

STATE OF NORTH CAROLINA
LENOIR COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 635

JULIUS P. "JAY" CHERRY, JR. and
ANN B. CHERRY,

Plaintiffs,

v.

ARMISTEAD B. MAUCK,

Defendant,

v.

AJAL INVESTMENTS, LLC and C-
GAS, LLC,

Nominal
Defendants.

**ORDER ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

1. This case arises out of management disputes in two family businesses: AJAL Investments, LLC and C-Gas, LLC. Plaintiffs Julius "Jay" Cherry, Jr. and Ann Cherry, a married couple, accuse their brother-in-law, Defendant Armistead Mauck, of making unauthorized distributions of company cash. Pending is the Cherrys' motion for preliminary injunction, (ECF No. 10), which the Court **GRANTS** for the reasons discussed below.

2. The material facts are undisputed. AJAL and C-Gas are among several companies in which the Cherrys (Jay and Ann) and the Maucks (Armistead and his wife, Louise) have shared interests. Since 2021, the families have been locked in related litigation over the management of a company called Cherry Oil Company. *See Mauck v. Cherry Oil Co.*, 2021 NCBC LEXIS 81, at *2 (N.C. Super. Ct. Sept. 20, 2021)

(“This action, succinctly put, concerns a dispute among family members over the management and future direction of a family business.”).

3. AJAL’s membership interest is split equally between the Cherrys and the Maucks. C-Gas’s membership interest is split equally between Jay and Armistead (Ann and Louise are not members). Jay and Armistead are also the only managers of each company. (See V. Am. Compl. ¶¶ 6, 7, 12, ECF No. 9; Aff. A. Mauck ¶¶ 4–9, ECF No. 14.)

4. AJAL’s operating agreement states that “[t]he Managers shall distribute Distributable Cash and other property at such times and in such amounts as the Majority in Interest of the Members determines, in its sole discretion.” C-Gas’s operating agreement similarly states that “[a]ny cash of the Company which might be available for distribution to the Members shall be distributed to the Members at such times and in such amounts as determined by the Members.” (AJAL Op. Agrmt. § 9.3, ECF No. 3; C-Gas Op. Agrmt. § 8.1, ECF No. 3.)

5. In October 2013, Jay and Armistead agreed that AJAL and C-Gas would make regular monthly distributions of \$29,000 and \$6,000 to be split equally between the two families. This arrangement lasted more than a decade. Earlier this year, the Cherrys changed their minds. They were upset that the Maucks did not attend a special meeting of AJAL’s members to discuss sums supposedly owed to Cherry Oil. Following the aborted meeting, the Cherrys “question[ed] the ability of AJAL to conduct its business” and “withdr[ew their] consent to make the continuing monthly payments from AJAL.” Later, they withdrew their consent to C-Gas’s distributions

as well. This did not dissuade Armistead, who continued distributing cash each month. He told the Cherrys that “[w]e agreed to the current monthly distributions,” “[w]e have not agreed to stop them,” and “you do not have ‘the unilateral authority’ to do so.” In response, the Cherrys informed Armistead that Cherry Oil would withhold “inter-company rent payments to C-Gas and AJAL in the amounts of the wrongfully retained funds paid by Mauck to himself.” (V. Am. Compl. ¶¶ 19, 20, 22–27, 30, 31; Aff. A. Mauck ¶¶ 19, 20, 24, 25, 35–37; Def.’s Ex. G, ECF No. 14.8.)

6. In this lawsuit, the Cherrys claim, among other things, that Armistead breached each company’s operating agreement by distributing cash without member authorization. Pending is the Cherrys’ motion for a preliminary injunction, in which they seek to bar Armistead from making future distributions and to force him to return the funds that he distributed over their objections. (ECF No. 10.) The motion is fully briefed, and the Court held a hearing on 4 December 2024.

7. 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 of proof and must show not only a likelihood of success on the merits of its claims but also a likelihood of irreparable harm in the absence of an injunction. *See A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983).

8. The Cherrys have shown that they are likely to succeed on the merits. Both agreements give the LLCs’ members the right to decide when and whether to distribute company cash, and absent approval of a majority of the members, the

managers have no authority to make distributions. The undisputed evidence shows that Armistead distributed cash from both LLCs without majority approval and that he intends to do so going forward, thus establishing a likelihood of success on the claims for breach of the operating agreements. *See Gruber v. Wright*, 2022 NCBC LEXIS 15, at *9 (N.C. Super. Ct. Feb. 17, 2022) (concluding that the plaintiff had established a likelihood of success on claims for breach of similar operating agreement provision given evidence that the defendant distributed cash without the plaintiff's consent).

9. Armistead offers no persuasive response. He does not dispute that the Cherrys, representing half the membership of each company, object to further distributions. Rather, his position is that their objection is ineffective. According to Armistead, he and Jay approved regular monthly distributions in 2013, and the Cherrys are stuck with that arrangement unless and until the members vote by a majority to change course at a formal meeting or by written consent.

10. This is an untenable argument. Under the operating agreements, the Cherrys are free to change their minds and to veto proposed distributions as they please. Consent at one time is not consent for all time. Moreover, no provision in either operating agreement requires the members to determine the amount and timing of distributions at formal meetings or by written consent. Indeed, Armistead has not argued or shown that he and Jay complied with these formalities when they decided to start making the distributions in 2013. In short, the Cherrys' opposition

deprives Armistead, as a manager of AJAL and C-Gas, of authority to distribute company cash.*

11. The Cherrys have also shown a likelihood of irreparable harm. Without an injunction, Armistead will continue to make distributions over the Cherrys' objection, thus depriving them of their "contractual rights . . . to participate in management decisions through [their] consent or veto of distributions." *Gruber*, 2022 NCBC LEXIS 15, at *9–10. Armistead's unilateral acts, without member approval, are "injur[ies] . . . to which [the Cherrys] should not be required to submit or [Armistead] permitted to inflict, and [are] of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *A.E.P. Indus.*, 308 N.C. at 407 (citation and quotation marks omitted).

12. Finally, the likely irreparable harm to the Cherrys from any continued breach outweighs any potential harm to Armistead from entry of an injunction. Although Armistead contends that the Cherrys have unclean hands, he has not shown that their actions, including temporarily directing Cherry Oil to withhold rent payments from AJAL and C-Gas, caused injury to him as opposed to the LLCs. *See Crumley & Assocs., P.C. v. Charles Peed & Assocs., P.A.*, 219 N.C. App. 615, 619 (2012) (noting that defense of unclean hands "is only available to a party who was injured by the alleged wrongful conduct" (citation and quotation marks omitted)).

* Just a few days after the hearing on this matter, the Cherrys and the Maucks held special member meetings for AJAL and C-Gas. Their counsel jointly reported that the members discussed the monthly distributions, with the Cherrys voting to halt them and the Maucks voting to continue them. But the parties agreed that Cherry Oil would remit overdue and future rent payments to an AJAL and C-Gas investment account.

13. Injunctive relief is therefore appropriate to prevent further unauthorized distributions from AJAL and C-Gas. But the Court declines to order Armistead to return past distributions because the purpose of a preliminary injunction “is not to punish past wrongs but to prevent future injuries” *Eco Fiber Inc. v. Yukon Packaging, LLC*, 2024 NCBC LEXIS 98, at *11 (N.C. Super. Ct. July 23, 2024).

14. For all these reasons, the Court **GRANTS** the Cherrys’ motion for preliminary injunction. In its discretion, the Court **ENJOINS** Defendant Armistead Mauck, during the pendency of this action, from making cash distributions from AJAL and C-Gas without the consent of a majority of the companies’ members as to the timing and amounts of such distributions. This Order shall become effective when the Cherrys post a bond or give security in the amount of \$500, which the Court concludes, in its discretion, is reasonable and appropriate as a condition of granting the preliminary injunction.

SO ORDERED, this the 18th day of December, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases