

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV012798-590

BARINGS LLC,

Plaintiff,

v.

IAN FOWLER, KELSEY TUCKER,
and CORINTHIA GLOBAL
MANAGEMENT LIMITED,

Defendants.

**ORDER ON CORINTHIA
GLOBAL MANAGEMENT
LIMITED'S MOTION TO STAY**

1. Defendant Corinthia Global Management Limited has moved to stay all proceedings under N.C.G.S. § 1-75.12(a). For the following reasons, the Court **DENIES** the motion.

2. **Background.** Plaintiff Barings LLC is a Delaware limited liability company that is headquartered in North Carolina. In March 2024, twenty-two members of Barings's Global Private Finance group resigned in unison and accepted similar positions at Corinthia, a fledgling competitor chartered and headquartered in the United Kingdom. In this case, Barings alleges that the departing employees took its trade secrets and other confidential information at Corinthia's direction and that Corinthia conspired with Ian Fowler and Kelsey Tucker (both former Barings officials) in orchestrating the raid. (*See generally* Am. Compl., ECF No. 69.)

3. At the start of this case, Barings moved for emergency injunctive relief and expedited discovery. To resolve that motion, the parties negotiated and tendered a stipulated injunction order for entry by the Court. Following the entry of that order, Corinthia returned over 100 documents containing Barings's confidential

information. Even so, Barings believes that Corinthia has not complied with all of the parties' agreed terms. (*See* Stip. Inj. Order, ECF No. 44.)

4. After Barings amended its complaint, Corinthia, Fowler, and Tucker each moved to dismiss the asserted claims under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. In another order issued today, the Court partly granted their motions to dismiss. Several claims remain. They include claims for civil conspiracy (against Corinthia, Fowler, and Tucker); constructive fraud and breach of fiduciary duty (against only Fowler); and tortious interference with contract, misappropriation of trade secrets, unfair or deceptive trade practices under N.C.G.S. § 75-1.1, and breach of the stipulated injunction order (against only Corinthia).

5. Corinthia has also moved to stay the case on *forum non conveniens* grounds under N.C.G.S. § 1-75.12, arguing that North Carolina is an inconvenient forum and that Barings's claims should be heard in England. Briefing on the motion to stay is complete, and the Court held a hearing on 28 October 2024. The motion is ripe for decision.

6. **Discussion.** If a trial court finds “that it would work a substantial injustice for [an] action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State.” N.C.G.S. § 1-75.12(a). In other words, “[w]hen it plainly appears that” North Carolina “is an inconvenient forum and that another is available which would better serve the ends of justice and the convenience of [the] parties, a stay should be entered.” *Motor Inn Mgmt., Inc. v. Irvin-Fuller Dev. Co.*, 46 N.C. App. 707, 713 (1980).

7. In deciding whether to grant a stay, our courts examine a series of convenience factors and policy considerations, including

(1) the nature of the case, (2) the convenience of the witnesses, (3) the availability of compulsory process to produce witnesses, (4) the relative ease of access to sources of proof, (5) the applicable law, (6) the burden of litigating matters not of local concern, (7) the desirability of litigating matters of local concern in local courts, (8) convenience and access to another forum, (9) choice of forum by plaintiff, and (10) all other practical considerations.

Peter Millar, LLC v. Shaw's Menswear, Inc., 274 N.C. App. 383, 388 (2020) (citation and quotation marks omitted). It is not necessary to consider each factor. *See Muter v. Muter*, 203 N.C. App. 129, 132–33 (2010).

8. Here, Barings's choice of forum deserves great deference. This is so because North Carolina is Barings's home forum. As this Court has stressed, the "plaintiffs' choice of forum ordinarily is given great deference, especially when plaintiffs select their home forum to bring suit." *La Mack v. Obeid*, 2015 NCBC LEXIS 24, at *16–17 (N.C. Super. Ct. Mar. 5, 2015); *see also Harris Teeter Supermarkets, Inc. v. Ace Am. Ins. Co.*, 2023 NCBC LEXIS 125, at *58 (N.C. Super. Ct. Oct. 10, 2023). Corinthia's insistence that Barings engaged in forum shopping is not remotely persuasive. This factor weighs heavily against a stay.

9. Neither the convenience of the witnesses nor the ease of access to sources of proof weighs heavily in one direction or the other. Some witnesses (including Tucker) live in North Carolina; some witnesses (including Fowler) live in other parts of the United States; and yet others live in the United Kingdom. Because Barings's Global Private Finance group was based partly in North Carolina and partly in the United

Kingdom, there are sources of proof in both places. Staying this case in favor of litigation in an English forum “would simply shift the inconvenience from one party to another.” *Wachovia Bank, N.A. v. Deutsche Bank Tr. Co. Ams.*, 2006 NCBC LEXIS 10, at *19 (N.C. Super. Ct. June 2, 2006) (cleaned up). It also bears noting that “some of the most important evidence in this action will be documents that may be exchanged electronically between counsel and which are accessible in any forum,” as evidenced by Corinthia’s production in response to the stipulated injunction order. *Harris Teeter*, 2023 NCBC LEXIS 125, at *59. These factors are neutral.

10. Corinthia argues that English law will apply to most claims and, thus, that the applicable law favors an English forum. This is incorrect for some claims and far from certain for others. North Carolina law indisputably applies to Barings’s claim for breach of the stipulated injunction order. In addition, because Barings is a Delaware LLC, Delaware law applies to the claims for constructive fraud and breach of fiduciary duty against Fowler. See *JS Real Estate Invs. LLC v. Gee Real Estate, LLC*, 2017 NCBC LEXIS 104, at *15 (N.C. Super. Ct. Nov. 9, 2017) (discussing choice of law under internal affairs doctrine).

11. For claims of misappropriation of trade secrets and unfair or deceptive trade practices, “the proper choice of law rule . . . is the *lex loci* test.” *SciGrip, Inc. v. Osae*, 373 N.C. 409, 420 (2020); *Window World of Baton Rouge, LLC v. Window World, Inc.*, 2024 NCBC LEXIS 153, at *106 (N.C. Super. Ct. Nov. 26, 2024) (discussing application of *lex loci* rule to claims under N.C.G.S. § 75-1.1). It is unclear, at this stage, where “the last event necessary to make the last actor liable or the last event

required to constitute the tort” took place. *Harco Nat. Ins. Co. v. Grant Thornton LLP*, 206 N.C. App. 687, 695 (2010). Discovery is needed to show whether the alleged trade-secret misappropriation occurred (if at all) in North Carolina, the United Kingdom, or both. At a minimum, it would be premature to conclude that the last event required to constitute the torts occurred in the United Kingdom.*

12. Although not certain, the claim for tortious interference with contract is likely to involve both North Carolina law and English law. Corinthia is alleged to have interfered with contracts that Barings had with employees based in both places. As a result, North Carolina is likely to be the place in which some of these employees “stopped contract performance and harmed plaintiff’s business.” *Soma Tech. v. Dalamagas*, 2017 NCBC LEXIS 43, at *22 (N.C. Super. Ct. May 11, 2017) (citing *Lloyd v. Carnation Co.*, 61 N.C. App. 381, 387–89 (1983)).

13. In sum, it appears that this litigation will involve the laws of several jurisdictions, including North Carolina, Delaware, and England. This Court is best suited to apply North Carolina law and frequently applies Delaware law, given its prominence in American corporate jurisprudence. And if needed, the Court may determine and rule on questions of English law. *See* N.C. R. Civ. P. 44.1. There is no sound reason to shift the burden to an English court to apply Delaware and North Carolina law. This factor weighs slightly against a stay. *See Harris Teeter*, 2023 NCBC LEXIS 125, at *63 (concluding that applicable law weighed against a stay

* Even if the last event occurred in the United Kingdom, that would not require this Court to apply English law. Rather, it would mean that Barings does not have a viable claim under North Carolina’s Trade Secrets Protection Act and, perhaps, N.C.G.S. § 75-1.1. Barings has not asserted alternative claims based on analogous English laws.

given that it was “reasonably possible” that claims would require application of North Carolina law).

14. The rest of Corinthia’s arguments are equally unpersuasive. Compulsory process, for example, does not favor or disfavor a stay. “[W]here the moving party fails to allege that nonparty witnesses would participate only if compelled to do so, the availability of compulsory process should be given little weight[.]” *Cardioventis Ag v. IQVIA Ltd.*, 2018 NCBC LEXIS 243, at *7 (N.C. Super. Ct. Dec. 31, 2018), *aff’d per curiam* 373 N.C. 309 (2020) (citation and quotation marks omitted).

15. Nor does England have a greater sovereign interest than North Carolina. Barings is headquartered here, and its Global Private Finance group is primarily based here. North Carolina “has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 367 (1986) (citation and quotation marks omitted). This factor weighs against a stay.

16. Finally, the possibility that Barings may have to enforce a judgment against Corinthia in England matters little. The same could be said for most foreign defendants. That enforcement of a judgment may take place elsewhere does not tend to show that North Carolina is “plainly . . . an inconvenient forum” and that proceeding in England “would better serve the ends of justice and the convenience of [the] parties.” *Motor Inn Mgmt.*, 46 N.C. App. at 713.

17. **Conclusion.** For these reasons, the Court concludes that the applicable factors under section 1-75.12(a) are either neutral or weigh against a stay. Corinthia

has not shown that a substantial injustice would result if this case were to proceed in North Carolina. The Court therefore **DENIES** Corinthia's motion to stay this case under section 1-75.12(a).

SO ORDERED, this the 13th day of February, 2025.

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