

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
06 CVS 6091

MITCHELL, BREWER, RICHARDSON,)
ADAMS, BURGE & BOUGHMAN, PLLC;)
GLENN B. ADAMS, HAROLD L.)
BOUGHMAN, JR., and VICKIE L. BURGE,)

Plaintiffs)

v.)

COY E. BREWER, JR.,)
RONNIE A. MITCHELL,)
WILLIAM O. RICHARDSON,)
and CHARLES BRITTAIN,)

Defendants)

ORDER

THIS CAUSE, designated a complex business case by Order of the Chief Justice of the North Carolina Supreme Court, pursuant to section 7A-45.4(b) of the General Statutes of North Carolina, and assigned to the undersigned Special Superior Court Judge for Complex Business Cases, by Order of the Senior Special Superior Court Judge for Complex Business Cases, came before the court for hearing upon the Plaintiffs' March 4, 2008 Motion for Preliminary Injunction (the "Motion"), and was so heard on April 2, 2008; and

THE COURT, having considered the Motion, the respective submissions and arguments of counsel supporting and opposing the Motion, appropriate matters of record, and the ends of justice, FINDS that the evidence offered to date fairly supports the following:

1. Mitchell, Brewer, Richardson, Adams, Burge & Boughman, P.L.L.C. (the “Firm”), is a North Carolina Professional Limited Liability Company that was established to engage in the practice of law.

2. In or around June 2005, Adams, Burge, and Boughman (collectively, “Plaintiffs”); and Brewer, Mitchell, Richardson, and Brittain (collectively, “Defendants”), ceased practicing law together (the “Breakup”).

3. The Members of the Firm never executed a written operating agreement governing their respective rights and duties relative to the Firm.

4. At times material, the Firm had legal services contracts with various clients. Some of those contracts involved ongoing, unresolved contingent fee cases (the “Contingent Fee Cases”).

5. After the Breakup, Defendant Brewer performed an accounting of the Firm’s financial status as part of winding up the Firm. In a memorandum to the Firm’s Members, Brewer presented the results of this accounting, which included a proposed allocation of existing debts, obligations and assets of the Firm and a proposed final distribution to Plaintiffs. The accounting did not attribute any value to the Contingent Fee Cases.

6. Plaintiffs filed their Complaint on August 2, 2006, seeking, among other things, an additional distribution of Firm proceeds to reflect their contended share of net Firm assets, including the Contingent Fee Cases. In their Complaint, Plaintiffs ask for an accounting to the Firm of the Firm’s profits and losses, an accounting to Plaintiffs of the Firm’s profits and losses, and a distribution to reflect Plaintiffs’ contended share of the net value of the Firm’s assets. Plaintiffs further contend that Defendants’ failure to

provide a sufficient accounting and distribution, and their refusal to recognize Plaintiffs' entitlement to a share of any fees from the Contingent Fee Cases, constitute both a breach of fiduciary duty and an unfair and deceptive trade practice. In short, Plaintiffs seek money damages and an accounting from Defendants.

7. Since the inception of this action, Defendants have received substantial proceeds from certain of the Contingent Fee Cases. These proceeds have been distributed to Defendants.

8. It is anticipated that Defendants will soon receive further proceeds from one or more of the Contingent Fee Cases. It is anticipated that these proceeds will be distributed to Defendants.

9. The Motion seeks to preliminarily enjoin Defendants from distributing to themselves any additional proceeds received in relation to the Contingent Fee Cases.

BASED upon the foregoing FINDINGS, the court CONCLUDES that:

1. A preliminary injunction is an extraordinary measure, and will only be issued (a) if a plaintiff is able to show a likelihood of success on the merits of his case and (b) that he 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 a plaintiff's rights during the course of litigation. *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983). Its issuance is a matter of discretion of the court, to be exercised after balancing the equities. *Id.* (quoting *State v. School*, 299 N.C. 351, 357–58, 261 S.E.2d 908, 913 (1980)). The burden is on the plaintiff to establish his right to a preliminary injunction. *Pruitt v. Williams*, 25 N.C. App. 376, 379, 213 S.E.2d 369, 371 (1975) (citing N.C. Gen. Stat. § 1A-1, Rule 65(b)).

2. The Plaintiffs have not made a convincing showing that they either are likely to sustain irreparable loss unless the injunction is issued, or that such relief is necessary for the protection of their rights during the course of litigation. Plaintiffs' contentions in this regard are implausible. Their claims for an accounting will not be affected by the issuance or denial of the injunction sought; and their claims for money damages are adequately provided for at law, and are weak grounds for the issuance of an injunction. *See generally Durham v. Public Service Co. of N.C.*, 257 N.C. 546, 557, 126 S.E.2d 315, 323–24 (1962) (“Ordinarily, an injunction will not be granted where there is a full, adequate and complete remedy at law, which is as practical and efficient as is the equitable remedy.”) (citations omitted). In sum, the court is not persuaded that the injunction sought is necessary to protect Plaintiffs either during or after the course of this litigation.

3. Further, a balancing of the equities between the parties does not weigh sufficiently in favor of Plaintiffs to require injunctive relief in order to protect Plaintiffs' rights during the course of this litigation.

4. Accordingly, Plaintiffs have not met the standard for issuance of a preliminary injunction, and the court need not consider Plaintiffs' likelihood of success on the merits.

NOW THEREFORE, based on the foregoing FINDINGS and CONCLUSIONS it is hereby ORDERED that Plaintiffs' Motion for Preliminary Injunction be, and hereby is, DENIED.

This the 9th day of April, 2008.

/s/ John R. Jolly, Jr.
John R. Jolly, Jr.
Special Superior Court Judge for
Complex Business Cases