

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
13 CVS 7849

AMERICANA DEVELOPMENT, INC., )  
Plaintiff )  
v. )  
EBIUS TRADING & DISTRIBUTING )  
COMPANY f/k/a EASTERN BIKES, INC. and )  
VEIN INCORPORATED, )  
Defendants )  
v. )  
KENLIGHT TRADING CO., LTD; )  
KENSTONE METAL CORPORATION; )  
GREENTECH HOLDING CORPORATION )  
and BICITECH HOLDING CORPORATION, )  
Counterclaim Defendants )

**TEMPORARY RESTRAINING  
ORDER**

THIS MATTER came before the undersigned on August 27, 2014, for hearing of Plaintiff's Motion for Temporary Injunctive Relief ("Motion") pursuant to Rule 65 of the North Carolina Rules of Civil Procedure ("Rule(s)"), and

THE COURT, having heard arguments of counsel for Plaintiff and having considered appropriate matters of record, including the affidavits of Jeffrey Pizzola and Lonnie Wells, FINDS and CONCLUDES, only for the limited purpose of determining the Motion, as follows:

1. It is in the public interest for this court to take swift, appropriate, and carefully tailored action to ensure the equitable distribution of proceeds among creditors of a corporation upon circumstances amounting to a winding-up or dissolution of the corporation. To that end, Plaintiff alleges that the actions of Defendants amount to

breaches of fiduciary duty owed by Defendants. Further, Plaintiff alleges that these breaches are causing irreparable harm to Plaintiff.

2. Defendant Ebius Trading & Distributing Company f/k/a Eastern Bikes, Inc., ("Ebius") and Defendant Vein Incorporated ("Vein") (collectively, "Defendants") owe Plaintiff for specific unpaid invoices totaling approximately \$1,900,000 ("Debt"). These invoices are the subject of this action. In addition to the debt owed to Plaintiff, Defendants, together with J.M. Deeds, Inc. ("J.M. Deeds"), parent company of Defendant Ebius,<sup>1</sup> owe approximately \$500,000 to various other creditors and have recorded losses varying from approximately \$100,000 to \$500,000 in 2010, 2011, 2012, and 2013.

3. J.M. Deeds, by its principals and officers, Jon Byers ("Byers") and Michael Corley ("Corley"), obtained a \$200,000 line of credit with Wells Fargo Bank, N.A. ("Wells Fargo"). In addition to being secured by all personal property owned by J.M. Deeds, the Wells Fargo debt is personally guaranteed by Byers and Corley.

4. Byers, on behalf of Defendants, has previously negotiated with Plaintiff with regard to a payment plan for the Debt owed to Plaintiff. Byers subsequently terminated these negotiations and began the process of liquidating the assets and winding up the business activities of the Defendants.<sup>2</sup>

5. As part of the liquidation process, Byers and Corley are attempting to sell certain intellectual property owned by Defendants to pay in full J.M. Deeds' debt to

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<sup>1</sup> As set forth in the Affidavit of Jeffrey Pizzola, Chief Financial Officer of Plaintiff, the assets and liabilities of Defendants and J.M. Deeds, Inc., are "generally lumped . . . together" such that the proceeds from a sale of all three business would be used to pay Plaintiff regardless of which entity incurred the obligation to Plaintiff. Pizzola Aff. ¶ 13.

<sup>2</sup> See E-mail from Jon Byers to Jeffrey Pizzola, Chief Financial Officer, Americana Dev., Inc. (Aug. 12, 2014, 17:35 EST) (Pizzola Aff. Ex. 9).

Wells Fargo and thereby fully satisfy their personal guarantees. Byers and Corley are persisting in this manner of liquidation even though the owners of the intellectual property, Defendants, are not obligated on the Wells Fargo debt.

6. Under North Carolina law, principals and directors of a corporation owe a fiduciary duty to creditors of the corporation when the corporation is insolvent and "under circumstances amounting to a 'winding-up' or dissolution of the corporation." *Whitley v. Carolina Clinic, Inc.*, 118 N.C. App. 523, 526, *disc. review denied*, 340 N.C. 363 (1995). This "duty is breached if the directors take advantage of their position for their own benefit at the expense of other creditors." *Keener Lumber Co. v. Perry*, 149 N.C. App. 19, 30 (2002) (citing *Whitley, supra*).

7. Byers and Corley are using their positions as principals and officers of J.M. Deeds and Defendants to secure a personal benefit by satisfying only those debts for which they are personally liable. If Defendants are permitted to favor only those creditors whose debts are personally guaranteed, Plaintiff, as a non-guaranteed creditor of Defendants, would be at risk of significant injury as its claim would go wholly unsatisfied as a result of the improper distribution by Byers and Corley. The injury caused by the improper liquidation of Defendants' assets would be irreparable.

8. Among other things, Plaintiff has alleged claims in this action for breach of contract and constructive fraud. Plaintiff has demonstrated a likelihood of success on the merits of those claims.

9. Accordingly, unless Defendants are enjoined in the manner and form set forth below, Plaintiff will suffer irreparable injury. Moreover, greater injury would likely be

inflicted upon Plaintiff by the denial of temporary injunctive relief than will be inflicted upon Defendants by the granting of such relief.

THEREFORE, based upon the foregoing FINDINGS and CONCLUSIONS, it is ORDERED that the Motion should be GRANTED in part, as follows:

1. Defendant Ebius Trading & Distributing Company f/k/a Eastern Bikes, Inc., and Defendant Vein Incorporated are IMMEDIATELY ENJOINED and PROHIBITED, directly or indirectly, alone or in concert with others, from selling any property belonging to Defendants or J.M. Deeds, Inc.

2. Further, Defendant Ebius Trading & Distributing Company f/k/a Eastern Bikes, Inc., and Defendant Vein Incorporated are IMMEDIATELY ENJOINED and PROHIBITED, directly or indirectly, alone or in concert with others, from paying the debts of the Defendants or J.M. Deeds, Inc., in any manner other than on a pro rata basis.

3. Unless otherwise ordered, the parties shall appear before this court at 11:00 a.m. on the 5th day of September, 2014, in the Wake County Courthouse, Courtroom 3B, to determine whether this Order should be converted to a preliminary injunction. Plaintiff shall file a memorandum in support of its Motion for Preliminary Injunction on or before 5:00 p.m. on Tuesday, September 2, 2014. Defendants shall file a responsive memorandum, if any, on or before 5:00 p.m. on Wednesday, September 3, 2014. Plaintiff shall file a reply to Defendants' response, if any, on or before 5:00 p.m. on Thursday, September 4, 2014.

4. On or before 5:00 p.m. on Tuesday, September 2, 2014, the Plaintiff shall post security for the issuance of this Order in the amount of \$5,000.00, as required by Rule 65(c), in form satisfactory to the Clerk of Superior Court of Wake County.

5. The terms and conditions of this Order shall be in force and effect immediately and, unless extended pursuant to the provisions of Rule 65, will expire on Saturday, September 6, 2014.

6. Except as specifically granted in this Order, the Motion is DENIED.

SO ORDERED, this the 28th day of August, 2014.

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