

STATE OF NORTH CAROLINA
COUNTY OF GASTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09-CvS-2201

TAI SPORTS, INC.,)
)
Plaintiff,)
)
v.)
)
JEFFREY LEE HALL, TRACI HALL,)
JEFF HALL SPORTS, INC.,)
JEFFREY LEE HALL d/b/a)
"WORTH SPORTS," "BAT-R-UP," "WSL,")
and/or "JEFF HALL GRAPHICS,")
TKL ELECTRICAL SERVICES, INC.,)
C.H. & SONS CONSTRUCTION)
COMPANY, INC., WORTH SPORTS, LLC,)
A Subsidiary of the JARDEN)
CORPORATION, BRANDON)
ROBERTS a/k/a "crestchargers13)
@yahoo.com, RODNEY WALKER, MIKE)
CALDWELL, TRACI P. BRADLEY, TED)
W. HARRIS, SHELLY A. ("MOE") NEAL,)
ANDREW BENFIELD, DEWEY)
McKINNEY, and MIKE CORNELL,)
)
Defendants.)
)

**BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

NOW COMES Plaintiff, TAI SPORTS, INC. ("TAI"), by and through its undersigned attorneys, in support of its Motion for Preliminary Injunction and tenders the following brief:

FACTUAL BACKGROUND

In support of its Motion for Preliminary Injunction, as contained in ¶¶ 46-58 of the Amended Verified Complaint, Plaintiff proffers the following:

- Amended Verified Complaint;
- Affidavit of Paul Preciado with Exhibits;

- Affidavit of Carlos Vega with Exhibits;
- Affidavit of Citizens South Bank with Exhibits (subject to Plaintiff's motion to file under seal, and pending the Court's determination of a protective order governing the use of such exhibits);
- Affidavit of Iqbal H. ("Ike") Lakhany with Exhibits;
- Affidavit of Jose Vega;
- Affidavit of Andrew Benfield;
- Affidavit of Matt Haines; and
- If allowed by the Court, the Plaintiff intends on eliciting live testimony from individual defendants, as necessary.

Brief Recitation of Relevant Factual Allegations

Plaintiff leased commercial space at 3400 South New Hope Road for use as TAI Sports, Inc.'s East Coast Distribution Center ("ECDC"). (Amended Verified Complaint, ¶ 22; Affidavit of Carlos Vega, Ex. A) Plaintiff engaged Defendant Jeff Hall to act as an agent and employee at the ECDC and confided in him a fiduciary responsibility to act in the best interests of Plaintiff as the President of Plaintiff TAI's ECDC. (Amended Verified Complaint, ¶¶ 22-23, 25-27) To facilitate the operations of the ECDC, Plaintiff opened a checking account at Citizens South Bank in Gastonia and allowed Defendant Hall to have signing privileges for amounts less than \$10,000. (Amended Verified Complaint ¶ 23) Unfortunately for Plaintiff, it's new-found agent and employee had other than the best interests of TAI Sports in mind, and forged Carlos Vega's signature on a document entitled, "Corporate Resolution" to allow himself to have unlimited access to Plaintiff's funds. (Amended Verified Complaint, ¶ 22; Affidavit of Carlos Vega, ¶ 2)

While Plaintiff was relying fully on Defendant Hall's trustworthiness to operate the ECDC and sell and market TAI Sports' "Elite" branded softball merchandise, Defendant Hall in collusion with other individuals and corporate defendants began designing, marketing, and selling similar merchandise from the ECDC using Plaintiff's employees, facilities. (Amended Verified Complaint, ¶ 28) Defendant began operating an 'inside entity' within the ECDC called Jeff Hall Sports, Inc. and used said entity as a way to funnel business and revenue to himself and/or other defendants. (Amended Verified Complaint, ¶¶ 33, 35-36; Affidavit of Paul Preciado, Ex. B [Report]; Affidavit of Matt Haines, ¶¶ 2-5; Affidavit of Andrew Benfield, ¶ 8-10) In the same approximate time frame, Defendant Jeff Hall and his co-conspirators began using the ECDC facility, Plaintiff's employees, and Plaintiff's resources to operate several unrelated businesses – Jeff Hall Graphics, Bat-r-up, C.H. & Son's Construction Company, Inc., WSL, and TKL Electrical Services, Inc. (Amended Verified Complaint, ¶¶ 28, 35, 41; Affidavit of Paul Preciado, Ex. B [Report]) In furtherance of said conspiracy, certain Defendants installed batting cages, a boxing ring, and other alterations to the ECDC facility that had nothing to do with the business of TAI Sports. (Amended Verified Complaint, ¶¶ 28, 32-33; Affidavit of Carlos Vega, ¶ 2; Affidavit of Jose Vega, ¶ 4; Affidavit of Andrew Benfield, ¶¶ 16-19)

Plaintiff's president and principal, Carlos Vega (who resides in California), first became aware of the problems at the ECDC in February 2009, when he received a telephone call from an irate customer concerning undelivered products and poor customer service he received out of the ECDC. (Amended Verified Complaint, ¶ 29) Upon further investigation and with the hiring of certified fraud investigator, Paul Preciado, Plaintiff

became aware of the unauthorized change to the bank account, the operation of the various unauthorized businesses out of the ECDC, and most importantly the diversion of goods, services, and funds from Plaintiff to the Defendants Hall and others. (Affidavit of Paul Preciado, Ex. B [Report]) An investigation by Preciado of a ‘QuickBooks’ file found at the ECDC confirmed that funds and products rightfully belonging to Plaintiff had been converted and that a method of using false inventory item codes and fictitious vendors had been established to conceal the diversion of said funds and assets. (Amended Verified Complaint ¶¶ 33, 35-44; Affidavit of Paul Preciado, Ex. B [Report]; Affidavit of Jose Vega) Upon confrontation with certain of these facts, Defendant Hall admitted to misusing certain assets of TAI Sports. (Affidavit of Jose Vega, ¶ 11)

Currently, Defendants have removed themselves from the ECDC, but their alterations at said facility, including signage, batting cages, and interior partitions remain on the property.

REQUESTED INJUNCTIVE RELIEF

Plaintiff requests that the Court order the following injunctive relief:

1. An order restraining Defendants from entering onto the property of Plaintiff located at 3400 South New Hope Road, Gastonia, North Carolina, or interfering in any way with said property or with the operations of Plaintiff at said property.
2. An order mandating that Defendant Jeff Hall and/or his respective corporate entities immediately remove all signage from the foregoing property that refers to any of the Defendants in any way.

3. An order directing that Defendant Jeff Hall immediately release any and all signing and drawing rights to all bank accounts owned by Plaintiff.
4. An order directing that Defendant Jeff Hall, Jeff Hall Sports, Inc., Bat-r-Up, WSL, TKL Electrical Services, Inc. and C.H. & Sons Construction Company, Inc. immediately make an accounting to Plaintiff for all revenue and expenses incurred and/or generated from November 2006 through March 31, 2009.
5. An order establishing a constructive trust with Plaintiff as a beneficiary and restraining Defendants from withdrawing, encumbering, or in any way transferring any funds from the bank accounts in the name of the following Defendants:
 - i. Jeff Hall Sports, Inc.;
 - ii. Bat-r-Up;
 - iii. WSL;
 - iv. Worth Sports (but not Worth Sports, LLC);
 - v. TKL Electrical Services, Inc.;
 - vi. C.H. & Sons Construction Company, Inc.; and
 - vii. Jeff Hall Graphics.

LEGAL STANDARD

Under N.C. Gen. Stat. § 1-485, a preliminary injunction may be issued when:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and this relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

(2) When, during the litigation, it appears by affidavit that a party thereto is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual; or,

(3) When, during the pendency of an action, it appears by affidavit of any person that the defendant threatens or is about to remove or dispose of his property, with intent to defraud the plaintiff.

N.C. Gen. Stat. § 1-485.

Ordinarily, a preliminary injunction will be granted pending trial on the merits, (1) if there is probable cause for supposing that plaintiff will be able to sustain his primary equity, and (2) if there is reasonable apprehension of irreparable loss unless injunctive relief be granted, or if in the court's opinion it appears reasonably necessary to protect the plaintiff's right until the controversy between him and defendant can be determined. *Pruitt v. Williams*, 288 N.C. 368, 218 S.E.2d 348 (1975); *Laboratories, Inc. v. Turner*, 30 N.C.App. 686, 228 S.E.2d 478 (1976). See G.S. 1-485, and G.S. 1A-1, Rule 65.

State ex rel. Edmisten v. Challenge, Inc., 54 N.C.App. 513, 516 (1981).

Where multiple causes of action are alleged, plaintiff need only show likelihood of success on one claim to justify injunctive relief. McNeil-PPC, Inc. v. Granutec, Inc., 919 F.Supp. 198 (1995). An injunction may be issued, even where there are serious questions as to the existence of facts or the facts are disputed such that such factual issues must be determined by a jury. See Yount v. Setzer, 155 N.C. 213 (1911); Scott v. Gillis, 197 N.C. 223 (1929).

Pursuant to a demand by a shareholder for an accounting and inspection of corporate books and records, a Court has the power by mandamus or otherwise to compel the corporation to make disclosure of the requested information and records under N.C.G.S. § 55-16-02 and under the common law of this state. Parsons v. Jefferson Pilot Corp., 333 N.C. 420 (1993); Carter v. Wilson Const. Co., Inc., 83 N.C.App. 61 (1986).

So long as the demand is made in good faith and is not for an improper purpose the disclosure of requested corporate information must be allowed. Id.

North Carolina courts have often issued preliminary injunctions to freeze disputed corporate assets, stop the dissipation of assets from an entity to an unauthorized insider entity, and to determine who controls an entity during the trial of a corporate malfeasance matter. See e.g. Scottish Re Life Corp. v. Transamerica Occidental Life Ins. Co., 184 N.C.App. 292 (2007)(affirming grant of preliminary injunction ‘freezing’ certain assets of defendant corporation pending litigation); First Presbyterian Church of Raleigh v. St. Andrews Presbyterian College, Inc., 254 N.C. 717 (1961)(affirming grant of a preliminary injunction to allow Plaintiff to exercise control over corporation during pendency of action where defendants threatened to close college and move assets to another corporation); Barnes v. St. Rose Church of Christ, Disciples of Christ, 160 N.C.App. 590 (2003)(affirming grant of preliminary injunction and appointment of receiver where defendant allegedly converted assets and control of member-Plaintiff organization into a separate corporate entity); Tuckett v. Guerrier, 149 N.C.App. 405 (2002)(Superior Court granted a preliminary injunction in a dispute over ownership of an architectural firm and its leased premises); Webb et al. v. Royal American Company, LLC, et al., “Order Granting in Part and Denying in Part Motion for Preliminary Injunction and Order Appointing a Receiver”, N.C. Super. Ct., October 17, 2006 (N.C. Business Court, 2006)(Business Court Order restraining controlling and majority member purchasers from dissipating assets and funds of LLC and exercising day-to-day control and appointing receiver to administer LLC).

ANALYSIS

I. Restraining Access to TAI Facility and Mandating Removal of Signage

Plaintiff requests that the Court enter an order restraining Defendants from entering onto the property of leased by Plaintiff located at 3400 South New Hope Road, Gastonia, North Carolina, or interfering in any way with said property or with the operations of Plaintiff at said property and for an affirmative order mandating that Defendant Jeff Hall and/or his respective corporate entities immediately remove all signage from the Plaintiff's property that refers to any of the Defendants in any way. Plaintiff has shown that it is legal owner of the leasehold of the property located at 3400 New Hope Road. (Affidavit of Carlos Vega, Exhibit B [Deed] and Exhibit C [Sublease Agreement]) It is undisputed that the lawful lessee of real property has the right to exclude from his property those who have no legal right of use or entry and may sue for damages resulting therefrom. 12 ALR.2d 1192. Plaintiff has made allegations for trespass in its amended verified complaint. (Amended Verified Complaint, ¶¶ 101-105) Plaintiff is entitled to the entry of this form of injunctive relief to protect its right to the exclusive use of its leasehold estate in the real property. This form of relief is contemplated under the common law and under § 1-485(1). This form of injunctive relief will merely maintain the rights and status quo of the parties pending litigation and protect Plaintiff from the unauthorized use and access of its property during litigation. The removal of the Defendants' signage is merely in accord with the Plaintiff's right to exclusive access to its property and will further protect the parties and the public from any confusion regarding the use and ownership of the facilities and property located 3400

South New Hope Road. This form of requested relief will do no harm to Defendants, but will maintain the property rights of Plaintiff.

II. Directing Release of Bank Account Rights and Ordering Freeze and Constructive Trust of Assets of Certain Defendants

Plaintiff asks that the Court require that Defendant Jeff Hall release all of his bank account privileges for the account held at Citizens South Bank in the name of Plaintiff “TAI Sports, Inc.” bearing account #590045005. As stated in the amended verified complaint, Defendant Jeff Hall had no right or authority to alter the Plaintiff’s bank account. (Amended Verified Complaint, ¶¶ 23-24, 38) An injunction to order said relief would only serve to protect Plaintiff pending the litigation and put the parties in their proper legal positions in regards to the bank account.

Plaintiff additionally asks that the Court restrain Defendants from withdrawing, encumbering, or in any way transferring any funds from the bank accounts in the name of the business entities and ‘d/b/a’s’ that were operated from and with Plaintiff’s property and/or whose assets were commingled with Plaintiff’s assets. The allegations of the verified amended complaint and the affidavit of Paul Preciado set forth details of how funds and assets of Plaintiff were misused and diverted to the entities operated by Jeff Hall. (Amended Verified Complaint, ¶¶ 27-28, 32-33, 35-43; Affidavit of Paul Preciado, Ex. B [Report]) Defendant Jeff Hall embezzled funds from Plaintiff in order to fund and purchase inventory and assets for his own business operations. (Amended Verified Complaint, ¶¶ 32-33, 35-43; Affidavit of Paul Preciado, Ex. B, [Report])

Plaintiff has made claims alleging constructive fraud, breach of fiduciary duty, conversion, and the imposition of a constructive trust in order to repatriate the misused and stolen assets of TAI. (Amended Verified Complaint, ¶¶ 73-83) The recovery of

assets and funds wrongfully used or diverted through a breach of fiduciary duty or by fraud may be recovered through the imposition of a constructive trust. Sara Lee Corp. v. Carter, 351 N.C. 27, 35 (1999)(“[A] constructive trust ordinarily arises out of the existence of fraud, actual or presumptive-usually involving the violation of a confidential or fiduciary relation-in view of which equity transfers the beneficial title to some person other than the holder of the legal title.’ ” *Leatherman v. Leatherman*, 297 N.C. 618, 621-22, 256 S.E.2d 793, 795-96 (1979) (quoting *Bowen v. Darden*, 241 N.C. 11, 13-14, 84 S.E.2d 289, 292 (1954)). An injunction freezing the assets of the insider entities and the imposition of a constructive trust over said assets would serve dual purposes: (1) to protect Plaintiff from the further disposal of its wrongfully allocated property (See e.g. § 1-458); and (2) to preserve the evidentiary integrity necessary to trace the funds embezzled from Plaintiff. Such injunctive relief is routinely granted by North Carolina Courts, when appropriate on numerous occasions. (See e.g. cases cited on pp. 6-7 *supra*) While the entry of these orders will cause some interference with certain Defendants’ use of their bank accounts, greater damage will result from Plaintiff if the assets are not protected pending litigation in this case. In addition, said Defendants do not have a legal right to use and dispose of property that does not belong to them and that was obtained through improper means. Relief in such cases is similar to and often granted in the form of an attachment proceeding. See N.C.G.S. § 1-440 *et seq.*

III. Demand for Accounting and Access to Corporate Records

Plaintiff has a right to inspect and examine its own corporate books and records and demand an accounting by making a reasonable demand that is not for an improper purpose. (See e.g., N.C.G.S. § 55-16-02; Parsons v. Jefferson Pilot Corp., 333 N.C. 420

(1993)) Plaintiff further requests that the Court order that Jeff Hall, Jeff Hall Sports, Inc., Bat-r-Up, WSL, TKL Electrical Services, Inc. and C.H. & Sons Construction Company, Inc. (the same entities/parties that Plaintiff requests a freeze on assets) give an accounting to Plaintiff and to the Court to trace the assets and funds wrongfully diverted from Plaintiff. Such an order would follow naturally from an injunction freezing the assets of those same entities as such disclosure would preserve the evidence of fund transfers, facilitate discovery in the case, and allow the Court and the parties to monitor compliance with the injunction.

CONCLUSION

Plaintiff prays that this Court enter a preliminary injunction ordering the relief set forth herein or take other appropriate measures to ensure the protection of Plaintiff pending the outcome of this litigation.

This the 21st day of May, 2009.

**GRAY, LAYTON, KERSH, SOLOMON,
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CERTIFICATION UNDER N.C.B.C. RULE 15.8

The undersigned attorney hereby certifies that the foregoing brief complies with N.C. Business Court Rule 15.8. Said attorney relies on the word count of the “Microsoft Word” Word Processing Software in making this certification pursuant to Rule 15.8.

/s/ William E. Moore, Jr. _____
William E. Moore, Jr.

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that the foregoing **BRIEF IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION** has been served on May 21, 2009 via United States First Class Mail and/or email, on the following parties to this action in the manner prescribed by Rule 5 of the Rules of Civil Procedure, addressed as follows:

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