CRH E., LLC v. Berastain, 2024 NCBC Order 62.

STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23 CVS 039534-590 MASTER FILE
CRH EASTERN, LLC, formerly known as CTS METROLINA, LLC, Plaintiff, v. DUSTIN BERASTAIN, TIMOTHY MOREAU, INKWELL EMERGENCY RESPONSE, LLC, S&P CAP PARTNERS, LLC, ZACHARY VANEK, CHAKYRA CHERRY, and VICTOR PENA, Defendants.	**ORDER ON MOTION FOR PRELIMINARY INJUNCTION**
CABARRUS COUNTY METROLINA RESTORATION, LLC, TIM MOREAU, and DUSTIN BERASTAIN, Plaintiffs, v. CTS METROLINA, LLC, CONTINUUM RESTORATION HOLDINGS, LLC, CONTINUUM RESTORATION SERVICES, LLC, CONTINUUM TOTAL SOLUTIONS, LLC, and ROBCAP CTS OPERATING, LLC, Defendants.	23 CVS 2124

1. **THIS MATTER** is before the Court on Defendants[1] Berastain's and Moreau's Motion for Temporary Restraining Order and Motion for Preliminary Injunction (the "Motion") filed pursuant to Rule 65 of the North Carolina Rules of Civil Procedure (the "Rules(s)"), (ECF No. 99).

2. With this Motion, Counterclaim-Plaintiffs Dustin Berastain and Timothy Moreau seek extraordinary relief—an order prohibiting a non-party, Robertson Real Estate Group, LLC, from selling a parcel of real property located in Cashiers, North Carolina.

3. Having considered the Motion, the affidavits filed in support of and in opposition to the Motion, the related briefing, the arguments of counsel at a hearing on the Motion held 3 October 2024, and other relevant matters of record, the Court **FINDS** and **CONCLUDES**, solely for the narrow purposes of the Motion,[2] as follows:

FINDINGS OF FACT[3]

4. Dustin Berastain ("Berastain") and Timothy Moreau ("Moreau") co-founded Metrolina Restoration, LLC ("Restoration"), a North Carolina limited liability company that provided emergency property restoration and repair services

---

[1] While the Motion is titled "*Defendants* Berastain's and Moreau's Motion for Temporary Restraining Order and Motion for Preliminary Injunction," the Court observes that Berastain and Moreau are Counterclaim-Plaintiffs for purposes of this Motion.

[2] It is well-settled that neither findings of fact nor conclusions of law made during a preliminary injunction proceeding are binding upon the Court at a trial on the merits. *See Lohrmann v. Iredell Mem'l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) (citing *Huggins v. Wake Cnty. Bd. of Educ.*, 272 N.C. 33, 40–41 (1967)).

[3] To the extent any finding of fact is more appropriately characterized as a conclusion of law or vice-versa, it should be reclassified. *See N.C. State Bar v. Key*, 189 N.C. App. 80, 88 (2008) ("[C]lassification of an item within [an] order is not determinative, and, when necessary, the appellate court can reclassify an item before applying the appropriate standard of review.").

primarily to owners of residential properties. (Aff. of Dustin Berastain ["Berastain Aff."] ¶¶ 6–7, ECF No. 21; Aff. of Timothy Moreau ["Moreau Aff."] ¶¶ 6–7, ECF No. 22.)

5. On 1 October 2021, Berastain and Moreau received a letter of intent from Continuum Restoration Services, LLC, "by and through its parent company, Robertson Capital, LLC ("Robertson Capital")," detailing its desire to purchase Metrolina's assets. (Berastain Aff. ¶ 14; Moreau Aff. ¶ 14.) Thereafter, the parties negotiated an asset purchase agreement (the "APA"). On 11 February 2022, a new entity, CTS Metrolina, LLC, now known as CRH Eastern, LLC ("CTS Metrolina"), was formed as a Louisiana limited liability company to acquire Restoration's assets. (Berastain Aff. ¶¶ 15–16; Moreau Aff. ¶¶ 15–16.) The deal closed on 1 March 2022. (Berastain Aff. ¶ 22; Moreau Aff. ¶ 22.)

6. In exchange for Restoration's assets, Berastain and Moreau received $3.6 million, were granted minority, non-voting interests in CTS Metrolina, and were offered positions as Co-Presidents of CTS Metrolina. (Ver. Compl. ¶¶ 15, 17, ECF No. 3.) Both Berastain and Moreau accepted the positions, signed employment agreements, and thereafter managed and operated CTS Metrolina on a day-to-day basis. (Ver. Compl. ¶¶ 15, 31.)

7. The relationship between the parties quickly soured. Berastain and Moreau allege that CTS Metrolina reneged on its promises to infuse capital into the business, (Berastain Aff. ¶¶ 29–31, 46–50; Moreau Aff. ¶¶ 29–31, 46–50), and that withdrawals from CTS Metrolina's account caused CTS Metrolina to experience a

cash shortage. (*See* Berastain Aff. ¶¶ 35, 37, 39–40, 44–45, 57–58; Moreau Aff. ¶¶ 35, 37, 39–40, 44–45, 57–58.)

8. The strained relationship between the parties culminated in CTS Metrolina terminating Berastain on 10 October 2023. (Berastain Aff. ¶ 68.) Following Berastain's termination, Moreau resigned. (Moreau Aff. ¶ 67.)

9. On 23 June 2023, prior to Berastain's termination and Moreau's resignation, Berastain, Moreau, and Restoration filed suit in Cabarrus County Superior Court against CTS Metrolina and some of its affiliated companies (Continuum Restoration Holdings, LLC, Continuum Restoration Services, LLC, Continuum Total Solutions, LLC, and RobCap CTS Operating, LLC) (collectively, the "CTS Entities"). (23-CVS-2124 ["Cabarrus County Action"].) The Complaint in the Cabarrus County Action asserts claims for recission, breach of contract, fraudulent inducement, negligent misrepresentation, fraud, unfair and deceptive trade practices, and declaratory judgment, as well as a request to disregard the corporate veil. (*See* Cabarrus County Action, ECF No. 2.)

10. On 15 December 2023, CTS Metrolina returned fire by filing suit in Mecklenburg County Superior Court against Berastain, Moreau, and an entity affiliated with Berastain and Moreau, Inkwell Emergency Response, LLC. (23-CVS-39534 ["Mecklenburg County Action"].)

11. By Order dated 23 May 2024, the Court consolidated the Cabarrus County and Mecklenburg County Actions and permitted the parties to amend their pleadings in the Mecklenburg County Action "to include any allegation, claim, and

defense that relates to the disputes between the parties[.]" (Consolidation Order ¶ 14, ECF No. 78.)

12. CTS Metrolina filed its Amended Complaint on 12 June 2024. (Am. Compl., ECF No. 87.) On 2 July 2024, Berastain, Moreau, and Restoration answered the Amended Complaint and asserted counterclaims against CTS Metrolina as well as the other CTS Entities. (Answ. & Countercls., ECF No. 89.) The counterclaims mirror the claims asserted in the Cabarrus County Action.

13. In their brief and during the hearing, Counterclaim-Plaintiffs argued that Andrew Robertson ("Robertson") owns Robertson Capital, which in turn owns Continuum Total Solutions, LLC, the parent company of Continuum Restoration Holdings, LLC, a holding company that owns seventy five percent of CTS Metrolina. Although Counterclaim-Plaintiffs provided the Court an organizational chart that they prepared as a demonstrative exhibit with this information, there is no sworn testimony regarding the contents of the exhibit, leaving the Court with no evidentiary basis upon which to make findings of fact with respect to the relationship among the entities and individuals named.

14. On 12 August 2024, Sunflower Bank, N.A. ("Sunflower") filed suit in Texas against Samuel Andrew Moody Robertson ("Robertson Sr."), who Counterclaim-Plaintiffs identify as Robertson's father,[4] and Robertson Capital (the "Texas Action"). (Aff. of Dustin Berastain in Supp. of Mot. for PI ["Second Berastain

[4] Once again, Counterclaim Plaintiffs present no evidentiary basis upon which the Court can find as a fact that Samuel Andrew Moody Robertson is Andrew Robertson's father.

Aff."] ¶ 6, ECF No. 100; Motion, Ex. B ["Texas Compl."].) In the Texas Action,[5] Sunflower alleges that on 8 March 2022, Continuum Total Solutions, LLC, one of the CTS Entities, entered into loan agreements with Sunflower. The loans were allegedly guaranteed by Robertson Sr. and Robertson Capital. Sunflower claims that the loans are in default. (*See generally* Texas Compl.)

15. Robertson and his father co-own Robertson Real Estate Group, LLC ("Robertson Real Estate"), which owns property in Cashiers, North Carolina (the "Property"). (Aff. of Andrew Robertson ["Robertson Aff."] ¶¶ 4–5, ECF No. 106.) Prompted by Robertson Sr.'s estate planning, the Property has recently been listed for sale. (Robertson Aff. ¶¶ 6–7.) To date, no buyer has been identified. (Robertson Aff. ¶ 6.)

16. Based on the affidavits of some vendors and some employees of some of the CTS Entities indicating that they have not been paid on a consistent basis, (ECF Nos. 115–18), Berastain believes that, should the action before this Court be successful, "the CTS Entities would be required to utilize [the Property] to satisfy the judgment." (Second Berastain Aff. ¶ 15.) Berastain is also concerned that "[i]f the CTS Entities are subject to a future judgment for the Texas Action, while potentially undergoing judgment in North Carolina" the CTS Entities will not be able to satisfy a judgment in this action. (Second Berastain Aff. ¶ 16.)

---

[5] The Court takes judicial notice of the allegations contained in the Texas Complaint. *See* N.C. R. Evid. 201(a)–(b) (The Court may take judicial notice of adjudicative facts that are not subject to reasonable dispute because they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

17. Accordingly, Berastain and Moreau ask to Court to enjoin: (1) the sale of the Property by Robertson Real Estate; (2) the CTS Entities, Robertson Capital, and Robertson Real Estate from transferring funds associated with the sale of the Property; and (3) the CTS Entities, Robertson Capital, and Robertson Real Estate from transferring tangible assets outside of the regular course of business. (*See* Motion.)

18. Berastain and Moreau filed the Motion on 29 August 2024, and the Court held a hearing on the Motion on 3 October 2024. (Br. Order and Not. Hr'g, ECF No. 104.) The Motion is now ripe for disposition.

CONCLUSIONS OF LAW

19. A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cmty. Invs. Inc. v. Berry*, 293 N.C. 688, 701 (1977). The plaintiff bears the burden to show: (1) a likelihood of success on the merits, and (2) that it is likely to sustain irreparable loss unless the injunction is issued or, "if, in the opinion of the Court, issuance is necessary for the protection of plaintiff's rights during the course of litigation." *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983); N.C.G.S. § 1-485. Ultimately, the decision to grant or deny a preliminary injunction rests in the discretion of the court. *Lambe v. Smith*, 11 N.C. App. 580, 583 (1971).

20. Likelihood of success means a "reasonable likelihood[.]" *A.E.P. Indus., Inc.*, 308 N.C. at 404. Irreparable injury is not necessarily injury that is "beyond the possibility of repair or possible compensation in damages, but . . . one to which the

complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Id.* at 407 (emphasis omitted). Irreparable injury must be "real and immediate." *Daimlerchrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 586 (2002).

21. After reviewing the record, the Court concludes that Berastain and Moreau have failed to establish a likelihood of success on the merits. The entity that owns the real estate in question, which according to Counterclaim-Plaintiffs is Robertson Real Estate, is not a party to this action.[6] Robertson Capital is also not a party and, except for the Counterclaim-Plaintiffs' argument that Andrew Robertson has an ownership interest in both, there is no apparent relationship between these two LLCs or between Robertson Capital and the real estate held by Robertson Real Estate. Given that these two LLCs are not parties, there are no claims pending against them to evaluate for purposes of determining whether Berastain and Moreau have a reasonable likelihood of success on the merits.

22. Counterclaim-Plaintiffs' reliance on Section 1-485(3) of the General Statutes is unavailing. The statute provides that "[a] preliminary injunction may be issued . . . [w]hen, during the pendency of an action, it appears by affidavit of any person that the *defendant* threatens or is about to remove or dispose of *his property*,

[6] On 30 September 2024, Berastain, Moreau, and Restoration filed a Motion to Amend their Answer and Counterclaims, (ECF No. 111), seeking to add Robertson, Robertson Capital, and Robertson Real Estate as parties to this action. At the time of this Order, the Motion to Amend is still in briefing and is not ripe for disposition.

with intent to defraud the *plaintiff*." (emphasis added.) Accordingly, the statute contemplates injunctive relief against a party in favor of another party.[7]

23. Further, to the extent Berastain and Moreau request that the Court enter an order restraining the CTS Entities that are parties to this action from "transferring funds associated with the sale of the Property" and "transferring tangible assets outside of the regular course of business," they have failed to present any evidence that any of the CTS Entities has threatened or is about to remove or dispose of this property with the intent to defraud them. Speculation and argument does not constitute evidence, and the latter is necessary for extraordinary relief.

24. Berastain and Moreau assert that the Court has the authority to enjoin a sale of the Property because "Robertson Capital owns an interest in one or more of the CTS Entities." (Dustin Berastain's and Timothy Moreau's Br. Supp. Mot. PI ["Br. Supp."] 6, ECF No. 101.) Once again, there is no competent evidence in the record to support this assertion. Berastain and Moreau's reliance on unverified pleadings is inadequate. *See* N.C.G.S. § 1-485(3) ("A preliminary injunction may be issued . . . [w]hen . . . it appears by *affidavit* of any person that the defendant threatens or is about to remove or dispose of his property, with intent to defraud the plaintiff. (emphasis added)).

---

[7] While Rule 65 of the North Carolina Rules of Civil Procedure provides that an order granting injunctive relief is binding, not only on the parties, but also on those persons "in active concert or participation with them who receive actual notice in any manner of the order," the reverse is not true. The activity of nonparties cannot be the basis for injunctive relief that then stretches to a party. In any respect, Counterclaim-Plaintiffs fail to present evidence that Robertson Real Estate is acting in active concert with any of the CTS Entities with respect to the sale of the real estate in question.

25. Additionally, Berastain and Moreau have failed to prove that they are about to suffer irreparable injury. "A prohibitory preliminary injunction is granted only when irreparable injury is *real and immediate*." *Daimlerchrysler Corp.*, 148 N.C. App. at 586 (quoting *Telephone Co. v. Plastics, Inc.*, 287 N.C. 232, 235 (1975) (emphasis added)). Berastain and Moreau contend that if Robertson Real Estate's Property is sold, the funds will be used to satisfy Continuum Total Solutions, LLC 's obligation to Sunflower, and there will be nothing left to satisfy a potential judgment in their favor. (Br. Supp. 11.) But this argument assumes too much. The affidavits presented do not satisfy the Court that Robertson Real Estate intends to use the funds in this way or that any one of the Counterclaim-Defendants are in such dire financial straits that it would not be able to honor a judgment should one be entered. A motion for extraordinary relief requires much more evidentiary support than exists here.

26. Finally, when determining whether to enter a preliminary injunction, the Court "should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted." *Williams v. Greene*, 36 N.C. App. 80, 86 (1978). No preliminary injunction should be entered when "there is a serious question as to the right of the defendant to engage in the activity" and forbidding the defendant to do so during the pendency of the litigation "would cause the defendant greater damage than the plaintiff would sustain from the continuance of the activity while the litigation is pending." *Bd. of Provincial Elders v. Jones*, 273 N.C. 174, 182 (1968).

27. Counterclaim-Defendants present evidence that the contemplated sale of real property by Robertson Real Estate was prompted by Robertson Sr.'s desire to engage in estate planning and put his affairs in order. This is a legitimate reason to sell property, and, on this record, the Court will not restrain it.

28. **WHEREFORE**, the Court concludes, on the record before it at this preliminary stage of the proceeding, that Counterclaim-Plaintiffs have not met their burden of demonstrating a likelihood of success on the merits or that they are likely to suffer irreparable harm in the absence of injunctive relief. Therefore, the Court, in its discretion, **DENIES** the Motion.

SO ORDERED, this the 7th day of October, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases