

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 5766

SED HOLDINGS, LLC,)
)
Plaintiff,)
)
v.)
)
3 STAR PROPERTIES, LLC; JAMES)
JOHNSON; TMPS LLC; MARK)
HYLAND; HOME SERVICING, LLC;)
and CHARLES A. BROWN &)
ASSOCIATES, PLLC d/b/a)
DOCSOLUTION, INC.,)
)
Defendants.)
)

**ORDER CANCELLING HEARING AND
STAYING CASE**

1. THIS MATTER is before the Court sua sponte following the North Carolina Supreme Court’s grant of Defendants 3 Star Properties, LLC, James Johnson, TMPS LLC, Mark Hyland, and Home Servicing, LLC’s (“Original Defendants”) petition for discretionary review (“PDR”), docket number 211P16, on September 23, 2016.

2. Presently scheduled before the Court is a hearing in this action for September 29, 2016 at 2:00 p.m. (the “Injunction Hearing”) to consider Plaintiff’s Motion for Mandatory Preliminary Injunction against Defendant Charles A. Brown & Associates, PLLC d/b/a DocSolution, Inc. (“Charles A. Brown”).

3. On August 23, 2016, the Court entered its Opinion and Order Regarding Stay Pending Appeal (the “August 23 Opinion and Order”). In the August 23 Opinion and Order, the Court analyzed the then-current procedural posture of the case and determined that it could proceed with the Injunction Hearing. The Court’s

determination of its authority to proceed was based, in large part, on the fact that Original Defendants' Motion to Dismiss based on lack of subject matter jurisdiction and improper venue was not the subject of their second, pending appeal to the Court of Appeals, but was only the subject of their PDR, and Original Defendants had not sought a stay of the proceeding while their PDR was under consideration by the Supreme Court. In the August 23 Opinion and Order, the Court advised the parties that it would issue a separate order scheduling the Injunction Hearing. The Court also directed that any party who believed other matters needed determination by the Court should file, on or before September 2, 2016, a Notice of Requested Hearing.

4. On August 30, 2016, the Court issued a Notice of Hearing, scheduling the Injunction Hearing for September 29, 2016. On the same day, the Court issued a Scheduling Order and Notice of Hearing directing the parties to comply with Rule 18.6 of the General Rules of Practice and Procedure for the North Carolina Business Court relating to discovery disputes and to consider whether the provisions of Rule 18.6 might aid in the resolution of any discovery disputes between the parties. Counsel for Plaintiff was directed to file with the Court a listing of any discovery matters remaining unresolved and needing Court attention at the Injunction Hearing on or before September 12, 2016.

5. No party filed a Notice of Requested Hearing or otherwise advised the Court that any discovery disputes remain outstanding. As a result, the Court understands that all prior discovery issues and disputes between the parties have been resolved to the parties' satisfaction.

6. On September 23, 2016, the North Carolina Supreme Court granted Original Defendants' PDR. The PDR deals with a venue issue arising from a choice of forum provision contained in the Non-Performing Note and Mortgage Loan Sale Agreement ("LSA") entered into between Plaintiff and Defendant 3 Star Properties, LLC. The PDR seeks review of the North Carolina Court of Appeals' decision affirming the trial court's decision denying Original Defendants' Motion to Dismiss based on lack of subject matter jurisdiction and improper venue.

7. The Court notes that Plaintiff's claims against Charles A. Brown arise from a contract between Plaintiff and Charles A. Brown that is separate from the LSA at issue in the PDR, and that, unlike the LSA, Plaintiff's contract with Charles A. Brown contains a North Carolina choice of forum provision. However, the Court also notes that the loan files at issue between Plaintiff and Charles A. Brown are the same loan files at issue between Plaintiff and Original Defendants.

8. Based on its research and consideration of the matter, the Court believes that the grant of Original Defendants' PDR by the North Carolina Supreme Court—making the Original Defendants' Motion to Dismiss based on alleged lack of subject matter jurisdiction and improper venue an issue on appeal, rather than an issue pending discretionary review—divests the undersigned of authority to consider Plaintiff's Motion for Mandatory Preliminary Injunction against Charles A. Brown, at least absent a directive from the Supreme Court directing this Court to proceed.

9. As a result, the Court cancels the Injunction Hearing presently scheduled for September 29, 2016.

10. The Court has reviewed the two Notices of Appeal to the North Carolina Supreme Court filed on September 23, 2016 by Defendants TMPS LLC, Mark Hyland, and Home Servicing, LLC (the “Appeals”). The Appeals are of the August 23 Opinion and Order, and the Court’s Order Setting Deadlines to File and Serve Responses to Amended Complaint and Motion for Mandatory Preliminary Injunction, entered on August 24, 2016. The Court’s determination that it is divested of jurisdiction to proceed with the Injunction Hearing rests entirely on the grant of the PDR and is not affected by the filing of these two interlocutory, and arguably defective, appeal notices.

11. THEREFORE, it is hereby ORDERED that the Injunction Hearing scheduled for September 29, 2016 is CANCELLED, and this matter is STAYED pending further order of this Court following the resolution of Original Defendants’ appeal to the North Carolina Supreme Court.

SO ORDERED, this the 27th day of September, 2016.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases