

Dec 30 2022

Ian Conits

SC Court of Appeals

From: Lynn Birkner <LBirkner@gwblawfirm.com>
Sent: Tuesday, December 6, 2022 9:11 AM
To: Transcripts
Subject: Maddox v. MIT, et al. 2021-CP-23-04898 (Date of Hearing 12.5.22) [GWB-IMANMAIN.FID875840]
Attachments: Maddox v. MIT - Transcript Request Form.pdf

Attached is a transcript request form for an expedited transcript in the referenced matter. Thank you.



GALLIVAN WHITE BOYD

Complex experience for complex matters

Lynn Birkner
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Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Zachary L. Weaver</u>	Phone Number <u>864-271-9580</u>	Email Address <u>zweaver@gwblawfirm.com</u>	
Mailing Address <u>P.O. Box 10589</u>	City <u>Greenville</u>	State <u>SC</u>	Zip Code <u>29601</u>
Transcript Information			
Docket Number <u>2021CP2304898</u>	Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Randall P. Maddox v. Maddox Industrial Transformer LLC and Spiller</u>		
Date(s) of Proceeding <u>December 5, 2022</u>	Circuit <input checked="" type="checkbox"/> Family <input type="checkbox"/>	County <u>Greenville</u>	
Presiding Judge <u>Hon. Edward W. Miller</u>	Expedited Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Court Reporter(s) _____	Opposing Counsel <u>Sterling Laney</u>		

Requestor's Signature: /s/ Zachary L. Weaver
(Typed name will serve as signature)

Date: 12/06/22

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
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Ian Conits

From: Transcripts <transcripts@sccourts.org>
Sent: Tuesday, December 6, 2022 3:59 PM
To: Lynn Birkner; Transcripts
Subject: RE: Maddox v. MIT, et al. 2021-CP-23-04898 (Date of Hearing 12.5.22) [GWB-IMANMAIN.FID875840]

Warning – This email originated outside the GWB email system!

Yes, we have received a transcript request for an October 21, 2022 hearing in this matter.

Thank you.

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

From: Lynn Birkner <LBirkner@gwblawfirm.com>
Sent: Tuesday, December 6, 2022 2:00 PM
To: Transcripts <transcripts@sccourts.org>
Subject: RE: Maddox v. MIT, et al. 2021-CP-23-04898 (Date of Hearing 12.5.22) [GWB-IMANMAIN.FID875840]

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you. I also sent a request for a transcript on November 30 in the same case which requested a transcript for an October 21, 2002 hearing. I did not hear anything back on that request. Was that also received?



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From: Transcripts <transcripts@sccourts.org>
Sent: Tuesday, December 6, 2022 1:58 PM
To: Lynn Birkner <LBirkner@gwblawfirm.com>
Subject: RE: Maddox v. MIT, et al. 2021-CP-23-04898 (Date of Hearing 12.5.22) [GWB-IMANMAIN.FID875840]

Warning – This email originated outside the GWB email system!

Good afternoon.

Your transcript request was received in our office today.

Thank you.

Tammie M. Holmes
Court Reporter Manager
South Carolina Judicial Branch
1220 Senate Street, Ste. 200
Columbia, SC 29201
tholmes@sccourts.org
803-734-1825

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**Ian Conits**

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**From:** Green, Pamela E. <PGreen@sccourts.org>  
**Sent:** Monday, December 12, 2022 2:04 PM  
**To:** Zach Weaver  
**Subject:** Randall Maddox v. Maddox Industrial  
**Attachments:** Randall Maddox v. Maddox Industrial 10-21-22.pdf; Randall Maddox v. Maddox Industrial 12-5-22.pdf; Randall Maddox v. Maddox International.pdf

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Mr. Weaver,

Enclosed please find the two transcripts you requested along with the invoice for both of them. Thank you.

*Pamela E. Green*

Circuit Court Reporter

At-Large

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF COMMON PLEAS NONJURY

3
4 RANDALL P. MADDOX, AS TRUSTEE OF THE) TRANSCRIPT
5 RANDALL P. MADDOX 2007 TRUST; AND) OF
6 MARVIN H. BLUNDELL, AS TRUSTEE OF THE) RECORD
7 MARVIN H. BLUNDELL REVOCABLE TRUST,)
8)
9) PLAINTIFFS,
10)
11) vs.
12)
13) MADDOX INDUSTRIAL TRANSFORMER, LLC;
14) C. CAMDEN SPILLER, MIT HOLDINGS, LLC;
15) 1601 SE COMMERCE, LLC; AND MIT
16) WASHINGTON REAL ESTATE, LLC) 2021-CP-23-4898
17)
18) DEFENDANTS.
19)

20
21
22
23
24
25
October 21st, 2022

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:

STERLING LANEY and JENNIFER OGLE
ESQ.
Attorneys for the Plaintiffs

ZACHARY L. WEAVER
ESQ.
Attorney for the Defendants

Transcribed by Pamela E. Green, from
webEx Recording

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

1 PROCEEDINGS

2
3 THE COURT: Maddox -- Randall Maddox versus Maddox
4 Industrial.

5 (Pause.)

6 THE COURT: All right. We've got a motion to dismiss
7 and a motion to compel.

8 All right. Yes.

9 MR. WEAVER: Morning, judge. Zach weaver on behalf of
10 Maddox Industrial Transformer, LLC, as majority owner,
11 Camden Spiller. I've got Amelia Farmer here with me who is
12 waiting on the bar results eagerly. So, I figured I'd bring
13 her over today.

14 THE COURT: This is Abigail Gowdy. She is waiting on
15 bar results too.

16 (Pause.)

17 MR. WEAVER: Judge, we have two motions as you
18 mentioned, a motion to dismiss and a motion to compel. I'd,
19 I'd like to take them one at a time if that's all right with
20 Your Honor.

21 THE COURT: Absolutely.

22 MR. WEAVER: This case is a corporate breakup of an LLC
23 being MIT. There's a valid operating agreement in place
24 between the parties. It's all executed by all the members.
25 The plaintiffs and the counter defendants in this case are

1 Randall Maddox and his son-in-law, Heath Blundell. Those
2 folks left in April and July of 2021 from MIT as -- was the
3 time they dissociated, and when they dissociated, a buyout
4 is required by the operating agreement, and the operating
5 agreement's very specific on how that's to be done, when
6 it's to be done, and all of those different details.

7 There became a dispute as to the amount to be paid and
8 the plaintiffs brought a lawsuit claiming that they are
9 entitled to fair value under a statute as opposed to the
10 amounts described by the operating agreement. I don't
11 normally file motions to dismiss but this one matters
12 because these folks are seeking something that they're not
13 allowed under the contract and what the statute specifically
14 prohibits. And that's important because, if we continue
15 with a claim for fair value as opposed to the amount of the
16 contract, we're gonna have to spend tens of thousands of
17 dollars on experts doing valuations and the like that is
18 gonna be unnecessary when we are bound by the contract
19 that's in place.

20 So the statute's important in this case and that is
21 S.C. Code 33-44-701 and that's what Counts 1 and 2 are
22 argued, under, under the amended complaint, are argued that
23 it controls and that specifically says if the price and
24 other terms of a purchase of a distributional interest are
25 fixed or to be determined by the operating agreement, the

1 price and terms fixed are determined to govern the purchase,
2 and the comment to that section's even more specific, and it
3 says the party's lawsuit is not available under Subsection C
4 if they previously agreed to price and terms in an operating
5 agreement.

6 And so, for those reasons, judge, we ask that Counts 1
7 and 2 be dismissed, and that if they have a claim, they may
8 be entitled to assert a claim for breach of the contract or
9 the like. But they're not entitled to go outside the
10 contract.

11 THE COURT: All right. Yes, sir.

12 MR. LANEY: Thank you, Your Honor.

13 Sterling Laney and I have Jennifer Ogle here with me on
14 behalf of the plaintiffs, Randall Maddox and Marvin H.
15 Blundell. They also -- they're individual and as trustees
16 of respective trusts, Your Honor.

17 With, with all due respect, Mr. Weaver -- essentially
18 he's trying to turn this motion to dismiss into a motion for
19 summary judgment. His -- there's a counterclaim by his
20 clients seeking a declaratory judgment that we have to
21 purchase these shares under the operating agreement.

22 Our first and second causes of action say we should not
23 have to purchase the shares, shares under Section 9.8 of the
24 operating agreement and the reason for that, Your Honor, is
25 that it does provide that, upon a dissociation, there should

1 be a purchase, and it also provides a formula for that.

2 However, the ability for that formula to operate don't,
3 don't exist and did not exist at the time of the
4 dissociation.

5 Primarily it says you look to Exhibit A. And if there
6 is an equity value put in there for the company within 365
7 days of the dissociated member leaving the company, then you
8 look there. If not, you look to this formula.

9 But part of the formula is you have to have three years
10 of audited financial statements, Your Honor, and there --
11 those did not exist. Exhibit A did not exist and the three
12 years of audited financial statements did not exist in April
13 of 2021 and in July of 2021 when Mr. Maddox and Mr. Blundell
14 dissociated, resigned their employment with the company and
15 left.

16 So, as we, we cited a number of cases, Your Honor, that
17 say, in section 33-44-409, the comment to that says or 410,
18 excuse me, Your Honor, says that you may turn to the Court
19 for relief when you have a conflict under the operating
20 agreement and we cited a number of cases where the Court has
21 used equitable and come up with its own formula to determine
22 the value of what the, the value for the shares would be.
23 That's the whole controversy here, Your Honor.

24 I understand that this may be expensive in discovery.
25 This -- these companies, as we cited in our complaint, are

1 worth tens of millions of dollars. So, there's a lot of
2 money at stake here.

3 Your Honor, I don't know if you had a chance to read
4 the complaint.

5 THE COURT: I have.

6 MR. LANEY: I'm new to it but my predecessors,
7 Ms. Wrenn and Mr. Custer, 50 plus paragraphs that set forth
8 the factual predicate for bringing these causes of action.
9 We're certainly entitled to bring the cause of action under
10 the LLC act and it's the heart of the matter.

11 So, essentially, if you grant his motion to dismiss,
12 you're also granting approval that his first cause of action
13 or his counterclaim, which essentially is a motion for
14 summary judgment, Your Honor.

15 So, for those reasons, we believe this certainly
16 survives a motion to dismiss when you just look at the
17 wealth, you know, you just look at the allegations of the
18 complaint. Our memorandum in support, the Skydive case,
19 shows that, even if you don't think we have a good case,
20 it's not at this stage for the judge to determine whether,
21 you know, the underlying merits of the case, the plaintiff
22 will succeed or not.

23 So, for those reasons, we'd ask that you deny the
24 motion, Your Honor.

25 THE COURT: Thank you.

1 Anything you'd like to say in response?

2 MR. WEAVER: Yes, judge.

3 I think the argument being made is the issue that I
4 raised, which is they have a breach of contract case. They
5 do not have a case for fair value under the statute.

6 So, the relief being requested is the issue, and if
7 they have a breach of contract case, case, I think they're
8 entitled to plead it. But I don't believe they're entitled
9 to go outside that and that jives with all contract law
10 which, you know, the contract is designed to put you in the
11 place that you would of been had it been performed.

12 If the contract was performed in this case, then
13 they're entitled to allege that we breached the contract and
14 should -- that we should have to perform the contract as
15 it's written. But they're not entitled to go outside that.

16 THE COURT: Well, I've had an opportunity to review
17 everything you filed on both sides and I certainly
18 appreciate the briefs on both sides.

19 After reviewing everything, I do, I do feel like
20 there's enough to survive a motion to dismiss at this point.
21 And so your motion's respectfully denied.

22 Do we want to move on to the motion to compel?

23 MR. WEAVER: Sure, judge.

24 THE COURT: Thank you.

25 MR. WEAVER: On the motion to compel, a little bit of

1 additional background is helpful.

2 When Randall Maddox left MIT in April of 2021, he sent
3 a variety of emails to customers, vendors, employees, and
4 the like saying that he was being terminated or indicating,
5 somewhat cryptically, how he was going out and it was not
6 how he wanted.

7 In addition to that, he was asking for these people to
8 contact him at his personal email address. His son-in-law
9 then left a couple months later, and during that time period
10 or at some point in time they began to start a competing
11 company called Core. That company does the same type of
12 business that MIT does, and when -- the evidence that we've
13 developed so far indicates that they have at least
14 interfered or had one contract canceled that MIT had with
15 another customer and are now receiving that business.

16 And so we've filed a lawsuit against Core as well as
17 the other plaintiffs in this case for civil conspiracy,
18 breach of fiduciary duty, and for breach of contract and the
19 like. And we've asked for documents from Core, which is a
20 fairly start up, relatively new entity, and we believe we're
21 entitled to those based on the allegation in the complaint.

22 We have not received any documents as relates to Core,
23 its formation, its financials, or who it's doing business
24 with. All of which should be produced based upon what we've
25 alleged.

1 In addition to documents relating to Core, we've asked
2 for documents relating to communications Mr. Blundell and
3 Mr. Maddox had following their dissociation. Those are
4 relevant because Mr. Maddox specifically sent emails to
5 customers and venders seeking to have them contact him after
6 he left MIT. If these folks are seeking a buyout from MIT
7 and are seeking fair value, if they are now interfering with
8 MIT and still seeking relief from that company to be bought
9 out, we're entitled to know what those folks are doing and
10 how they're doing it and what's going on with them.

11 And the final piece to the motion to compel, judge,
12 relates to damages and we do not yet have a calculation for
13 how they claim damages should be calculated, and we're
14 asking for that to be supplemented as well.

15 THE COURT: All right. Yes, sir.

16 MR. LANEY: Thank you, Your Honor.

17 I think it's very important to note here, Your Honor,
18 that there's not a non-compete agreement in place. So,
19 there's not a non-solicitation agreement in place.

20 When you look at the LLC statute, and this is a, a
21 manager managed LLC, and the operating agreement's attached
22 in the, in the memorandum in support of the motion to
23 dismiss, 33,44-409(h)(1) says a member who is not also a
24 manager owes no duties to the company by reason of being a
25 member. Also the comment to 33-44-409 states that the duty

1 not to compete terminates upon dissociation.

2 It's uncontroverted that Randall Maddox left the
3 company in April of 2021 and that Heath Blundell left in
4 July of 2021.

5 Your Honor, we believe they are absolutely entitled to
6 communications up to and including the day of their last day
7 of employment. However, as soon as they left, they were
8 free to compete with MIT, Your Honor.

9 And so when you look -- and, and what they're asking
10 for is they've asked for our customer list. They asked for
11 a list of all our employees. They've asked for the
12 membership contributions to Core. They've asked for
13 communications that were all post the time they left. But
14 when you look at their answer and counterclaim, Your Honor,
15 they've only said that we tortuously interfered with one
16 joint venture and that's with Southland Electrical Company.
17 The rest of it is just we believe they interfered with
18 customers.

19 We believe they spread false information to our
20 employees. But they have not specifically stated who those
21 employees are. They've not stated who any other customers
22 are that they may of lost and it's really hard to understand
23 why they would be entitled to Core's customers list, which,
24 Your Honor, we, we filed a memo late yesterday. I don't
25 know if you've had a chance to look at it.

1 THE COURT: I have not.

2 MR. LANEY: But it's -- that, that constitutes a trade
3 secret under the South Carolina Trade Secrets Act and we, we
4 cited that in our, our memo. We cited all the cases and
5 those -- and we're entitled to protections since it's a
6 trade secret. It's not immediately available to, to the
7 public and somebody could derive economic value from that if
8 it's made public to them.

9 We're entitled -- that should not be produced except
10 pursuant to the terms of a, a carefully crafted protective
11 order and it's really hard, when they've said you interfered
12 with one joint venture agreement, which we still haven't
13 seen the joint venture agreement yet, to say that we have to
14 produce our entire customer list regarding -- and the other
15 key thing here, Your Honor, is Core was formed in September
16 of 2021, five months after Mr. Maddox left, two and a half
17 months after Mr. Blundell left, and, again, no non-compete,
18 no non-solicitation. And when you look at the LLC statute,
19 there was no duty of loyalty or anything that continued
20 after they dissociated.

21 It's -- it, it states that the comment, 33-44-409,
22 states that you start to terminate -- I mean start to
23 compete as soon as you terminate. It's hard to see that --
24 the harm that would come from, from these documents being
25 turned over. So essentially we now have Core and MIT

1 competing with one another and MIT is asking for very
2 sensitive information that they would not otherwise be
3 entitled to from a competitor without showing a basis for
4 that.

5 And, Your Honor, since you haven't had a chance to read
6 the, to read the memo, the -- if I can just -- indulge me
7 one second, Your Honor. There's a, there's a case that sets
8 forth the -- as usual, I'm drowning in paper. But there we
9 go, Your Honor.

10 So, when -- a trade secret is a qualified evidentiary
11 privilege under the trade secret act for these, these
12 documents. So what you -- what the trade secret act says
13 and the cases that interpret it say that there are four
14 criteria that must be met, and you got to show that the
15 allegations in the initial pleadings setting forth the
16 factual predicate for or against liability have been pled
17 with particularity.

18 And, Your Honor, if you go to their civil conspiracy
19 claim, you go to their breach of fiduciary duty claim, and
20 you go to their tortious interference claim, you don't see
21 any particularity as to which customers we supposedly
22 conspired to hurt them, which employees who may have done.

23 The only, only particularity we have is Southland
24 Electric Company and they -- again, they reference a joint
25 venture agreement, which we haven't seen. But it says you

1 got to show that the information sought's directly relevant
2 to the allegations again as pled with particularity and they
3 would be substantially prejudiced if they don't -- if
4 they're not permitted access to this information. And,
5 again, you got to show -- the fourth is that the information
6 will be admissible at trial.

7 Your Honor, they're saying that somehow they've lost
8 business from customers through the nefarious acts of
9 Randall Maddox and Heath Blundell while they went -- after
10 they started Core. Surely they have information to know who
11 those customers are and could go to those customers if they
12 believe there has been nefarious acts that somehow deprived
13 them of business with those customers and at least, you
14 know, send us discovery or amend their complaint,
15 counterclaims, excuse me, to plead with particularity.
16 These are the -- these are the customers and these are the
17 employees we believe that you breached your duty of loyalty,
18 which we can disagree continues, or that you, you know,
19 deprived us of profits from when you shouldn't have.

20 Without that, Your Honor, this, this becomes a huge
21 fishing expedition and, and really intrusive and, and
22 certainly the harm that could happen to Core if we produced
23 these documents far outweighs the good that can come from
24 this. So, we would ask that you deny it. But if you wanted
25 to give it, we certainly need a craft a, a -- put some

1 thought into a protective order that, that does this.

2 One other thing and Mr. Weaver didn't bring this up.
3 But when -- this happened before I was involved. I think
4 this was an oversight.

5 There is a confidentiality order in place but it only
6 addresses MIT. It doesn't address any, any other parties,
7 their documents.

8 I think you intended that. I believe you and Catherine
9 probably intended that. But to the extent we need to amend
10 the confidentiality order that's in place for any documents
11 that Mr. Maddox or Mr. Blundell may produce in this case, we
12 would like that confidentiality order to, to extend to all
13 parties. Not just MIT.

14 THE COURT: Certainly.

15 MR. LANEY: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. WEAVER: Your Honor, thank you.

18 Number one, I'm fine with any confidentiality order we
19 may need that would provide protection at issue.

20 The irony of the argument being made is that we should
21 know more and more about what was done or we can't see that.
22 So we don't know what information is out there. And if the
23 arguments are being made that these plaintiffs are entitled
24 to fair value of their distributional interest, and they are
25 competing with the company that they want to seek that

1 distributional interest from, we're entitled to know what
2 they're doing to potentially harm the company, undermine the
3 company, or take customers from the company. That goes now
4 to the very heart of what they claim their damages are.

5 There, there is a continuing duty of loyalty as well
6 under the LLC statute under 33-44-603(5). A member's duty
7 of loyalty and care continued with regard to matters arising
8 in events occurring before the member's dissociation.

9 So, from our prospective, if Mr. Maddox contacted all
10 of these customers and clients right before we walked out
11 the door, we're entitled to know what he was doing and his
12 further communications with those people after he leaves.

13 And so, judge, the, the last thing is they mentioned a
14 joint venture agreement that we have not provided. That has
15 been produced in the case and I will hand a copy to my
16 co-counsel now. It's Defendant's 1270 and so we---

17 MR. LANEY: That very well could be. I'm -- like I
18 said, I'm the latest to the party. So --.

19 MR. WEAVER: We, we, we---

20 MR. LANEY: I apologize for misrepresentation.

21 MR. WEAVER: No, no, no. I understand.

22 We, we have produced that, and then the, the mention of
23 trade secrets, that can be taken care of with a
24 confidentiality order and I don't believe that's an issue
25 because there are attorney's eyes only as well as

1 confidentiality provisions.

2 so, for those reasons, judge---

3 THE COURT: Okay.

4 MR. WEAVER: ---we'd ask you grant our motion to
5 compel.

6 THE COURT: All right. Well, I will grant the motion
7 to compel. I'll give you 30 days to comply. I will ask
8 that you, however, draft a, draft a confidentiality order
9 that you feel covers -- that, that would satisfy you and
10 your client with regard to it and, of course, show it to
11 Mr. Weaver and see if, if that satisfies him and I'm happy
12 to sign whatever you have and then also any extension that
13 needs to be made to any confidentiality orders that are
14 already in place. And I'm happy to, to -- if, if I need to
15 sign anything to, to extend those orders, I'm happy to do
16 that.

17 All right. Thank you very much.

18 MR. WEAVER: Thank you, judge.

19 THE COURT: And for the motion to dismiss, are you fine
20 if I just do a Form 4 order?

21 MR. WEAVER: I'm fine with, Your Honor. Yes, ma'am.

22 THE COURT: Okay. Very well. Thank you.

23 MR. LANEY: And so the motion to compel, just so I'm
24 clear, it's for everything that he asked for, all the --
25 everything?

1 THE COURT: Yes.
2 MR. LANEY: Financials and everything?
3 THE COURT: Yes. Thank you.
4 All right?
5 MR. WEAVER: Thank you, judge.
6 MR. LANEY: Thank you, Your Honor.
7 THE COURT: Thank you.
8 (Pause.)
9 THE COURT: We'll just do a Form 4 on both the motion
10 to compel and the, and the motion to dismiss. But the -- so
11 far as the confidentiality order, if you don't mind, I'll,
12 I'll look to you to make sure the language is something
13 that---
14 MR. LANEY: Yes.
15 THE COURT: ---that, that satisfies you.
16 MR. LANEY: Okay. Thank you, Your Honor.
17 THE COURT: Okay. Thank Honor.
18 MR. WEAVER: Appreciate your time.
19
20 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Greenville County, South Carolina, on the 21st day of October, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 11th, 2022



PAMELA E. GREEN, Court Reporter

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

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P R O C E E D I N G S

THE COURT: Okay. Maddox versus Maddox.
Okay. Okay. Go for it.

MR. LANEY: Thank you, Your Honor.

Sterling Laney and Clay Custer here on behalf of the plaintiffs, Randall Maddox, individual, and as Trustee of the Randall Maddox 2007 Trust and Marvin H. Blundell or Heath Blundell, individually, and as Trustee of the Marvin H. Blundell Revocable Trust.

Your Honor, we filed this motion on Friday afternoon and asked for an emergency hearing which the Court graciously granted and allowed us, under Rule 6(d), to, to schedule this hearing today to hear this and essentially we're here to ask for mandatory injunctive relief from the Court.

We're asking the Court, in its sound discretion, which is the standard to grant a mandatory injunction, to balance the equities, which is the standard, and look at the benefit to the plaintiff against the detriment, harm, and damages possibly to the defendant and we believe, when the Court does that, it will see that a mandatory injunction's proper here and essentially what we're asking the Court to do is to order the defendants, MIT, Maddox Industrial Transformers, and their manager, Camden Spiller, to release about

1 2.6 million-dollars in tax distributions which are necessary
2 to cover the income that was just reported in September
3 through K-1's against the plaintiffs.

4 And so just, just a little background, Your Honor.
5 We're here about the business valuation of a company that
6 was formed in 2015 between the plaintiffs and the defendant,
7 Mr. Spiller. In 2021, Randall Maddox, in April, resigned
8 his employment with the company and then, in May of 2021,
9 Heath Blundell resigned his employment with the company.
10 And, essentially, Your Honor, at that, at that point in time
11 the parties began to negotiate what should be the buyout of
12 the member's interest in the company.

13 Unfortunately an agreement could not be reached
14 between, between them. I believe you'll hear that, that
15 buyout amount was tendered in September of 2021. That was
16 rejected by my clients and this lawsuit was filed in October
17 of 2021.

18 Since October, 2021, for the last year, the parties
19 have gone back and forth several times. There's been an
20 amended complaint filed that -- the answer filed, and,
21 importantly, in that amended complaint, Your Honor, in
22 Paragraph 112, we stated that the plaintiff's own membership
23 interest in MIT, Maddox Industrial Transformers, and that
24 was admitted by MIT and Mr. Spiller. And further we
25 indicate we -- we said that Mr. Spiller's the manager, was

1 legally bound to comply with the operating agreement, that's
2 Paragraph 113 of our amended complaint, and they admitted
3 that as well.

4 They also admitted that we, as the plaintiffs, and
5 Mr. Spiller, are the parties to the operating agreement are
6 bound by its terms and conditions. And if you look at the
7 operating agreement, Your Honor, Article 7.1 -- and this is
8 all in our motion. I have copies of the operating agreement
9 if you need to see that. I also have copies of the
10 pleadings if that would help at all, Your Honor, so you can
11 see what I'm referring to if, if you'd like me to pass, pass
12 that up to you.

13 THE COURT: Yeah, make it faster than me trying to find
14 it on this computer.

15 MR. LANEY: Okay.

16 (Pause.)

17 MR. LANEY: And, Your Honor, I handed up our amended
18 summons and complaint, the amended answer and counterclaims,
19 and also the operating agreement. And I'm sure Mr. weaver
20 will be referring to that operating agreement here in just a
21 minute. So that's -- be good for you to have a copy there.

22 THE COURT: Okay.

23 MR. LANEY: As you can see, in Paragraph 1 -- I was
24 referring to Paragraph 112 on the, the amended summons and
25 complaint, Your Honor, and 113 where we alleged that we own

1 membership interests in MIT and that Mr. Spiller, as the
2 manager, is legally bound to uphold the operating agreement
3 and they admit the same in their answer. It's not -- I've
4 tabbed all those for ease of reference --

5 THE COURT: Okay.

6 MR. LANEY: -- for you.

7 THE COURT: All right.

8 MR. LANEY: I'll let you go to the operating agreement,
9 Your Honor, and it's Article 7.1. You'll see there is a
10 mandatory provision in there, it's on Page 18, Your Honor,
11 of the operating agreement, that says the manager shall,
12 from time to time, make such distributions as are necessary
13 to enable the members to pay taxes on the company's income.
14 And the crux of this matter's gonna come down that what
15 you're gonna hear from Mr. Weaver, based on the filings he
16 just filed, you know, about an hour ago, is that he's gonna
17 say that we are no longer members even though in his answer
18 he admits we own a membership interest in the, in the
19 company. But it's gonna say that, by tendering the buyout,
20 we became transferees and no longer members, and, therefore,
21 we're not entitled to receive any distributions from the
22 company.

23 The, the problem with that, even, even if that's true,
24 Your Honor, is that, in September of this year, and this is
25 attached as Exhibit A to the four affidavits we filed, we

1 filed affidavits from Mr. Maddox, Mr. Blundell, and their
2 spouses, K-1's were issued, signed by Mr. Spiller on behalf
3 of MIT that indicated that our, our clients received a
4 combined 8.4 million-dollars in income from MIT. So
5 representing to the Internal Revenue Service that we have
6 received income and profits from Maddox Industrial
7 Transformers in the amount of 8.4 million which represents
8 our combined 38.5 percent interest in the company.

9 As you can imagine, that triggered a lot of tax
10 liability, Your Honor. That was filed in September of this
11 year.

12 Over Thanksgiving week, on November 23rd, and
13 attached as Exhibit B to the affidavits, the Internal
14 Revenue Service issued letters saying that we had two weeks.
15 We had until December 7th, this wednesday, to pay 1.713
16 million by Mr. Maddox and 924,000 for Mr. Blundell, which
17 already includes \$173,000 in penalties and interest for not
18 paying the taxes which were due on the income that MIT
19 states that we received and we have not received any of that
20 income as of today's date.

21 We've not---

22 THE COURT: Well, let me get this---

23 MR. LANEY: Yes, sir.

24 THE COURT: ---straight.

25 They're saying that the fact that you made a tender is

1 equivalent to an actual transfer?

2 MR. LANEY: If I -- now I read it very quickly, Your
3 Honor, because if -- he filed it at one o'clock but I
4 believe that's, that's what they're saying is that we are
5 now are not members, but we are transferees, and, therefore,
6 do not have a right to any distributions under the operating
7 agreement even though they've represented to the IRS that we
8 received 8.4 million in distributions this past year, and I
9 believe he's gonna further say that, since we're a term
10 company, and we "wrongfully dissociated under his cause of
11 action, a transferee can receive, nominally, the
12 distributions for the 90 whatever years are left in this
13 company. I guess we'd had 92 years left in this 99 year
14 term company but they don't have to cover any of the taxes.

15 I, I believe that's the argument you're gonna hear,
16 Your Honor, and so we're here to ask the Court to require
17 them to make the, the income tax distribution which they
18 have in escrow. They've escrowed this money. They filed or
19 they provided us all the quarterly estimated tax payments
20 including up to January, 2022 which was four months after
21 this lawsuit or three months after this lawsuit was filed.

22 THE COURT: Okay. So what happens to the rest of the
23 money?

24 MR. LANEY: They, they still have it. Nobody's
25 received it, Your Honor.

1 THE COURT: Are y'all asking them to pay taxes on
2 something they haven't gotten?

3 Is that's what's -- that's what he's telling me.
4 Go ahead, Zach. Tell me what you --.

5 MR. WEAVER: So, judge, I think there's been a lot of
6 argument about what I'm gonna say and I think it's gotten a
7 bit confused.

8 First of all, it's confusing as to what's being
9 represented as the K-1. I'm obviously not a tax
10 professional but the K-1's do not indicate that the -- it is
11 revenue that an individual receives. As an LLC, it's a pass
12 through and it goes, it's my understanding, to the
13 individual and they're attributed a certain amount of the
14 company's income. That amount is not the money they receive
15 from the company. It's the amount of revenue that they are
16 liable for taxes on.

17 So it's not a distribution from the company for that
18 amount. It's how much is reported to the IRS as a result of
19 the overall likely tax liability.

20 It's important to understand how we got here and what
21 is being argued and why it's incorrect.

22 I'm sorry. I didn't introduce myself. I'm Zach Weaver
23 on behalf of Maddox Industrial Transformers. I've got Ian
24 Conits with me and Amelia Farmer.

25 We only filed our brief at one o'clock today because we

1 did not get their brief until one o'clock on Friday and they
2 asked for an emergency hearing to bring us here. I think
3 it's important that I make a record because I think it's
4 getting confusing as to what's being argued and the position
5 MIT is taking.

6 This motion ought to be dismissed out of hand because
7 what's being asked is extraordinary. They're asking us to
8 come in one day -- with one day's notice and for you to
9 distribute two point something million dollars worth of tax
10 liability that's disputed and that -- as to the amount, as
11 the overall liability, and as to when it ought to be paid.

12 They are making an argument that my clients are
13 responsible for paying these taxes and they are responsible,
14 under the operating agreement, because we've admitted it's
15 enforceable. That's correct. But they aren't citing the
16 provisions of the operating agreement that control the
17 issues that we are talking about here.

18 The factual background, before we get to that, is
19 really important.

20 First of all, these individuals, the plaintiffs signed
21 an operating agreement that said specifically as to their
22 rights and obligations. It talks about the buyouts and what
23 happens if you leave the company. They resigned from MIT
24 voluntarily last year. They walked out of the door. They
25 started a competing company and they did that and my clients

1 offered them their buyout pursuant to the terms of the
2 operating agreement. They said no.

3 Under section 9.10 of the operating agreement, it
4 specifically says their right to distributions terminate
5 when that amount is tendered. After that happens, they
6 demand millions of dollars more than the buyout amount.
7 They filed this lawsuit and now they've staying in the
8 company keeping a membership, membership interest.

9 Now, there's a very big distinction between having a
10 membership interest under South Carolina law and that under
11 the operating agreement then there is in being a member
12 because what the operating agreement says is that you can
13 have a membership interest. But once you dissociate, under
14 South Carolina law, you become a transferee. Transferees
15 are deal -- dealt with under the operating, dealt with under
16 the operating agreement, which specifically says transferees
17 do not get distributions, which include tax liability, until
18 liquidation.

19 The same thing goes if you are a member that is
20 departing the company. Under the buyout section, it says
21 amounts for members that are leaving the company that are
22 only paid at the time of closing and that makes sense.
23 You're not suppose to leave a company, hold it hostage by
24 maintaining a membership interest, and reject the amount of
25 the buyout that you've agreed to so that you stay on and

1 that's -- they've created this situation in which they're
2 still in the company. They're running a competing company
3 and they're demanding that we pay the tax liability for
4 them.

5 So, the primary point here, judge, is my clients -- and
6 I think we've got plenty of factual issues with the
7 affidavits we filed. My clients tendered the buyout. They
8 rejected that. And when they rejected that, that cut off
9 their, their ability to get distributions period. That's
10 issue number one.

11 Even if though---

12 THE COURT: Wait a second.

13 Why is, why is that -- because they reject the buyout
14 agreement, they're not -- then they're not entitled to get
15 distributions?

16 Is that what you said?

17 MR. WEAVER: Your Honor, if you look at sub---

18 THE COURT: Is that right?

19 MR. WEAVER: 9.10.

20 THE COURT: Nine point -- okay.

21 MR. WEAVER: Under closing, it says place and date. It
22 says place and date of closing --

23 THE COURT: Yeah.

24 MR. WEAVER: -- under 9.10(a), unless otherwise agreed
25 by the parties, closing of the sale and purchase of

1 membership interest shall take place at the principal office
2 of the company on the closing date which shall be designated
3 by the company and shall be no more than 45 days from the
4 following to occur, the event of purchase or the
5 determination of the purchase price. The selling member's
6 rights as a member of the company, including the right to
7 receive distributions, that includes taxes, the right to
8 receive notice of meetings and the right to vote at meetings
9 shall terminate on the tender of the purchase price.

10 As my client's affidavit indicates, he set up a
11 closing. He tendered the purchase price. They said no. At
12 that point in time it cut off their ability to get the
13 distributions that they're demanding right now.

14 But even if, judge, they are entitled to them, and we
15 don't believe they are, but even if they are, the time to
16 pay that under this operating agreement is when they either
17 accept their buyout or when this company gets liquidated as
18 transferees.

19 THE COURT: Okay.

20 MR. WEAVER: This --.

21 THE COURT: Go ahead.

22 MR. WEAVER: This motion is also procedurally improper.
23 They are seeking summary judgment on their third cause of
24 action, which they are citing you to, and basically they've
25 asked for you to rule on a summary judgment issue within a

1 day of them filing their motion.

2 Obviously we have issues of fact that we are disputing
3 and issues of law that have to be taken up and we don't
4 believe summary judgment can be granted. On injunctive
5 relief, they're also -- the, the claim also fails and that's
6 the---

7 THE COURT: Let me, let me -- slow down. You guys are
8 deep in this.

9 So, the reason they rejected it was because of the, the
10 amount?

11 Y'all couldn't come to an agreement as to the value?

12 MR. LANEY: Yeah, that's, that's the whole basis of the
13 lawsuit. Your Honor, we've asked the Court to determine
14 the, the value of our membership interest under the fair
15 value rule because there is -- was not -- an Exhibit A and
16 there were not three years of audited financial statements
17 at the time we were, we resigned.

18 THE COURT: Okay.

19 MR. LANEY: (Indiscernible)---

20 THE COURT: Without getting into---

21 MR. LANEY: ---what's owed on the membership interest
22 and that's our whole lawsuit basically.

23 THE COURT: Okay. All right. Well, let's, let's just
24 think hypothetically here.

25 Let's say I deny this motion and then it comes out

1 that, you know, the, the big, bad IRS, it turns out that
2 they actually owe the money.

3 Okay. If that is the result of this fight, that they
4 actually owe the money, between now and the time that
5 determination is made, they're gonna be an accrual of
6 penalties and interest, correct?

7 MR. WEAVER: That's correct, Your Honor, and that's---

8 THE COURT: Okay. So, let me just --.

9 MR. WEAVER: Sorry.

10 THE COURT: So, if -- I mean I'm just thinking out
11 loud.

12 I deny the motion and require the, the losing party to
13 pay the increased penalties and interest at the time that's
14 determined, would that be fair?

15 MR. WEAVER: I think that would be the ultimate damage
16 that would be determined later. But I think that will be a
17 question of is that amount actually owed because it should
18 of been covered by the plaintiffs or should of have been
19 covered by my, my company. But that is a question of fact
20 and I think that's---

21 THE COURT: Well.

22 MR. WEAVER: ---a damages issue.

23 THE COURT: Okay. I'm, I'm with you on that but you
24 don't want to let go of the money. They don't want to
25 accrue penalties and interest if it -- and if it -- if, you

1 know, the ruling today is that whoever loses eats the
2 increased penalties and interest of whatever the final
3 determination is, wouldn't that be fair?

4 MR. WEAVER: I, I, I don't see how it would be unless
5 there's an offset later as it relates to how much the
6 ultimate liability between the companies are. So, for
7 example, I've got counterclaims and---

8 THE COURT: Okay. You -- for non-compete or something?

9 MR. WEAVER: It's, it's for -- tortuous interference
10 with the contract, taking customers, that kind of thing.

11 THE COURT: Okay.

12 MR. WEAVER: And so I, I do believe that there's a lot
13 of issues that have to be determined together---

14 THE COURT: Yeah.

15 MR. WEAVER: ---before we get to that.

16 THE COURT: Well, I'm, I'm with you on that and this is
17 a -- penalties and interest from the United States
18 Government is a great motivator to get the thing resolved.

19 You hear what I'm saying?

20 MR. WEAVER: I don't disagree, Your Honor.

21 THE COURT: So without -- on the, on the other hand, if
22 I grant the whatever -- if I make you pay the money to the
23 taxes and terminate that liability, then -- and it's
24 determined at a later point that you didn't need to do that,
25 okay, that they were wrong, why couldn't, in this order, we

1 just anticipate that and say that the losing party on that
2 end pays the interest on this amount at the legal rate---

3 MR. WEAVER: I don't know---

4 THE COURT: ---or at the prevailing rate today?

5 MR. WEAVER: I do not know what these individuals would
6 be able to pay at that point in the future and it would also
7 be telling my clients that they're gonna have to pay
8 continuing obligations for taxes in the future while they
9 sit around and---

10 THE COURT: No, no. Just with respect to this one
11 issue. And so maybe it's better that I just let the
12 interest and penalties accrue and that would speed up the
13 negotiations to resolve the case.

14 Is that --?

15 MR. WEAVER: I would respectfully request that the
16 motion be denied and that, if the issue does come up, and I
17 think it will be on who's gonna be responsible for those
18 penalties and interest, that will be part of this
19 litigation. And if my client loses that issue, you know,
20 the, the Court may very well make that award that they
21 should of paid it.

22 THE COURT: No, I, I would make it today. I want it to
23 be laid out that -- and that amount -- the amount, I guess,
24 would be determined later, the exact amount, because you
25 don't know how much money they're gonna charge. So I'm

1 getting -- I'm sort of giving y'all a choice.

2 This is kind of like being in criminal court when
3 somebody pleads guilty and they want to get -- they want
4 probation. And so I, I tell them -- or no, actually it's
5 better -- more about you can go -- Conits, you know about
6 this.

7 A year -- I'll say I'll give you a year down the road
8 or three years of home incarceration and I let them choose.

9 Do y'all want to talk about it for a little bit and see
10 which one's better for you?

11 I guarantee you -- and, as Ian knows, they will take
12 home incarceration every time and then they'll flunk out of
13 it and end up going to prison anyway.

14 So do y'all want to talk about that?

15 I mean I don't know how else to resolve this.

16 MR. WEAVER: Can you tell me the very -- the two
17 options?

18 MR. LANEY: Yeah, I'm not sure we understand exactly
19 what the options are.

20 THE COURT: No, home incarceration involves wearing an
21 ankle monitor. I'm sorry.

22 One, I, I require you-all to pay the -- give them the
23 money and they pay these taxes one time. And if it -- find
24 out that you shouldn't of had to do that, they have to pay
25 you back with interest at a rate to be determined. The

1 legal rate's pretty high. We could do it -- of course, the
2 way the Fed's going but at a, at a predetermined interest
3 rate or, two, I say no, you can't have the money and then
4 the penalties and interest are gonna continue to accrue at
5 whatever rate the IRS has set. And when you, at the
6 conclusion of it, if it's -- you determine that they're at
7 fault, then they've got to pay -- they pay that amount.

8 Does that make sense?

9 I'm getting lost in my own---

10 MR. WEAVER: I, I---

11 THE COURT: ---thinking.

12 MR. WEAVER: If I understand it, Your Honor, my --
13 you're offering the option of my client can pay the taxes
14 now this one time and they have the obligation to pay us
15 back if it goes -- that they are not entitled to it or
16 alternatively---

17 THE COURT: With interest.

18 MR. WEAVER: With interest.

19 THE COURT: Yeah.

20 MR. WEAVER: Or, alternatively, my client can --

21 THE COURT: Hold the money.

22 MR. WEAVER: -- hold the money and then be responsible
23 for taxes and penalties.

24 THE COURT: And then, if you lose, you got to pay the
25 money plus the accrued interest and penalties and all that.

1 MR. WEAVER: My client would say option two.

2 THE COURT: That's the home incarceration unit or is
3 it?

4 I don't know.

5 What do you-all say?

6 MR. LANEY: Yeah, the problem with option two is the
7 reason we filed the motion, Your Honor, at least for the
8 Blundell's, they don't have the money, as they said in their
9 affidavit, to come up with a million dollars by Wednesday
10 basically and the, and the defendants know that and this is
11 a pure and simple squeeze play is what this is, which is why
12 they made tax distributions up through April of this year
13 even after the -- even after, even after last June when we
14 "rejected" their buyout proposal, even after last September
15 when they sent this proposed -- you know, sent, sent this --
16 set up this supposed closing that they say we didn't show up
17 for that we didn't do.

18 They made another tax distribution last September.
19 They made another one this past January. It was only in
20 April of this year, five months after this lawsuit was
21 filed, they sent an email and say oh, we're not making,
22 making any more tax distributions, and, of course, the, the
23 income of the company's gone up dramatically. It's -- I
24 think it was 22 million for 2021.

25 Okay. So there's plenty of money there. So the

1 problem with option two, all due respect, is the reason we
2 filed this. I mean the Maddox -- Mr. Maddox I think can,
3 can sell some stocks and do some other taxable gain
4 transactions here at the end of the year, which create a
5 whole nother situation, to get his hands-on the 1.8 million
6 or whatever he's suppose to do. The Blundell's just plain
7 and simple don't have the money.

8 So, so saying well, okay, later, instead of a million,
9 it will be 1.2 or 1.4, we're suppose to mediate I think in
10 February or March, you know, you know whatever it is then,
11 then we'll -- you know, we'll pay them.

12 well, they've got, as we laid out in the affidavit,
13 they've got issues related to their credit, to getting liens
14 placed on their properties. The IRS, you know, sometimes
15 moves slowly, sometimes it doesn't move quite so slowly,
16 and, and, you know, we've consulted with a tax attorney who
17 schedules them out. This -- with amounts this large they
18 typically move quicker than slower. This isn't like a
19 \$10,000 amount owed.

20 so they have a, a grave concern. And so, you know,
21 therein lies the problem.

22 If, if -- with, obviously, option one's fine with us
23 because we're -- our clients are gonna turn around and send
24 this money to the IRS. If the IRS, in turn, decides they
25 made a mistake or something, which I don't think's gonna be

1 the case, but if they do two months or, or 10 months or
2 whatever from now, sends it back and then it turns out we
3 didn't owe it, so I mean sure, we'll, we'll comply with the
4 Court's order at that point and have our clients return it
5 to the -- MIT.

6 But, but I, you know, what they've done is issued K-1's
7 saying we got this income and, in fact, we didn't get the
8 income. Therein lies the crux of the -- so they can't have
9 it -- if we were simply transferees, Your Honor, then
10 transferees don't have K-1's issued to them until
11 something's actually transferred to them. So you can't say
12 we're just transferees and say nothing was transferred at --
13 while nothing was transferred and say you're not a member.

14 They're saying -- oh, they obviously -- K-1 that's
15 based on our membership interest and yet they're saying
16 despite rule -- Section 7.1, which requires the manager to
17 make distributions as are necessary to enable the members to
18 pay taxes on the company's income, that's, that's Page 18,
19 Section 7.1 of the operating agreement, a totally different
20 section from what Mr. weaver's referring to.

21 We're either, we're either still members and the Court
22 needs to decide what our membership interest is worth or
23 we're just transferees. But if we're just transferees, then
24 don't K-1 our clients for, you know, however many millions
25 of dollars it is in the mean time unless some actual

1 transfer's been made and no transfer was made.

2 MR. WEAVER: Your Honor, do you mind if I respond to
3 that?

4 THE COURT: Yeah. No. Go ahead.

5 MR. WEAVER: It, it -- they are conflating when someone
6 is a member, when somebody is a transferee, what happens
7 under the operating agreement that they all signed. This
8 operating agreement spells out exactly what's suppose to
9 happen.

10 The misunderstanding seems to be, when you are a member
11 of the company, you're still there. When you resign from
12 the company, under South Carolina law, there's a statute
13 that we cite in our brief and then we laid it -- I think our
14 brief lays it out very well.

15 You become -- you're no longer a member. You become a
16 dissociated member and you are treated as a transferee. Our
17 operating agreement specifically talks about what a
18 transferee gets and when they get it and that's in
19 liquidation. This notion of they're transferees, so they're
20 not suppose to get aK-1, that misunderstands the whole
21 issue.

22 The issue is how these people are treated under the
23 operating agreement, and what they've asked the Court to do
24 is contrary to what this operating agreement specifically
25 says. Having my client responsible for the funds ultimately

1 is what this Court should -- having responsibility after
2 there's a determination of liability, that's the proper
3 ruling today with all due respect.

4 I do not believe that it's proper to find that my
5 clients are responsible to pay this money and then have them
6 say oh, well, we'll give it back to you if we don't need it.
7 They've already said that they may not be able to pay these
8 taxes and that they are asking you -- the Court to enforce
9 this agreement on the one hand in their favor but not
10 enforce it and make them take the buyout that they were
11 suppose to take and they never would of incurred it or had
12 this membership interest had they left the company when they
13 should have.

14 So, judge, we ask that the Court enforce this agreement
15 as it's written, as we've agreed that it should be, as the
16 plaintiffs have agreed that it should be, and deny the
17 motion that they've filed this afternoon.

18 THE COURT: Who's, who's gonna mediate this and when is
19 it?

20 MR. WEAVER: Chip Darwin is mediating it I think
21 February 2nd.

22 MR. LANEY: Your Honor, one other thing I wanted to
23 mention and I forgot in response -- related to what, what
24 Zach just said.

25 But, you know, injunction rule generally provides for

1 bond anyway, and in regards to the proposal, I think number
2 one of those two proposals the Court threw out, you know,
3 our client, you know, would be willing to post a bond in the
4 event that the Court granted the injunction, had the money
5 turned over, and then, as you said, what if it was wrong and
6 it wasn't owed or whatever. I think then my client,
7 Mr. Maddox anyway, can come up with the money to go post a
8 bond for that amount so that, in that event if it turns out
9 he's wrong, and I think that would solve the Court -- the
10 Court's concern on number one there and it may solve, may
11 solve the defendant's concern as well. I don't know.

12 But I, I think that -- we would, we would have no, no
13 problem with that. We actually broached the subject with
14 our client this morning that that might -- the Court might
15 find that appropriate. And so I just throw that out.

16 THE COURT: Well, I see you rising to speak.

17 MR. WEAVER: I'm, I'm sorry. It, it -- I'm, I'm really
18 struggling with the notion of they are asking the Court to
19 make an award on disputed liability claims, disputed
20 amounts, and disputed timings of those payments and they're
21 asking for that to be paid today. And I do not believe that
22 there's a rule or any, any law that they've cited that
23 allows that to happen, that makes that the correct decision
24 of the Court.

25 This operating agreement controls and I do not believe

1 they have any irreparable harm that they could show.
2 They're talking about a hypothetical issue with the IRS that
3 is not yet come to fruition. They don't know what these
4 issues are and I, I just -- I do not believe a bond solves
5 the issue that they are raising, Your Honor.

6 THE COURT: Well, you'd be protected on the money for
7 sure. You had, at one point, said that you were concerned
8 that they wouldn't have the money to pay it back. So --
9 and, and -- it's a little disconcerting that you-all made
10 all these distributions right up until the point the, the,
11 the lawsuit was filed.

12 MR. LANEY: They also paid the taxes, the State income
13 taxes, in composite filings, Your Honor, on behalf of all
14 members, which included us. That's a distribution just like
15 he's saying we're not entitled to. So they do that for
16 eight states. They -- and, and with all due respect, I'd
17 like to know when Zach says, Mr. Weaver, excuse me, saying
18 we're getting the 5.6 million for Mr. Maddox.

19 I mean they represented to the IRS that we received
20 that. There's no, A, they're a transferee, this is phantom
21 income, they didn't get it, and, judge, those were
22 hypothetical about getting the letter from the IRS saying
23 you owe \$924,000 to the Blundell's who don't have it by
24 December 7th, which is Wednesday.

25 There's no hypothetical about that and they have sworn

1 in their affidavit they can't pay that. That's real.

2 we're offering to pay a bond, cut off these penalties
3 and interest, and be able to resolve this thing, which we
4 need to -- on the valuation hopefully at mediation. But,
5 Your Honor, that's just -- when you look -- and, and
6 disagreeing with him, the case law, under the Forest, you
7 know, Forestland versus Black, mandatory injunction's in the
8 sound discretion of the Court and you balance the equities
9 and you look at the equities between the parties and I just
10 can't find any other way that comes down on our side of that
11 one, Your Honor.

12 MR. WEAVER: we're balancing the equities, Your Honor.
13 what's happened here is they, they left this company. They
14 refused the buyout. They started a competing company and
15 now they've continued to stay in this company and hold this
16 company hostage while they are trying to earn money
17 separately with a competing interest.

18 The K-1's just seemed to be a, a complete -- we, we
19 need an accountant in here clearly because there seems to be
20 a, a fundamental misunderstanding about what a K-1 means and
21 how past through liability rolls through a K-1 as opposed to
22 it's not a distribution of five point something million
23 dollars. It is the ultimate amount apportioned to your
24 interest in the company.

25 THE COURT: well, this would be interlocutory, wouldn't

1 it?

2 He could appeal my decision today.

3 MR. WEAVER: I believe if an injunction was granted,
4 Your Honor, I believe we have the right to appeal that.

5 MR. LANEY: And that's why, if we post a bond,
6 that's -- that protects everybody's interest, Your Honor.

7 THE COURT: Yeah.

8 Well -- okay. I'm, I'm gonna make you pay it. I'm
9 gonna make them post a bond. And if it turns out -- I don't
10 know. I don't want to get too much into that. Y'all get
11 this resolved the sooner the better obviously. There's
12 obviously hard feelings between the, the members.

13 MR. WEAVER: One of the issues that's going to come up
14 is there's going to be future responsibility for tax
15 payments that are obviously gonna be disputed as to the
16 liability amount just like this one, Your Honor.

17 THE COURT: When's the next one due?

18 MR. WEAVER: It's gonna be beginning of next year I
19 assume.

20 THE COURT: Okay. Well, I'm not ruling on that. This
21 is a one time deal.

22 MR. LANEY: We're asking just for the 2021 that the IRS
23 is saying we owe, we owe right now. We -- we're reserving
24 our rights under that. We're, we're just asking for those
25 to pay the 2021 taxes.

1 THE COURT: If it turns out that they didn't owe it,
2 then there's got to be some kind of penalty on your behalf
3 to -- that, that -- what is the -- what's the prevailing
4 rate right now?

5 MR. WEAVER: I don't know. I'd have to look.

6 THE COURT: Call Sharon Powell.

7 MR. LANEY: I don't like to look anymore, Your Honor.

8 THE COURT: So, if it turns out that, that, which
9 happens all the time, I'm wrong about this, and they
10 shouldn't of had to pay, then you're gonna have to pay the
11 money back plus interest at the legal rate. Kind of a
12 judgment and you're gonna have to post a bond to cover it.
13 So that way your -- you -- your people will be covered in
14 the event that it --.

15 MR. WEAVER: Post a bond pending appeal, Your Honor?

16 THE COURT: I don't know.

17 Are you gonna appeal it?

18 MR. WEAVER: I, I just---

19 THE COURT: Y'all just need to talk about that. I
20 don't know what's gonna -- something like this needs to kind
21 of get, you know, business courted.

22 You want me to call Lawton McIntosh for you?

23 MR. LANEY: We're happy to do that, Your Honor. We're
24 happy to get on a docket as soon as is reasonably practical.
25 I mean --.

1 THE COURT: I mean seriously.

2 MR. LANEY: (Indiscernible) behalf of communication but
3 yeah.

4 THE COURT: This really ought to be in the Business
5 Court. But if you-all can get together and get this thing
6 resolved in January, that's what you ought to do. But
7 that's -- you know. I don't know. There could be other
8 factors at play. I don't know all the ins and outs.

9 MR. WEAVER: Your Honor, will you---

10 MR. LANEY: It's money, Your Honor, like always.

11 MR. WEAVER: Will you be issuing a written order for
12 this, Your Honor?

13 THE COURT: Well, one of you's gonna prepare it and
14 give it to me.

15 MR. LANEY: We have a, we have a, we have a draft
16 order, Your Honor, that I think if requested by---

17 THE COURT: Make sure that that---

18 MR. LANEY: We'll do that.

19 THE COURT: ---y'all work on the language of it and
20 then---

21 MR. LANEY: Sure. We'll---

22 THE COURT: ---get it up, you know, and I can sign it.
23 If y'all -- I know you're not happy with the result. But as
24 long as the language in the order comports with what I've --
25 the ruling is today then I'll sign it.

1 MR. WEAVER: I understand, Your Honor. Thank you.

2 THE COURT: Okay.

3 MR. LANEY: I'll get that emailed over to you. Thank
4 you, Your Honor. Appreciate your time. Thank you.

5 THE COURT: If you send an email to me it may
6 disappear.

7 MR. LANEY: Thanks for working us in.

8

9 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Greenville County, South Carolina, on the 5th day of December, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 11th, 2022



PAMELA E. GREEN, Court Reporter

PAMELA E. GREEN - Circuit Court Reporter

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12-Dec-22

For
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