

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 11679

KELLY C. HOWARD and FIFTH
THIRD BANK, NATIONAL
ASSOCIATION, AS CO-TRUSTEES
OF THE RONALD E. HOWARD
REVOCABLE TRUST U/A DATED
FEBRUARY 9, 2016, AS AMENDED
AND RESTATED,

Plaintiffs,

v.

IOMAXIS, LLC f/k/a IOMAX
Information Services, LLC n/k/a
MAXISIQ, INC.; BRAD C. BOOR a/k/a
BRAD C. BUHR; JOHN SPADE, JR.;
WILLIAM P. GRIFFIN, III;
NICHOLAS HURYSH, JR.; ROBERT
A. BURLESON, and FIVE INSIGHTS,
LLC

Defendants.

**ORDER EXTENDING
RECEIVERSHIP**

1. **THIS MATTER** is before the Court on the Receiver's Motion to: (I) Extend the Term of the Receivership, (II) Compel the Production of Information, and (III) Grant Related Relief (the "Receiver's Motion"), (ECF No. 586).

2. On 25 January 2024, the Court entered an Order Appointing a Receiver over IOMAXIS, LLC, n/k/a MAXISIQ, Inc. (the "Appointment Order"), (ECF No. 415). The Appointment Order named the Finley Group, and Matthew Smith, as agent for

the Finley Group, as Receiver over IOMAXIS.¹ (Appointment Order ¶ 71.) The Court established an initial term of six months for the receivership, subject to continuation upon motion. (Appointment Order ¶ 72.)

3. The initial term having concluded on 25 July 2024, the Finley Group moves for an additional term. The Receiver also moves to compel the production of information and for other relief it contends is necessary to enable it to complete the duties assigned by the Court.²

4. Having considered the Receiver's Motion, the related briefing, the arguments of counsel at a hearing on the Receiver's Motion,³ and other relevant matters of record, the Court hereby **GRANTS** the Receiver's Motion, as provided below.

Johnston, Allison & Hord, P.A., by Greg C. Ahlum, David T. Lewis, Patrick E. Kelly, Katie D. Burchette, Austin R. Walsh, Alexandra Nibert, and Lauren S. Martin, for Plaintiff Kelly C. Howard, as co-Trustee of the Ronald E. Howard Revocable Trust u/a dated February 9, 2016, as Amended and Restated.

Womble Bond Dickinson (US) LLP, by Lawrence A. Moye and Scott D. Anderson, for Plaintiff Fifth-Third Bank, NA, as co-Trustee of the

¹ The Court found that the Finley Group is highly qualified and capable of performing this role. The Finley Group has extensive experience servicing as a receiver and officer of the court. It has also served as a Chapter 11 Trustee and in various capacities as financial advisor to both creditors and debtors. (Appointment Order ¶¶ 62–70.)

² Disposition of the Receiver's Motion was delayed by the recent discovery of an email that some of the Defendants argued raised a question regarding the Trust's standing to bring this action. The Court addressed the standing argument on 27 November 2024, (Order and Opinion on MAXISIQ Defs.' and Five Insights' Mot. Dismiss the Trust's Second Am. Compl., ECF No. 692).

³ Counsel for Defendants IOMAXIS, LLC, Buhr, Spade, Griffin, Burleson and Five Insights was present and was given an opportunity to present oral argument but declined.

Ronald E. Howard Revocable Trust u/a dated February 9, 2016, as Amended and Restated.

Allen, Chesson & Grimes PLLC, by David Allen, Benjamin S. Chesson, and Anna Majestro, and Nelson Mullins Riley & Scarborough LLP, by Travis Bustamante, for Defendants IOMAXIS, LLC f/k/a IOMAX Information Services, LLC n/k/a MAXISIQ, Inc., Brad C. Boor a/k/a Brad C. Buhr, John Spade, Jr., William P. Griffin, III, and Robert A. Burleson.

Miller Monroe & Plyler, PLLC, by Jason A. Miller, Paul T. Flick, and Robert B. Rader, III, and Whiteford Taylor Preston, LLP, by Steven E. Tiller, for Defendant Nicholas Hurrysh, Jr.

Moon Wright & Houston, PLLC, by Andrew Houston, for the Receiver The Finley Group.

Earp, Judge.

I. FINDINGS OF FACT⁴

5. The factual background underlying the Court's decision to appoint the Receiver is as stated in the Appointment Order and is incorporated herein. In brief, Plaintiffs, Trustees of the Ronald E. Howard Revocable Trust ("Trust"), allege that the Trust owns a 51% economic interest in IOMAXIS, LLC, now known as MAXISIQ, Inc. ("IOMAXIS" or "Company"). They allege that the IOMAXIS Defendants⁵ have formulated and are actively implementing a plan to transfer assets, disguise distributions paid to other interest holders, and dilute the Trust's economic interest.

⁴ 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.").

⁵ For purposes of this Order, the "IOMAXIS Defendants" include Defendants IOMAXIS, Buhr, Griffin, Spade, Burleson, and Five Insights.

6. Despite a history of regular distributions to its members, Plaintiffs complain that, since Ron Howard's death seven years ago, IOMAXIS has not made any distributions to the Trust. They believe that IOMAXIS's members have continued to receive value for their interests but that the Trust, which they allege is an economic interest holder, is being wrongfully excluded. (Second Am. Compl. ¶¶ 104–13, ECF No. 401.)

7. In December 2020, one of the Defendants, Nicholas Hurysh, Jr. ("Hurysh"), broke ranks with the others and filed an affidavit that included assertions that Defendant Brad C. Buhr ("Buhr") had "orchestrated a plan to artificially devalue IOMAXIS for purposes of minimizing the buyout of [the Trust's] interest in IOMAXIS." (Hurysh Aff. ¶ 36, ECF No. 97.)⁶ According to Hurysh, Buhr accomplished this plan by setting up multiple shell companies with names like "Fast Rabbit" (a/k/a "Rapid Hare"), which he used to "siphon funds out of IOMAXIS for his own benefit and to the detriment of IOMAXIS." (Hurysh Aff. ¶ 49.)

8. Hurysh also testified that Buhr engaged in misconduct "by setting up loans from IOMAXIS to Fast Rabbit and then 'repaying' these loans by adding substantial mark-ups to vendor invoices and then passing them through to IOMAXIS for payment. Mr. Buhr used these phony markups to generate funds to 'repay' the loans he setup with IOMAXIS." (Hurysh Aff. ¶ 49.)

9. Hurysh testified that from 2015 to mid-2020, Buhr "directed millions of dollars in payments from IOMAXIS to Fast Rabbit." (Hurysh Aff. ¶ 66.) At the same

⁶ Hurysh has since filed multiple affidavits in this matter, as referenced herein.

time, Buhr “incurred substantial expenses on extravagant travel, massages, entertainment, jewelry, gifts, and other personal benefits and credited these expenditures as ‘payments’ against the loan from IOMAXIS to Fast Rabbit as if they were legitimate business expenses.” (Hurysh Aff. ¶ 50.)

10. Hurysh testified that Buhr also used other corporate entities, including vendors named “Planetary Array,” “Cloud Storm,” and “Peak Radius,” and a shell intermediary named “Global Vector, LLC,” to divert IOMAXIS’s funds for his personal use. He added that “[f]rom 2015 until mid-2020, the IOMAXIS accounting system reflects that IOMAXIS paid at least \$2.4M to ‘Cloud Storm,’ \$7.1M to ‘Peak Radius,’ and \$2.7M to ‘Planetary Array.’” (Hurysh Aff. ¶¶ 43–45, 70, 72, 74–75.)

11. Buhr disputes these allegations and claims that any money transferred from IOMAXIS to Fast Rabbit was a loan that was repaid in 2013. (IOMAXIS’s Br. Opp. Mot. Appoint Receiver, Ex. A—Feb. 22, 2021 Aff. of Brad Buhr [“Buhr Aff.”] ¶¶ 18–20, 23, ECF No. 112.2.)

12. As evidence to support his allegations, in July 2021, Hurysh produced recordings of two telephone conference calls, one on 17 July 2020, and a second on 22 July 2020. During the 17 July 2020 conference call, Hurysh testified that Buhr “announced that IOMAXIS had converted the capital accounts of the IOMAXIS members (excluding decedent Ron Howard’s capital account) into loans for the purpose of being able to make ‘distributions’ to the members of IOMAXIS but [to] call them loan repayments thereby avoiding having to make pro-rata distributions to [the Trust].” (Additional and Suppl. Aff. Nicholas Hurysh, Jr. ¶ 8, ECF No. 244.5.)

13. IOMAXIS contends that it did not hide the plan to convert member capital accounts to loans, which it says it reported as a distribution in 2020. (IOMAXIS Defs.’ Br. Opp. Finley Grp’s Mot. [“Defs.’ Br.”] 17–18, ECF No. 618.) IOMAXIS further contends that, at least from 2018 to 2021, it “was free to make distributions to its members without distributing anything to the Trust. And it did.” (Defs.’ Br. 6.) The Trust was unaware of the conversion of capital to loans and did not receive distributions.⁷

14. Hurysh described the 22 July 2020 conference call as one in which “Buhr generally announced a complicated reorganization aimed at moving IOMAXIS from Texas to Delaware, changing the corporate form of IOMAXIS, and moving assets out of IOMAXIS into holding companies in various forms in order to protect these assets from claimants and, in particular, [the Trust].” (Hurysh 12 July 2021 Aff. ¶ 8, ECF No. 395.6.) The plan was to “setup [sic] one holding company for [IOMAXIS’s] public stock and similar investments, another holding company for IOMAXIS’[s] private stock investments, and other holding companies to protect IOMAXIS’[s] other assets.” (Hurysh 12 July 2021 Aff. ¶ 10.)

15. Hurysh testified that the “primary purpose for the restructuring of the company was two-fold: 1. to move assets out of the reach of the estate during the pendency of this litigation and 2. to convert capital contributions of all owners (except the Estate) to loans thereby allowing Defendant Buhr to pay himself and the other

⁷ IOMAXIS states: “This is an issue the parties can resolve through litigation. If the Trust is entitled to 51 percent of the distribution, it has the information to calculate its damages. MAXISIQ has the money to pay it.” (Defs.’ Br. 18.)

Individual Defendants distributions from IOMAXIS, but to label these distributions as a repayment of loans thereby avoiding the legal obligation to make these payments to all owners pro-rata (including the Estate).” (Aff. of Nicholas Hurysh, Jr. Opp. Mot. Prot. Order [“Hurysh Aff. Prot. Order”] ¶ 29, ECF No. 395.1.)

16. Notably, during the 17 July 2020 teleconference, Buhr counseled the IOMAXIS Defendants to avoid communicating “about distributions or taxes” on email because “then that becomes discoverable by the court[.]” (Additional and Suppl. Aff. Nicholas Hurysh, Jr., Ex. B [“17 July 2020 Tr.”] 51:19–21, ECF No. 244.5.) He tasked Hurysh with the responsibility of finding a communication means that would make the messages “disappear.” (17 July 2020 Tr. 52:5–54:7.)

17. After Hurysh provided the testimony above, on 16 September 2020, IOMAXIS terminated his employment. (Hurysh Aff. Prot. Order ¶ 51.) He complains that “IOMAXIS then created a false valuation of [his] membership interest based on fraudulent and inaccurate financial information and purported to buy-out [his] membership interest for an amount far less than its actual value.” (Hurysh Aff. Prot. Order ¶ 60.) Hurysh claims that when he objected and demanded to see the financial information on which the valuation of his interest was based, IOMAXIS refused. (Hurysh Aff. Prot. Order ¶ 61).

18. After Defendant Hurysh unveiled these allegations, Plaintiffs amended their Complaint to include claims for fraud. (First Am. Compl., ECF No. 197.) In addition, in a Supplemental and Second Amended Complaint, Plaintiffs divided their contract claims into three separate causes of action (failure to pay distributions,

breach of the buy-sell agreement, and breach of the duty of good faith and fair dealing), added allegations that the contract was repudiated, added civil conspiracy, and expanded and supplemented their factual allegations. (Second Am. Compl., ECF No. 401.)

19. Since the July 2020 recorded teleconferences occurred, IOMAXIS has undergone significant changes. It became a Delaware LLC, MAXISIQ, LLC, on 12 August 2020 and adopted a new operating agreement. (Second Am. Compl., Ex. 3 [“Delaware Petition”] ¶¶ 35, 37–38, ECF No. 401.3.) MAXISIQ, LLC converted to a Delaware corporation, MAXISIQ, Inc., on 31 March 2023. (Delaware Petition ¶ 48.)

20. Further, on 22 April 2021, Defendants Spade, Buhr, Griffin and Burleson formed Five Insights, LLC (“Five Insights”), a management services company, to operate MAXISIQ, Inc (herein “IOMAXIS”) and other entities. (Delaware Petition ¶¶ 40–42; Dep. of Brad Buhr [“Buhr Dep.”] 35:17–21, ECF No. 388.4.) Spade, Buhr, Griffin, and Burleson then conveyed their membership interests in IOMAXIS to Five Insights in exchange for like membership interests in Five Insights. (Delaware Petition ¶ 44.)

21. In sum, ownership, management, and control of IOMAXIS has been transferred to Five Insights, which is owned by Buhr, Spade, Griffin, and Burleson, and controlled by Buhr. (Buhr Dep. 14:10–19, 15:1–19, 35:17–19, 133:20–23, 134:4–6.) The former members of IOMAXIS are now members of Five Insights, while the Trust alleges that it is still an economic interest holder in IOMAXIS. (Buhr Dep. 151:23–152:13.)

22. Thereafter, on 1 May 2023, at Buhr's direction, Five Insights sold Ingressive, a business unit of IOMAXIS, to Millennium Corporation. (Buhr Dep. 57:14–58:1, 58:16–18, 60:9–22; Griffin Dep. 131:15–18, ECF No. 338.5.) None of the IOMAXIS Defendants notified the Trust of the sale, and the Trust has not received any economic benefit from the sale. (Pls.' Am. and Restated Br. Supp. Am. Mot. Appt. Rec. 3, ECF No. 331 (under seal), ECF No. 388.2 (public version).)

23. Plaintiffs allege that the creation of Five Insights and the subsequent sale of Ingressive through Five Insights is part of the plan to disguise distributions and devalue the Trust's economic interest in IOMAXIS, as discussed in the July 2020 recorded telephone conferences. (Pls.' Am. Mot. Appoint Receiver 3, ECF No. 330 (under seal), ECF No. 388.1 (public version).)

24. Buhr has testified that the Trust "has no economic interest" in IOMAXIS, and that he does not "have to treat the Trust honorably[.]" (Buhr Dep. 44:12–13; 61:21–22; *see also* Buhr Dep. 62:5–8 ("Q. "So you believe it would be perfectly within your rights to sell off the company bit by bit until there's nothing left?; A. "Yes - - -").)⁸

25. As a result of these developments, Plaintiffs moved for the appointment of a limited receiver to be the "eyes and ears" of the Court and to protect *the status quo* during the pendency of this litigation. (Pls.' Suppl. Br. Supp. Am. Mot. Appoint Receiver ["Pls.' Suppl. Br."] 13, ECF No. 404.) Given the evidence raising concern

⁸ Moreover, Plaintiffs believe the IOMAXIS Defendants have been purposefully recalcitrant during the discovery process to create delay in order to implement their alleged scheme. (Pls.' Suppl. Br. Supp. Am. Mot. Appoint Receiver ["Pls.' Suppl. Br."] 6–7, ECF No. 404.)

regarding asset transfers to insiders and related parties, among other reasons, the Court granted the motion, and the Receiver was appointed on 25 January 2024. (*See* Appointment Order, ECF No. 415.) The Receiver was tasked with conducting an investigation into the whereabouts of certain assets and the reason for their transfer, as well as overseeing the financial status of IOMAXIS to maintain the *status quo*.

26. The Court ordered IOMAXIS and the Responsible Parties to cooperate fully with the Receiver and to promptly respond to the Receiver’s inquiries for information. (Appointment Order ¶¶ 76–79.) IOMAXIS and the Responsible Parties were enjoined from “knowingly interfering with the Receiver or its duly appointed agents or representatives in connection with the investigation and analysis prescribed herein, and from interfering with the operations of the Receiver as herein authorized.” (Appointment Order ¶ 77.)

27. During the initial term of the receivership, the Receiver prepared and filed six reports detailing its progress with respect to the duties assigned by the Court. (*See* ECF Nos. 444, 472, 494, 513, 542, 573 (under seal), ECF Nos. 559, 560, 561, 562, 616, 617 (public versions).) In these reports, the Receiver observed that it had been unable to obtain the information it sought from IOMAXIS in a timely manner—and sometimes not at all. The Receiver summarized this concern in its brief: “[T]he Receiver has not received sufficient information or cooperation from Iomaxis or the Responsible Parties⁹ to either complete its initial investigation or completely exercise

⁹ The Responsible Parties are defined as “[e]ach officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over or affect the affairs of IOMAXIS[.]” (Appointment Order ¶ 77.)

its oversight function.” (Receiver’s Br. Supp. Mot. Extend term of Receivership, Compel Production of Info., and Grant Related Relief [“Receiver’s Br.”] 3, ECF No. 587.)

28. While some records were produced, the Receiver reported that it was not able to complete its Court-assigned duties because the Responsible Parties had failed to produce all of the requested records, refused to identify entities “to which IOMAXIS is transferring millions of dollars,”¹⁰ refused multiple requests for meetings, and generally had been uncooperative—even to the point of, at times, dictating to the Receiver how it should perform its duties. (Receiver’s Br. 3–5.)

29. In its sixth report, the Receiver complained that, even after six months, the Receiver had unanswered questions, there were missing documents, and its analysis was not complete. The Receiver attributed the situation to a lack of cooperation on the part of IOMAXIS and the Responsible Parties:

Early in the Initial Term and after an initial review of the provided documents, the Receiver requested to meet with the business representatives in an effort to efficiently gain an understanding of the background and financial affairs of the Company. The Receiver’s request was refused, and all information was shared either through a document production or email communications with IOMAXIS Counsel. The Receiver had no contact with Iomaxis business representatives during the Initial Term.

It is worth noting that this structure directed by defendant’s legal counsel has had a negative impact on the effectiveness and efficiency of the Receiver’s efforts. In many cases, broad requests and open-ended questions were met with responses and / or documents that were neither helpful nor complete. Likewise, detailed requests, made with intentional

¹⁰ The unidentified recipients are referred to by IOMAXIS’s counsel as “Payhatch,” “Company A,” “Company B,” “Company C,” “SA 1,” and/or “SA 2,” (collectively, the “Payhatch Entities”). (Receiver’s Br. 4–5.)

specificity, were frequently met with responses or documents that were insufficient to complete the Receiver's inquiry.

(Receiver's Sixth Status Report 4, ECF No. 573 (under seal), ECF No. 617 (public version).)

30. Defendants counter that it was the Receiver that refused to work with them, rather than the other way around, and that the Receiver failed to ask for documents that it now claims IOMAXIS did not produce and ignored other information that has been provided to it. (Defs.' Br. 7-9.)

31. Regardless of where the fault lies, the Receiver has not finished its work. Moreover, the Receiver reports that IOMAXIS has transferred millions of dollars to entities in which one or more of the IOMAXIS Defendants have an ownership interest. One of those entities is Five Insights, to which IOMAXIS has paid sizeable management fees, as well as dividends. Other affiliated entities, in which one or more Defendants have an ownership interest and identified to the Receiver only by various pseudonyms (the "Payhatch Entities"), have also received large sums of money from IOMAXIS.

32. In addition, the Receiver reports that much about IOMAXIS's financial condition remains a mystery. The Receiver concluded that:

[A] competent, yet independent third party could not solely and merely rely on the presented financial records to evaluate the revenue, gross margins, profitability and cash flow of the Company. Among other factors, Gross margin analysis is materially impacted by the financial operations with [the unnamed Payhatch Entities]. Additionally, the overall profitability of IOMAXIS is materially impacted by the arrangement and relationship with Five Insights. Further, IOMAXIS'[s] financial picture is impacted by and clouded by numerous loans and investments with related and unrelated parties.

(Receiver's Sixth Status Report 13.)

33. As to whether IOMAXIS is insolvent or is in imminent danger of insolvency, the Receiver reported that IOMAXIS appeared to be adequately capitalized as of 31 May 2024. However, the Receiver cautioned: "considering the unique nature of the management (Brad Buhr, Managing Partner, MAXISIQ, Inc) and equity ownership (purportedly 100% owned by Five Insights, LLC, with Brad Buhr serving as Chief Executive Officer), there exist no apparent safeguards to preserve and maintain this level of solvency, as it can be reduced at the direction of the Manager and/or sole shareholder immediately, at any point in time." (Receiver's Sixth Report 14.)

34. Also of particular concern are a number of instances of possible mismanagement of IOMAXIS that the Receiver believes warrant further investigation, including without limitation:

- Lack of forecast, financial analysis and valuation of future expected cashflows when evaluating a sale of contract assets to Millennium.
- Transferring membership rights and ownership to a related party entity (Five Insights, LLC) for the benefit of select interest holders, exposing IOMAXIS to potential legal and financial liability.
- Lack of required documentation of fee amounts for services rendered by Five Insights to IOMAXIS.

- Extension of credit to Tech Silo and then write offs of the loan as bad debt (2021). Repeated extension of credit and write offs (2022, 2023) and continued extensions of credit (2024).
- Creation of promissory notes as obligations and liabilities of the company for the benefit of select interest holders.
- No valuation of assets sold to OOKOS in exchange for a \$100k promissory note at below market interest rate.
- The purchase of an interest in Vexterra without third party valuation.
- Excessive profits at PayHatch / Company B and Company C which may create exposure to other potential legal and financial liability.
- Excessive personal spending on business credit cards.
- Excessive perks (travel, holiday parties, gifts, etc).
- The hiring of family members and concentration of duties in family members.
- Lack of independent validation of transactions with related parties.
- Lack of separate and independent legal counsel for the Company.
- Payment of large bonus compensation without sufficient documentation and support.
- Appointment of a board of directors comprised of former IOMAXIS shareholders (now current shareholders of Five Insights) and grant to those directors of broad and unmitigated authority over the Company.

(Receiver's Sixth Report 15.)

35. The Appointment Order provides that the Receiver shall not be deemed discharged until the Court enters an order discharging it, “provided that as a condition precedent to discharge, the Receiver must have filed with the Court and served on all parties a final report satisfactory to the Court.” (Appointment Order ¶ 86.) Because that condition has not been met in this case, the Court has not discharged the Receiver.

II. CONCLUSIONS OF LAW

36. The appointment of a receiver is an extraordinary remedy. *See e.g., Neighbors v. Evans*, 210 N.C. 550, 554 (1936). However, the Court has already determined that it is an appropriate response to the circumstances of this case and does not revisit that decision here.¹¹

¹¹ As the Court observed in the Appointment Order, pursuant to Section 1-502 of the North Carolina General Statutes, a receiver may be appointed “[b]efore judgment . . . when the party establishes an apparent right to property that is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired[.]” N.C.G.S. § 1-502(1).

Similarly, under the North Carolina Commercial Receivership Act (“NCCRA”), a receiver may be appointed before judgment:

to protect a party that demonstrates an apparent right, title, or interest in property . . . if the property or its rents and profits is being subjected to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction.

N.C.G.S. § 1-507.24(c). The Uniform Voidable Transactions Act (UVTA), N.C.G.S. § 39-23.1 *et seq.*, defines a voidable transaction to include one made by a debtor “[w]ith intent to hinder, delay, or defraud any creditor of the debtor[.]” N.C.G.S. § 39-23.4(a)(1). When determining if a debtor made, or is about to make, a transfer with the intent to “hinder, delay, or defraud” a creditor, courts examine a nonexclusive list of thirteen “badges of fraud.” These factors include (1) whether the transfer was to an insider; (2) the debtor’s control or possession of the property after the transfer; (3) whether the transfer or obligation was disclosed or concealed; (4) whether the debtor faced the threat of litigation or was being sued before the transfer occurred; (5) whether the debtor removed or concealed assets; and (6) whether the transfer

37. In the Appointment Order, the Court concluded that Plaintiffs have shown a reasonable likelihood of success on one or more of their claims. (Appointment Order ¶¶ 57–60.) Nothing in the Receiver’s status reports, the Receiver’s Motion and supporting brief, or the responsive brief of the Defendants changes this conclusion. As a purported 51% economic interest holder, the Trust has an apparent right, title or interest in property controlled by IOMAXIS, and there is evidence that the property is in danger of waste, loss, dissipation or impairment. The question now before the Court is whether the receivership should be extended to allow the Receiver to perform the duties the Court previously assigned it. The Court concludes that it is both necessary and appropriate to continue the limited receivership.

38. Defendants cite to cases in which a trial court “overreached the bounds of discretion” by appointing a Receiver, and they argue that the same has occurred under the circumstances presented here. (Defs.’ Br. 11.) The Court disagrees. As the cases cited by Defendants make plain, and as our Court of Appeals has observed, “whether [a receiver] ought to be appointed must be adjudged according to the equities of the particular case at hand.” *Haarhuis v. Cheek*, 261 N.C. App. 358, 368

occurred shortly before or after a substantial debt was incurred. No particular factor or number of factors is required; the totality of the circumstances dictates whether there is sufficient evidence of fraudulent intent to void the transaction. See N.C.G.S. § 39-23.4, cmt. 6 (2014). Further, a receiver may be appointed “in other cases as provided by law and equity.” N.C.G.S. § 1-507.24(g).

In addition to the statutory bases for appointing a receiver, the Court has the inherent authority to do so. See *Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959) (“Courts of equity have original power to appoint receivers and to make such orders and decrees . . . as justice and equity may require.”).

(2018) (collecting cases). Evidence presented by the Trust, as well as concern expressed by the Receiver—a court-appointed neutral—supports continuation of the receivership.¹²

III. ORDER

39. Accordingly, based on the foregoing findings and conclusions, the Court, in the exercise of its discretion, **GRANTS** the Receiver’s Motion and **ORDERS** as follows:

40. Until discharged by the Court, the Finley Group, and Mr. Smith as the Finley Group’s agent, shall continue to serve as Receiver on a month-to-month basis to perform the duties and responsibilities provided in the Appointment Order, including but not limited to paragraph 73, as well as the additional duties and responsibilities provided herein. After six (6) months, the Receiver shall file either (a) a final report and request discharge; or (b) a status report identifying reasons that the Receivership should be continued.

41. Upon motion by the Receiver, or any party in interest, or at such times as the Court may deem appropriate, the Court shall schedule status conferences to review the status of the receivership. In addition, the Receiver shall, during the

¹² Defendants argue that the company is well-funded and that its net income is increasing. They contend that IOMAXIS is paying Five Insights for legitimate expenses and that IOMAXIS’s transfers to Five Insights and other vendors owned by insiders has improved its profitability. (Defs.’ Br. 12–15.) However, they do not challenge the Receiver’s conclusion that, given the governance in place, there are no apparent safeguards to preserve this solvency. (*See supra* ¶ 33.) Further, the representations Defendants make with respect to IOMAXIS’s profitability and ability to satisfy its debts have not been confirmed by the Receiver.

pendency of this action, have the right to apply to this Court for further instructions, directions, or authority.

42. The duties of IOMAXIS and each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over or affect the affairs of IOMAXIS (collectively, the “Responsible Parties”) are as set forth in paragraphs 76 and 78 of the Appointment Order and remain in effect.

43. The Responsible Parties shall comply fully with N.C.G.S. § 1–507.30(b) and shall perform the duties set forth therein, in addition to those duties otherwise conferred by statute or order of the Court, shall reasonably cooperate with the Receiver in the administration of the receivership, and are hereby enjoined from knowingly interfering with the Receiver or its duly appointed agents or representatives in the performance of the Receiver’s duties.

44. In accordance with their obligations under N.C.G.S. § 1-507.30, the Responsible Parties are hereby **ORDERED** to provide to the Receiver no later than fourteen (14) days from entry of this Order¹³:

- (a) Documentation regarding all actual or planned transfers involving IOMAXIS’s funds or other assets valued in excess of \$100,000.00 (aggregated annually) from 1 January 2023 until 31 December 2024. The documentation shall, at a minimum, identify the following: (a) date; (b) amount; (c) persons or entities to whom funds or other assets

¹³ To the extent IOMAXIS contends that any of the information it is ordered to produce has already been produced to the Receiver, IOMAXIS shall identify such record(s) to the Receiver by bates number(s), specifying the provision of this Order to which the record(s) is responsive, within fourteen days following entry of this Order.

have been or will be transferred; (d) the basis for the transfer; (e) whether any identified person or entity is related to or affiliated with any of the Responsible Parties (and if so, which one(s)).

- (b) Complete copies of IOMAXIS's bank account records and statements for all (i) Bank of America, N.A., (ii) Broadway Bank, and (iii) American Express bank/credit card accounts covering the period 1 January 2023 through the present. Thereafter, for each month that follows until the Receivership concludes, the Responsible Parties shall update this production by producing the same records and statements for the above accounts, and for any new bank/credit account opened by IOMAXIS, within ten days from the date the records and statements are made available to IOMAXIS.
- (c) A chart listing all of IOMAXIS's accounts by institution and account number.
- (d) Complete copies of IOMAXIS's vendor reports for Millenium, Vexterra and Intraxis covering the period 1 January 2013 through the present. Thereafter, for each month that follows until this Receivership concludes, the Responsible Parties shall update this production by producing the same reports within twenty-one (21) days after the close of the preceding month.
- (e) IOMAXIS's monthly financial reports for each month covering the period 1 January 2024 through the present. Each monthly financial

report shall include the following information and documents: (i) the monthly bank statements, (ii) the monthly bank reconciliation, (iii) the vendor reports for the applicable month (in addition to those specified in (d) above), (iv) the accounts payable reports, (v) the ledger report with account level detail, and (vi) the payroll detail. Thereafter, for each month that follows until this Receivership concludes, the Responsible Parties shall update this production by producing the same information within twenty-one (21) days after the close of the preceding month.

- (f) Complete copies of IOMAXIS's internal policies and procedures from 1 January 2017 to present.
- (g) Complete copies of the following IOMAXIS documents in effect at any time between 1 January 2017 and the present: articles of incorporation; certificates of formation; bylaws; shareholder agreements; organizational and management charts; subscription agreements; operating agreements; share certificates; minutes of board, owner or management meetings; minutes of shareholder meetings; and corporate resolutions.
- (h) A complete copy of the Purchase and Sale Agreement between Defendants Spade and Buhr related to the sale of an interest in IOMAXIS (September 2017).

- (i) Direct access to IOMAXIS's electronic financial and accounting records in "read only" format (including but not limited to its JAMIS accounting software and its financial and accounting files saved to Synology), together with the applicable passwords and/or access codes. Any attorney-client privileged information (e.g., attorney invoices with substantive descriptions of services) may be segregated and logged on a privilege log.

45. Additionally, because the Receiver's duties include safeguarding the assets of IOMAXIS and protecting the *status quo*, and because there is evidence that some Defendants have received large amounts of money or other assets from IOMAXIS, either directly or through entities in which they have an ownership interest, the Receiver believes it is necessary for the administration of the receivership to review information from the recipients of this money or other assets.

46. The Receiver further contends that the oversight and reporting functions in the Appointment Order requiring him to identify insiders (and entities set up by insiders), transactions between IOMAXIS and its insiders and affiliates, and benefits afforded to insiders (including compensation, distributions and dividends), necessitate his review of certain information from both the individual Defendants and from entities in which these individuals have an ownership interest and that have received transfers from IOMAXIS.

47. Accordingly, within twenty-one (21) days from entry of this order, IOMAXIS and its Responsible Parties are **ORDERED** to provide the following information and documents to the Receiver:

- (a) Complete unredacted copies of the state and federal tax returns (including all schedules and amendments) for 2020-2023 for defendants Five Insights, LLC, Brad Buhr, William Griffin, III, John Spade, Jr., and Robert Burleson.
- (b) Complete copies of the financial statements (profit and loss statements, balance sheets and statement of cash flows) for Tech Silo, Inc. from 1 January 2013 through the present.
- (c) A sworn statement disclosing the identity of the entities referred to as “Payhatch,” “Company A,” “Company B,” “Company C,” “SA 1,” and/or “SA 2,” and referred to collectively herein as the “Payhatch Entities.” The sworn statement shall include the following information for each entity: its legal name; the date and state of its incorporation; the identity of each of its owners, officers, directors and managers; and the identity of each of its employees.
- (d) A sworn statement disclosing the following information as to (a) Five Insights, LLC; (b) Five Assets, LLC; and (c) Tech Silo, Inc., respectively; the date and state of each entity’s incorporation; the identity of each entity’s owners, officers, directors and managers; and the identity of each entity’s employees.

(e) In addition, as to (a) Five Insights, LLC; (b) Five Assets, LLC; and (c) the Payhatch Entities, the following information shall be produced to the Receiver:

- i. Complete unredacted copies of each entity's state and federal tax returns (including all schedules and amendments) for 2020-2023.
- ii. Complete copies of each entity's financial statements (profit and loss statements, balance sheets and statement of cash flows) for the years 2020 through the present.
- iii. Direct access to each entity's electronic financial and accounting records in "read only" format, together with the applicable passwords and/or access codes for all electronic records. Any attorney-client privileged information (e.g., attorney invoices with substantive descriptions of services) may be segregated and logged on a privilege log.
- iv. Complete copies of each entity's monthly financial reports for each month covering the period of 1 January 2024 through the present. Each monthly financial report shall include the following information and documents for each entity: (i) the monthly bank statements, (ii) the monthly bank reconciliation, (iii) the vendor reports for the applicable

month, (iv) the accounts payable reports, (v) the ledger report with account level detail, and (vi) the payroll detail.

48. On an ongoing basis, the Responsible Parties (including specifically defendants Buhr, Griffin and Spade) are **ORDERED** to and shall provide the Receiver with a monthly financial report for each entity identified in paragraph 47, above (Five Insights, LLC, Five Assets, LLC and the Payhatch Entities) on or before the date that is twenty-one (21) days following the end of each calendar month disclosing each entity's financial performance and status for the prior month. Each monthly financial report shall include the following information and documents for each entity: (i) the monthly bank statements, (ii) the monthly bank reconciliation, (iii) the vendor reports for the applicable month, (iv) the accounts payable reports, (v) the ledger report with account level detail, and (vi) the payroll detail.

49. To the extent IOMAXIS and/or the Responsible Parties are unable to produce the information required of them because the information is not within their care, custody and control, IOMAXIS and each individual Defendant shall submit a sworn statement attesting to it/their inability to comply with this Order, the reasons therefore, and identifying the person(s) who they believe have care, custody and control of the information in question.

50. Within five (5) days from entry of this order, IOMAXIS and the Responsible Parties are **ORDERED** to provide the Receiver with email addresses for the following individuals: Linda Buhr, Tara Pichurko, Anya Gulchenko-Jackson, Bryanna Sapp, Tracey Steele, Alison Coleman, Michael Maher, Brad Buhr, William

Griffin, III, John Spade, Jr. and Robert Burleson. In addition, to the extent the information is available to them, within five (5) days from the date of a request from the Receiver, IOMAXIS and the Responsible Parties shall provide the Receiver with the email addresses for any individuals subsequently identified by the Receiver.

51. In-person or video meetings with individuals identified by the Receiver shall occur at a mutually agreeable time within fourteen (14) days of the Receiver's request via email, copying all counsel. The individual interviewed may have counsel present, but only the Receiver may ask questions. The Receiver shall record and maintain a recording of any such meeting (both audio and video) pending further order of the Court.

52. In furtherance of its duties under the Receivership Order, the Receiver is authorized, as may be necessary or appropriate, (a) to cause the issuance and service of subpoenas *duces tecum* and/or subpoenas *ad testificandum* and (b) to take depositions.

53. Upon request by the Receiver, the Responsible Parties are further **ORDERED** to make available to the Receiver for purposes of the discharge of his duties all other books and records, electronic data, access codes or passwords, statements of accounts, deeds, titles, or other evidence of ownership, financial statements, financial and lien information, bank account statements, bank accounts, deposits, tax returns, checkbooks, ledgers, accounts payable and accounts receivable records, contracts, agreements, invoices, and papers and documents related to the financial operations of IOMAXIS (collectively, the "Financial Property"). This

obligation of the Responsible Parties to turn over Financial Property to the Receiver shall be ongoing and shall apply equally to any Financial Property of IOMAXIS that the Responsible Parties receive or obtain after entry of this Order.

54. The Receiver is authorized to serve this Order on all financial institutions that have maintained or currently maintain any of IOMAXIS's bank accounts (or its agents holding funds) or with whom IOMAXIS has a lender/borrower relationship, and any such financial institution and any other persons in active concert or participation with IOMAXIS shall take such steps as are necessary to promptly provide the Receiver with necessary Financial Property within their possession as requested by the Receiver. Any financial institution maintaining IOMAXIS's bank accounts shall, upon the Receiver's request, provide to the Receiver a complete listing of account numbers. For each such account, the financial institution shall upon the Receiver's request promptly provide the Receiver the current balance for each account and monthly bank statements (and details of transactions as requested).

55. The Receiver is further authorized to serve this Order and the Receivership Order on any third-party accounting or auditing firm that has prepared IOMAXIS's tax returns or audited IOMAXIS's books and records since 1 January 2017, and to obtain from that firm(s) information the Receiver deems necessary to perform its duties hereunder. Any accounting or auditing firm receiving this Order is hereby authorized and directed to take such steps as are necessary to promptly provide the Receiver with any requested tax returns, audit reports, accounting

records, financial statements, financial information and work papers within their possession, custody and control that pertain to IOMAXIS. Third-party accounting or auditing firms are also authorized and directed to discuss the following matters with the Receiver: IOMAXIS's financial condition, including its tax returns or audit reports; IOMAXIS's accounting and business practices; the Financial Property of IOMAXIS; and all matters identified in the Receivership Order.

56. The Receiver may employ accountants, attorneys, and other professionals as reasonably necessary to assist in carrying out its duties, pursuant to N.C.G.S. § 1-507.31.

57. In accordance with N.C.G.S. § 1-507.31(b), and subject to any procedural safeguards and reporting the Court may subsequently order, the Receiver and any other professionals retained to provide services to the receivership are to be paid from the receivership. IOMAXIS shall fund the receivership, absent any further orders from this Court to the contrary.

58. The Receiver's fees and expenses shall be paid following notice to all parties to this action and approval of such fees and expenses by the Court, subject to N.C.G.S. § 1-507.51, pursuant to the following process:

- (a) The Receiver shall prepare, file, and serve request for payment, with invoices, for the Receiver's fees and expenses, within seven (7) days following the close of each month of the receivership period;
- (b) The Receiver's fees must be task-billed, with separate entries for each separate and individual task performed by any individual, the date of

such task, a description of each task, the amount of time expended performing the task, and a designation of whether the task involves legal or non-legal services;

- (c) Any party wishing to object to the amount of the Receiver's invoice, or any entry therein, shall file and serve the written objection within four (4) business days following service of the Receiver's request for payment; and
- (d) The Court will enter an order regarding an award of fees and expenses after consideration of the request for payment and any written objections.

59. To the fullest extent allowed under applicable law, the Receiver and the employees, agents, accountants, and other professionals hired by the Receiver shall be entitled to all defenses and immunities provided by North Carolina law for all acts and omissions within the scope of the Receiver's appointment.

60. To the fullest extent allowed under applicable law, neither the Receiver nor the employees, agents, accountants, and other professionals hired by the Receiver may be sued personally for any act or omission in administering receivership property without the approval of this Court, as set forth in N.C.G.S. § 1-507.27.

61. The Receiver may provide a copy of this Order to anyone who may be affected by its terms and provisions.

62. As a result of the limited nature of the receivership, the management of IOMAXIS shall remain vested in its current management, which the Court

understands to be Five Insights. Notwithstanding Five Insights's role, financial outlays in excess of \$100,000.00 that are outside the ordinary course of operations, including the expenditure of funds, the incursion of debt, and the distribution or other transfer of any assets, must be disclosed at least 72 hours in advance to the Receiver. The Receiver may, through counsel or otherwise, file with the Court, either on the public record or provisionally under seal in accordance with Business Court Rule 5.2, any documents reasonably necessary in the Receiver's opinion to alert the Court to activity by the Management of IOMAXIS that the Receiver believes is not in the best financial interest of IOMAXIS.

63. To the extent the Receiver's duties require a review of confidential business information, Finley Group personnel shall be required to agree to the terms of the Protective Order entered in this action. (*See* Prot. Order, ECF No. 20, as amended, ECF No. 45.)

64. Plaintiffs shall post an additional bond with the Mecklenburg County Clerk of Superior Court in the amount of \$100,000.00. The bond shall be posted within seven (7) days of entry of this Order. Plaintiffs shall promptly file a notice with the Court once the bond is posted.

65. The Court may order that additional security be posted during the term of the Receivership.

66. The Receiver shall be deemed discharged upon entry of an order discharging the Receiver; provided that as a condition precedent to discharge, the

Receiver must have filed with the Court and served on all parties a final report satisfactory to the Court.

67. This Order shall be effective immediately upon entry.

68. The Court shall retain jurisdiction over the interpretation, implementation, and enforcement of this Order.

SO ORDERED, this the 17th day of December, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases