The General Partners and H&K dispute whether H&K is owed unpaid development fees. Therefore, whether Saxony, L.P. was entitled to terminate the management agreement under this provision is a fact that must be resolved by the fact-finder after a full trial.

[29] Nevertheless, Saxony, L.P. also argues that it was permitted to terminate the management agreement pursuant to additional terms of the agreement's addendum. Saxony L.P, first relies on the following termination provision included in the addendum:

> In the event, [H&K] fails to perform any of its duties under the Agreement hereunder or to comply with any of the provisions thereof or hereof, **[Saxony] shall notify [H&K] in writing and [H&K] shall have ten (10) days thereafter within which to cure such default** to the reasonable satisfaction of [Saxony]. Notwithstanding the foregoing, if the default cannot be cured within such ten (10) day period, [H&K] shall have such additional time as may be reasonably necessary to cure the same provided that [H&K] demonstrates to the continuing satisfaction of [Saxony] that it is diligently pursuing all necessary actions to cure such default and that the same will be cured within a reasonable time without damage or expense to [Saxony]. Failure to cure the default within the permitted time to cure shall constitute grounds for immediate termination of the Agreement by [Saxony] without further notice to [H&K].

Id. at 53. But Saxony, L.P., did not present evidence that it provided a notice of default to H&K with regard to Saxony apartments, and thus, Saxony, L.P, cannot establish that it was entitled to terminate the management agreement under the above provision.

[30] Saxony, L.P, next points to a provision in the addendum explaining that the management agreement shall have an initial term of two years that will be automatically renewed, "provided, however, that either party shall have the right to terminate the Agreement upon thirty (30) days written notice."[4] *Id*. at 54. Saxony, L.P. relies solely on this provision to support its claim that it may

[4] The addendum also provides that "those provisions which impose more stringent obligations upon the Agent or provide greater benefits to the Owner or Owner's Limited Partner shall prevail and control." Appellants' App. Vol. V p. 55.

terminate the management agreement without cause. Indeed, on November 27, 2019, Saxony sought to terminate the management agreement without cause by providing H&K with thirty-day written notice.[5] H&K argues that the thirty-day written notice applies only to the automatic renewal provision. H&K aptly observes that to reach any other conclusion would render the other termination provisions in the agreements superfluous.

[31] Simply put, the termination provisions in the management agreement and addendum are both conflicting and ambiguous when considering the contracts as a whole. After a full trial, Saxony, L.P. may be able to establish that it validly terminated the management agreement. But it has not established a reasonable likelihood of success on its trespass claim at this stage of the proceedings.

[32] Turning to the Golden Manor property, we observe that Golden Manor, L.P. sent a letter expressing its intent to terminate the management agreement with H&K for "malfeasance or gross misconduct" in managing the property. Appellants' App. Vol. IV, p. 64. The management agreement between the parties provides that the agreement will terminate "in the event that

[5] In the letter, Saxony, L.P. also referenced the termination provision in the management agreement quoted above and informed H&K that Saxony, L.P. "has obtained the written consent of the Owner's limited partners to the termination." Appellant's App. Vol. IV, p. 60. H&K responded that, pursuant to the terms of the management agreement, Saxony could not terminate the agreement because Saxony did not provide written consent of the termination of each limited partner to H&K, and H&K was entitled to unpaid fees, including developer fees. Id. at 62. Saxony, L.P.'s reliance on the termination provision in the management agreement in its letter to H&K conflicts with its sole reliance (in this appeal) on the termination provision in the addendum, which emphasizes the conflict and ambiguity in the contracts at issue in this case.

Management Entity commits malfeasance or gross misconduct with respect to its obligations hereunder." Appellants' App. Vol. VI, pp. 194–95.

[33] Specifically, Golden Manor L.P. alleged that H&K failed to maintain "minimal habitation standards." Appellants' App. Vol. IV, p. 64. In support of that allegation, Golden Manor L.P. discussed the Hammond Municipal Ordinance Violation citation, which identified

> several areas of rotted wood, peeling paint, missing or damage[d] soffit and fascia; several handrails on balconies were observed to be damaged or broken and in need of repair for the residents' protection; several of the building vents are missing proper covers to ensure vermin cannot enter the buildings and several others were completely blocked, creating an unsafe situation. The citation further denoted several complaints about roaches and bedbug infestations throughout the property.
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> The Hammond Common Council letter reported a lack of continuity regarding property management information, given [H&K's] continual Building Manager replacements; lack of timely information; dangerous and unusable balconies; roaches; mold; dirty carpets; filthy trash rooms; wear and tear on blinds; flooding in parking lot; elevator often not in operation; inoperable outside lights and long delays in their replacement, putting residents in danger; loose and falling shingles; lack of disinfecting the community and exercise rooms since COVID-19; lack of security under normal conditions; and murder in the neighborhood.

Id. at 64–65.

[34] In rejecting Golden Manor L.P.'s termination letter, H&K noted that it had not been responsible for property maintenance since 2013 when Golden Manor L.P. entered into a property-maintenance contract with the Hammond Housing Authority. *Id*. at 56–57. The contract was signed by H&K, and, notably, by Maria Carmen Paniagua as both the executive director of the Hammond Housing Authority and the president of Golden Manor L.P. H&K also rejected the termination letter, asserting that any capital-replacement issues, such as the unusable balconies, was Golden Manor L.P.'s responsibility. *Id*. at 70.

[35] As outlined above, Golden Manor L.P. and H&K dispute the facts, the proper interpretation of their various agreements, and the extent to which the Hammond Housing Authority was responsible for maintaining the condition of the property. Depending on the resolution of those disputes, Golden Manor L.P. may be able to prove that it validly terminated its management agreement with H&K, and therefore, H&K's continued occupation of its property constitutes a trespass. To be sure, Golden Manor L.P. could terminate the management agreement for malfeasance or gross misconduct if it can establish that H&K was responsible for the dangerous condition of the property. But the evidence may reveal that the 2013 maintenance agreement executed between Golden Manor L.P. and the Hammond Housing Authority absolved H&K of responsibility for many of the maintenance issues cited in the ordinance violation. In short, after considering the agreements at issue and the evidence presented by the parties, we conclude that the responsibility for the property's deplorable condition remains to be determined by the fact-finder.

[36] The General Partners did not prove a reasonable likelihood of success at trial on their trespass claims concerning H&K's continued occupation of Golden Manor apartments and Saxony apartments. Moreover, if the General Partners prove that they validly terminated the management agreements, the General Partners have an adequate remedy at law: eviction and monetary damages.

B. Irreparable Harm to the General Partners' Low-Income Housing Mission

[37] The General Partners also argue that "their mission to provide safe and affordable housing for low-income residents is being irreparably harmed and cannot be compensated by money damages at some time in the future." Appellant's Br. at 28. The General Partners do not dispute that the deplorable conditions at the properties have been ongoing for multiple years. For this reason, the trial court found that there was no immediate harm and denied their request for a preliminary injunction. The General Partners argue that the "trial court erred by injecting an immediacy requirement into the legal standard for finding irreparable harm." Appellants' Br. at 29. We disagree.

[38] "[O]nly harm which a court cannot remedy following a final determination on the merits may be deemed to constitute irreparable injury warranting issuance of a preliminary injunction." *Wells v. Auberry*, 429 N.E.2d 679, 683 (Ind. Ct. App. 1982). If an adequate legal remedy exists, injunctive relief should not be granted. *Walgreen*, 769 N.E.2d at 162. "A party suffering mere economic injury is not entitled to injunctive relief because damages are sufficient to make the party whole." *Id*. In determining whether an adequate legal remedy exists, a

trial court must assess whether the legal remedy is as full and adequate as the equitable remedy. *Mercho-Roushdi-Shoemaker-Dilley Thoraco-Vascular Corp. v. Blatchford*, 742 N.E.2d 519, 524 (Ind. Ct. App. 2001).

[39] It is undisputed that any harm to the General Partners' mission to provide safe and affordable housing has been ongoing for several years, as the condition of Saxony apartments and Golden Manor apartments has continued to deteriorate. Though the General Partners presented evidence of the deplorable conditions at the apartment complexes, they did not present any evidence (1) that they would suffer any additional, irreparable harm to their mission before trial or (2) that the court's ability to grant an effective remedy would be impaired. *See Tioga Pines*, 637 N.E.2d at 1315; *see also Barlow*, 744 N.E.2d at 5 (stating that the trial court must consider whether the plaintiff's remedies at law are inadequate, causing irreparable harm *pending the resolution of the substantive action*) (emphasis added).

[40] To put it bluntly, the damage has already been done. Over the last two years—at a minimum—the conditions at Golden Manor apartments and Saxony apartments have significantly deteriorated. Instead of working together to fix the issues at the apartment complexes, the parties have battled over which entity bears responsibility for repair. Indeed, the General Partners' conduct in this case belie their asserted concern for harm to their mission of providing safe and affordable housing for their residents.

[41] In its order, the trial court observed that the properties' residents are likely suffering irreparable harm due to the properties' deplorable conditions. And we are sympathetic to the residents. But the relevant inquiry before us is whether the plaintiffs', i.e., the General Partners', remedies at law are inadequate, thus causing irreparable harm pending the resolution of the substantive action if the injunction does not issue. *See Barlow*, 744 N.E.2d at 5. Accordingly, the General Partners were required to prove that *their* remedies at law are inadequate. The properties' residents are not parties to this action, and therefore, whether they have suffered irreparable harm is immaterial in this appeal.

[42] In sum, the trial court concluded that the General Partners' remedies at law are not inadequate. For the reasons provided above, the General Partners have failed to establish that the court's conclusion is contrary to law.

Conclusion

[43] The purpose of a preliminary injunction is to "protect the rights of the parties by 'maintaining the status quo as it existed prior to the controversy, until the issues and equities in a case can be determined after a full examination and hearing' and 'prevents harm to the moving party that could not be corrected by a final judgment.'" *Kuntz v. EVI, LLC*, 999 N.E.2d 425, 431 (Ind. Ct. App. 2013) (quoting *AGS Cap. Corp., Inc. v. Prod. Action Int'l, LLC*, 884 N.E.2d 294, 314 (Ind. Ct. App. 2008), *trans. denied*).

[44] The trial court concluded that the General Partners failed to establish that a preliminary injunction was needed to prevent harm that could not be corrected

by a final judgment in this case. And the General Partners have failed to establish that the court's conclusion is contrary to law. We therefore affirm the trial court's denial of the General Partners' motion for preliminary injunction.

[45] Affirmed.

Riley, J., and Crone, J., concur.