

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 4138

GUARDIAN GC, LLC, a North
Carolina limited-liability company,

Plaintiff,

v.

GCP APARTMENT INVESTORS,
LLC, a Florida limited-liability
company,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

1. Plaintiff's Motion for Preliminary Injunction is currently pending. The Court has considered the motion; the briefs, exhibits, and affidavits supporting and opposing the motion; and the parties' arguments at the hearing on March 24, 2017. Because the Court lacks jurisdiction to enter the requested injunctive relief, the Court **DENIES** the motion.

2. Plaintiff is a North Carolina limited liability company and a member and manager of 759 Ventures, LLC. Defendant is a Florida limited liability company and also a member and manager of 759 Ventures. (V. Compl. Ex. 1 p 6, ¶ 6.1(b).)

3. Plaintiff filed its Verified Complaint on March 8, 2017. The Verified Complaint asserts four causes of action related to disputes over the management of 759 Ventures: (1) breach of the 759 Ventures Operating Agreement; (2) specific performance of removal of Defendant as manager; (3) specific performance for an accounting and access to the books and records of 759 Ventures; and (4) a declaration

that 759 Ventures is a member-managed LLC. The Verified Complaint also includes a request for preliminary injunction, labeled as a fifth cause of action.

4. Plaintiff does not purport to bring any of its causes of action as a derivative claim on behalf of 759 Ventures. In addition, 759 Ventures is not a party to this action.

5. The dispute, for purposes of the preliminary injunction, concerns commercial property owned by yet another company—28th RO Commercial, LLC. 759 Ventures is one of 28th RO Commercial’s two members and is also its manager. (V. Compl. Ex. 15 p 32, ¶6.01(a)(ii).) In short, Plaintiff contends that Defendant is operating and managing 759 Ventures and 28th RO Commercial to the exclusion of Plaintiff, including unilaterally making decisions with respect to leasing 28th RO Commercial’s property. (Pl.’s Mem. of Law in Supp. Prelim. Inj. 8.)

6. Specifically, Plaintiff contends that Defendant has been unilaterally negotiating lease extensions with two of 28th RO Commercial’s tenants: Amelie’s French Bakery (“Amelie’s”) and Corporate Information Technologies (“CIT”). (Mot. for Prelim. Inj.) Plaintiff asserts that Amelie’s and CIT are both likely to decline lease extensions and to relocate because Defendant has not guaranteed the tenants access to certain parking rights. (V. Compl. Exs. 20(a), 21.) According to Plaintiff, Amelie’s and CIT will make final decisions regarding lease extensions in the near future, and the loss of these businesses as tenants would cause irreparable harm. (V. Compl. Exs. 20(a), 21.)

7. As a result, Plaintiff is requesting that the Court: (1) enter a preliminary injunction preventing Defendant from negotiating lease extensions for Amelie's and CIT; and (2) grant Plaintiff the exclusive right to negotiate these lease extensions on behalf of 759 Ventures and 28th RO Commercial. (Mot. for Prelim. Inj.)

8. The Court lacks authority to grant Plaintiff the relief it requests. Plaintiff is asking the Court to exercise control over the operations and management of 759 Ventures and 28th RO Commercial, but neither is a party to this litigation. This Court is "not free, for the sake of convenience, to completely ignore the existence of a legal entity, such as [an] LLC." *Keith v. Wallerich*, 201 N.C. App. 550, 558, 687 S.E.2d 299, 304 (2009). Accordingly, the Court does "not have jurisdiction to exercise control over [the] assets, operations, and management structure" of entities that are not parties to this lawsuit. *Campbell v. Campbell*, No. COA14-1155, 2015 N.C. App. LEXIS 448, at *2, 773 S.E.2d 93, 94 (N.C. Ct. App. 2015) (unpublished) (vacating preliminary injunction where "trial court affected the management structure of" LLC that was not a party in the action).

9. Therefore, the Court **DENIES** Plaintiff's motion for preliminary injunction.

This the 24th day of March 2017.

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