RECEIVED
Jan 02 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas

Marvin H. Dukes, Master-in-Equity

Case No. 2022-CP-07-02454
Appellate Case No.: 2023-000411

Blue Bell Holdings, LLC, ... Appellant,

v.

Gary C. Johnson, Stephen D. Halpern, Holly A. Angel, Holly Ann, LLC, Belmont Properties, LLC, Shoreline Funding, LLC, and Orange Capital, LLC (Nevis) ..... Respondents.

RESPONDENT GARY C. JOHNSON'S INITIAL BRIEF

Elizabeth J. Palmer (SC Bar #73680)
Saxton & Stump, LLC
151 Meeting St., Suite 400
Charleston, SC 29401
(843) 414-5080
ep@saxtonstump.com

Attorneys for Respondent Gary C. Johnson

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I. Did the lower court correctly determine that Appellant was not entitled to a preliminary injunction, freezing Respondent's assets during the pendency of a separately pending lawsuit, because it has an adequate remedy at law and also because it failed to show irreparable harm?

STATEMENT OF THE CASE

Appellant opens its Initial Brief asserting that this appeal "concerns whether a trial court should enjoin a defendant facing a multi-million-dollar judgment in civil litigation from voluntarily gifting, transferring, or otherwise disposing of his individual assets for no consideration after a plaintiff files a lawsuit against him." However, what Appellant is really asking this Court to do is set a precedent that allows any plaintiff to freeze a defendant's assets upon the filing of a lawsuit. In other words, Appellant is seeking a determination that the extraordinary remedy of a preliminary injunction is not so extraordinary after all, and available to every plaintiff anticipating the receipt of a money judgment, whether or not in the same lawsuit. This is not the law of this State.

Appellant's predecessor in interest, David Brosman, M.D., and Respondent Gary C. Johnson met around 1992 when they became neighbors. Johnson Aff., ¶ 5. Respondent had been in the real estate business for most of his life, becoming a real estate broker in South Carolina in 1987 and forming a brokerage firm, Boardwalk Properties, LLC, in 2006. Id., ¶ 4. In 2009, Brosman and Respondent decided to do some real estate deals together, and to that end, formed 30 Haul Away, LLC, and, later, 6 Shelley Court, LLC[1], and Island Funding, LLC, for that purpose. Id., ¶ 8, 12-14. Per the Verified Complaint, these LLCs were formed for the purpose of acquiring distressed real property and holding, and/or renting, and/or improving the properties for future sale at a profit. Verified Complaint ("V.C."), ¶ 15. Brosman and Respondent each held 50% membership interests in the LLCs, and their agreement was that Brosman would provide the capital, and Respondent would provide the "sweat equity". V.C. ¶¶ 14, 16; Johnson Aff., ¶ 11. Throughout the course of their business relationship, Respondent researched and identified nearly

[1] 6 Shelley Court, LLC, was dissolved and is not at issue.

all of the potential property purchases, attended all of the tax sales and closings, managed the renovations and repairs to the acquired properties (including the extensive repairs necessitated by Hurricane Matthew in 2016), handled the day-to-day operations of the LLCs, and managed the rental properties the LLC's owned from time to time. Johnson Aff., ⁋ 11.

Purportedly, in 2016, Brosman assigned his 50% interest in 30 Haul Away, LLC, and Island Funding, LLC (hereinafter the "LLCs") to Nautique Holdings, LLC, a Nevis entity, for "estate planning purposes." Johnson Aff., ¶ 15. In May 2021, Brosman/Nautique Holdings, LLC, assigned those interests to Appellant Blue Bell Holdings, LLC. Id. Around that same time, Brosman and Respondent began discussing their mutual desire to balance their respective capital accounts in the LLCs. Id., ¶ 18. The capital accounts were unbalanced because Brosman had provided all of the capital and had not taken any distributions, while Respondent had not provided any capital and had taken distributions.

To that end, two resolutions, drafted by Brosman's son, Matthew Brosman, Esquire, were executed in May 2021, and another in August 2021, memorializing the parties' agreement that LLCs properties would be sold and the proceeds from those sales and other LLC assets distributed to Appellant until the capital accounts were balanced. Id., ¶ 18. Notably, these resolutions identify the funds invested by Brosman into the LLCs as "capital" and the distributions to Respondent as "return of capital." Id., Ex. 4-6 to Johnson Aff.

Remarkably, less than two months after executing these resolutions characterizing the funds Brosman contributed to the LLCs as capital contributions, Appellant filed a lawsuit (the "First Lawsuit"), currently pending, in which it claims that those funds were actually loans, not capital, and therefore, that he is owed the return of those "loans" as well as millions in interest. See First Complaint, pp. 6, 9. Appellant also alleges that the distributions taken by Respondent

were unauthorized and that Respondent breached his duty of loyalty by engaging in competing real estate investment activities. See id. Respondent unequivocally denies these allegations.

On December 22, 2022, Appellant filed this action, the "Second Lawsuit", against Respondent, his fiancé (Holly Angel), his fiancé's LLC, his former business partner (Stephen Halpern), Mr. Halpern's LLC (Belmont Properties, LLC), Shoreline Funding, LLC (a company Respondent has with his mother), and Orange Capital, LLC, a company formed by Respondent. The Second Lawsuit alleges that the defendants engaged in fraudulent conveyances following the initiation of the First Lawsuit as part of a civil conspiracy to hinder Appellant's ability to collect on its judgment in that lawsuit. See V.C. But here's the thing: there is no such judgment, there likely will never be such a judgment, and even if there were to someday be a judgment, there is no reason to assume that Respondent will not satisfy that judgment, leaving Appellant with no need or standing to seek to have these allegedly fraudulent conveyances set aside.

Specifically, Appellant alleges Respondent engaged in a scheme to conceal his assets by transferring his property into other LLCs and placing fraudulent mortgages on properties he owns to make it appear as if he's insolvent. V.C., ¶¶ 25-27. The crux of the allegations is that Respondent gave "mortgages" on his properties to Orange Capital, LLC, a Nevis company formed by Respondent. Id.

Respondent contends that these mortgages, which were actually lines of credit, were recorded for purposes of enabling Respondent to conduct investment activities. Given the downturn in the economy and the corresponding effects that has on the real estate market, Respondent was looking to be able to raise cash out of the equity in his properties for his own projects/investments and to start a short-term loan business lending to investors who might need financing at foreclosure and tax sales as a bridge between the flip or time to get their permanent

financing. Johnson Aff., ⁋ 57. They would be bridge loans in the form of a line of credit secured by the equity in his real estate. Johnson Aff., ⁋ 57. Additionally, Respondent was concerned about his ability to get traditional financing himself during the pendency of the First Lawsuit. Johnson Aff., ⁋ 61.

Respondent began researching using a Nevis-based company to accomplish this. Johnson Aff., ⁋ 59. He got the idea of using a Nevis-based company from David and Matthew Brosman. Johnson Aff., ⁋ 56. Respondent's belief was, and is, that having a Nevis LLC holding the security (and issuing the line of credit) would protect his interests as well as his future clients' interests. Johnson Aff., ⁋ 58. In researching the formation of Nevis companies, Respondent found a firm/company called Lawyers Limited, which he retained to assist him in creating Orange Capital, LLC. Johnson Aff., ⁋ 59. Lawyers Limited also prepared the "Mortgages" that Respondent had recorded on his properties, which, again were actually lines of credits. Johnson Aff., ⁋ 59. Respondent's intention in doing all of this was not to defraud anyone or anything, his intention was to preserve his ability to raise capital should he desire to do so in view of increasing interest rates and a deflating real estate market. Johnson Aff., ⁋ 60. In other words, he wanted to be able to raise funds and understood that this was a way of accomplishing that. Johnson Aff., ⁋ 60.

Of note, no equity was ever taken out of any of the properties – the balance on each line of equity at all times was $0.[2] Johnson Aff., ⁋ 62. Additionally, in connection with the Verified Complaint, Appellant filed Lis Pendens on each of the subject properties. See Lis Pendens.

On the same day that Appellant filed this action, the Second Lawsuit, and three days before Christmas, it obtained an *ex parte* Temporary Restraining Order ("TRO") freezing all of Respondent's assets and his ability to even pay an electric bill. See TRO. Pursuant to the *ex parte*

[2] The Lines of Credit have since been released.

TRO, a hearing on whether a preliminary injunction would issue upon the *ex parte* TRO's dissolution was set for December 29, 2022. By Consent Order filed December 29, 2022, the parties agreed that the hearing would be continued and the *ex parte* TRO, as modified to allow Respondent to pay his bills, "shall be extended until a hearing can be held on this matter." 12/29/22 Order.

A hearing was held on February 23, 2023, at the conclusion of which the lower court took the matter under advisement. At the court's request, a second hearing/status conference was held on March 3, 2023. By Order filed March 8, 2023, the lower court denied the Appellant's motion for preliminary injunction, finding that "[Appellant] cannot show a lack of an adequate remedy at law or irreparable harm." 3/8/23 Order. Appellant filed a Notice of Appeal on March 10, 2023. Appellant also filed a Motion for Reconsideration, which was heard on June 1, 2023. By Amended Order filed June 7, 2023, the lower court denied the Motion for Reconsideration, reiterating that Appellant had failed to show a lack of an adequate remedy at law or irreparable harm. 6/7/23 Order. Appellant filed a second Notice of Appeal that same day.

STANDARD OF REVIEW

The decision to grant or deny injunctive relief is discretionary, and therefore, a reviewing court will not disturb the grant or denial of an injunction by the trial court absent an abuse of discretion demonstrating that the order is clearly erroneous. Gilley v. Gilley, 327 S.C. 8, 488 S.E.2d 310 (1997). Actions for injunctive relief are equitable in nature. Wiedemann v. Town of Hilton Head, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001). In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence. Doe v. Clark, 318 S.C. 274, 276, 457 S.E.2d 336, 337 (1995). A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law. Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

ARGUMENT

I. The lower court correctly determined Appellant failed to demonstrate that it would suffer irreparable harm in the absence of an injunction.

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The United States Supreme Court has explained:

> The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974).

Respondent cannot show ***any*** harm in the absence of injunctive relief, let alone irreparable harm. A plaintiff must demonstrate more than the mere possibility of irreparable harm; the plaintiff must demonstrate that irreparable injury is likely in the absence of an injunction. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 21 (2008); see also Rhoades v. Savannah River Nuclear Sols., LLC, 574 F. Supp. 3d 322, 335 (D.S.C. 2021) (citing In re Microsoft Corp. Antitrust Litig., 333 F.3d 517, 525 (4th Cir. 2003)) ("The harm to be prevented must be of an immediate nature and not simply a remote possibility.").

Appellant's identification of the "harm" it anticipates it may possibly, someday in the future, sustain varies between: 1) difficulty in collecting a judgment that it has yet to obtain; and 2) the inability to have the conveyances it contends are fraudulent set aside should its status as a creditor of Respondent be established. The latter is the only harm specified in the current lawsuit. The former relates solely to the First Lawsuit. Neither of these speculative "harms" that may never occur, and as shown below, are unlikely to occur, are sufficient to warrant the imposition of an injunction because neither are irreparable.

Appellant failed to establish that, in the absence of an injunction, it is likely, rather than merely possible, that it will obtain a judgment against Respondent in the First Lawsuit **and** that Respondent will refuse, or be unable, to satisfy that judgment. As set forth in his Affidavit, Respondent values his interests in the LLCs (i.e., 50% of the total value of the assets of the LLCs) to be worth approximately $2,500,000-$3,000,000, and estimates his net worth to be around $3,000,000, exclusive of his interests in the LLCs. Johnson Aff., ¶¶ 62-63. Respondent is far from insolvent. But, more importantly, Appellant's belief that it will obtain a multi-million dollar judgment in the First Lawsuit is not only speculative, it is based on strikingly one-sided allegations that have yet to make it past the pleading stage. As described in more detail below, even at this early stage of the litigation in the First Lawsuit[3], the weakness of Appellant's claims is apparent as is its calculation of the "damages" it contends to have sustained. For example, in the Complaint in the First Lawsuit[4], Appellant alleges that the principal amount it is owed (notably, by the LLCs, not by Respondent) on its "unpaid advances" (which, of course, Respondent contends was contributed as capital, not debt), is approximately $3,000,000.00. Johnson Aff., ¶ 27; First Lawsuit Complaint, pp. 6, 9. Appellant conveniently fails to take into account the nearly $2,500,000.00 distributed to Appellant in the months that immediately preceded the filing of the First Lawsuit pursuant to the resolutions executed by the parties (which, again, characterize the funds as capital contributions, not debt, totally defeating Appellant's claim for over $1,000,000 in interest owed on what it now claims was debt/loan). Id., ¶ 27.[5] Another example: in the First Lawsuit, Appellant

[3] While the First Lawsuit was filed in October 2021, only two depositions (that of Rebecca Hale, Esquire, Respondent's closing attorney, and Holly Angel, Respondent's fiancé) have been taken. Essentially, Appellant has put the First Lawsuit on hold while it has focused solely on pursuing an injunction to freeze Respondent's assets.

[4] The Complaint in the First Lawsuit was attached as an exhibit to the Verified Complaint in this action.

[5] While the $2.5mm distributed to Appellant in May-August 2021 would have presumably

claims that Respondent breached his duty of loyalty by engaging in competing real estate investment activities, damaging Appellant in the amount of $743,347. First Lawsuit Compl., ¶ 13. However, Appellant bases this calculation solely on purchase and sales prices, failing to take into account carrying and closing costs. The true figure is closer to $167,000, and there is certainly no guarantee that a jury would determine Respondent breached any duty of loyalty. Johnson Aff., ¶¶ 38-39.

Finally, even if Appellant were to obtain a judgment against Respondent, and even if Respondent refused to immediately satisfy it, forcing Appellant to utilize supplemental proceedings, difficulty in collecting a judgment is not "irreparable harm."

Appellant's claim that it will be irreparably harmed in the absence of an injunction because it will be unable to have the conveyances it contends are fraudulent set aside is even less persuasive. Appellant speculates that, absent an injunction, Respondent will engage in additional fraudulent conveyances and as such, even if Appellant were to obtain an order setting aside the initial conveyances it alleges are fraudulent, that order would be meaningless. First, in connection with its Verified Complaint, Appellant filed Lis Pendens on each of the properties it contends was fraudulently conveyed and has therefore already effectively prohibited any future conveyances. Second, subsequent transfers would be equally subject to being set aside pursuant to the Statute of Elizabeth. Again, Appellant is engaging in pure speculation and has not established that any harm, let alone irreparable harm, is likely.

included profits, Appellant's 2021 K-1s (Ex. 7 to Johnson Affidavit) reflect that at the end of 2021, the total value of its IF and 30HA capital accounts, which include all funds contributed by Appellant (the same funds it now claims were advances/loans), was $1,351,262, a far cry from the $3mm claimed to be owed.

II. The lower court correctly determined that Appellant has an adequate remedy at law.

An injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole. MailSource, LLC v. M.A. Bailey & Assocs., 356 S.C. 363, 369–70, 588 S.E.2d 635, 639 (Ct. App. 2003). The party seeking an injunction must prove it has no adequate remedy at law. Strategic Res. Co. v. Bcs Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

> The general rule is that an injunction should be granted only where some irreparable injury is threatened for which there is no adequate remedy at law. Whether a wrong is irreparable in the sense that equity may intervene, and whether there is an adequate remedy at law for a wrong, are questions that are not decided by narrow and artificial rules.

Id. (quoting Cartee v. Lesley, 286 S.C. 249, 256, 333 S.E.2d 341, 345 (Ct. App. 1985) (citations omitted) (holding that a "complaint fails to state a cause of action for injunctive relief unless facts are alleged which show that the plaintiff has no adequate and complete remedy at law")).

The fact of the matter is that Appellant, in placing the proverbial cart before the horse by filing this action in the first place, has shown that there are legal remedies available for the potential, speculative future damages it believes it may one day sustain. Namely, a lawsuit to set aside fraudulent conveyances and to pursue claims of civil conspiracy against those Appellant believes conspired to make more difficult the collection of a judgment it may someday be awarded. Moreover, to the extent that a judgment is someday rendered against, and not satisfied by, Respondent, Appellant would have a number of statutory remedies, including execution (S.C. Code Ann. § 15-39-10, et seq.), supplemental proceedings (S.C. Code Ann. § 15-39-310, et seq.), and obtaining a charging order against Respondent's distributional interests in the LLCs (S.C. Code Ann. § 33-44-504).

The lower court correctly determined that Appellant absolutely has adequate remedies at law. See Scratch Golf Co., 361 S.C. at 122, 603 S.E.2d at 908 (a plaintiff's argument that it will have difficulty collecting a potential future judgment because the defendant may "take its assets and run" does not warrant an injunction where statutory remedies are available).

III. Appellant cannot establish likelihood of success on the merits.

As an additional sustaining ground, Appellant cannot establish likelihood of success on the merits. See Scratch Golf Co., 361 S.C. at 121, 603 S.E.2d at 908 (an applicant must establish is that it has a likelihood of success on the merits for an injunction to issue). In addition to the claim for injunctive relief, Appellant asserts a Statute of Elizabeth/fraudulent conveyance claim and a claim for civil conspiracy. The allegations Appellant relies on to support these claims range no further than pure speculation that Respondent conspired with the other defendants to engage in a series of fraudulent conveyances with the intent of avoiding a potential future indebtedness should the First Lawsuit result in a judgment against Respondent and in favor of Appellant.

Appellant cannot show a likelihood of success on the civil conspiracy claim as stated in the Verified Complaint because it failed to plead damages.[6] A plaintiff asserting a civil conspiracy claim must establish: (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful act by unlawful means; (3) together with the commission of an overt act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

[6] In fact, Appellant's civil conspiracy claim, as pled in its initial Verified Complaint, which was the active complaint at the time the lower court entered its March 8, 2023, Order denying the preliminary injunction, was dismissed by order filed on May 17, 2023. That order, which found that "Plaintiff has failed to alleged that it has suffered any recoverable damages", granted Appellant leave to file an Amended Verified Complaint, which it did on May 31, 2023. In the Amended Verified Complaint, Appellant alleges that it has been damaged by way of incurring attorneys' fees and costs in bringing this action, a dubious claim for damages at best.

In connection with its civil conspiracy cause of action, Appellant pleads that "Johnson engaged in a scheme to hide, divert and encumber his assets in order to delay, hinder, or defraud Plaintiff's collection efforts *in the event a judgment was entered against him*." V.C., ¶ 120 (emphasis added). Appellant will only sustain damages from this alleged conspiracy ***if*** a judgment is entered against Respondent in the First Lawsuit and ***if*** Appellant is unable to collect on that judgment. As such, Appellant cannot presently show that it is likely to succeed on this claim because it has not been damaged, and may in fact never be damaged, by the allegedly conspiratorial acts. It cannot be assumed that a judgment will be rendered against Respondent in the First Lawsuit, or that Respondent would be unable to satisfy such a judgment.

Appellant also cannot show it is likely to succeed on its fraudulent conveyance claim. Under the Statute of Elizabeth, fraudulent conveyances may be set aside for existing creditors as well as for subsequent creditors. Mathis v. Burton, 460 S.E.2d 406, 408 (Ct. App. 1995). Appellant contends that it is an existing creditor, meaning its debt arose prior to the time of the allegedly fraudulent conveyances. App. Brief, p. 27. For an existing creditor, fraudulent conveyances may be set aside in two instances:

> First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full-not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

Id.; see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012) ("In interpreting this statute, this Court has held conveyances shall be set aside under two conditions: First, where

there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration"). Appellant further contends that there was no consideration for the conveyances at issues. App. Brief, p. 27. As such, to succeed on its fraudulent conveyance claim, it must prove by clear and convincing evidence (see Judy v. Judy, 403 S.C. 203, 207, 742 S.E.2d 672, 675 (Ct. App. 2013)) that: (1) Respondent was indebted to it at the time of the transfer; (2) the conveyance was voluntary; and (3) Respondent failed to retain sufficient property to pay the indebtedness to Appellant in full-***not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt***. It is that last element that renders it impossible to find that Appellant is likely to succeed on the merits of its fraudulent conveyance claim at this juncture because there is no way to determine, let alone by clear and convincing evidence, Respondent's retention of property at some future date. This "final analysis" cannot be conducted until and unless a judgment is rendered against Respondent and Respondent refuses to satisfy that judgment. To the extent Appellant argues that the analysis can be conducted at this juncture, it has not, and cannot, establish that Respondent has insufficient assets to pay any indebtedness for the reasons set forth hereinabove.

As an additional sustaining ground, Appellant cannot show likelihood of success on the merits of its claims in this lawsuit and the lower court's order should be affirmed.

IV. Appellant's argument that the lower court's order was based on an error of law is misplaced and was not preserved for appellate review.

In its brief, Appellant argues that the lower court's decision was based on an error of law. Specifically, that the lower court focused on the legal relief sought in the First Lawsuit and ignored the equitable claims sought in this action, the Second Lawsuit. As an initial matter, this argument was not raised to the lower court and therefore was not preserved for review. In order to preserve

an issue for appellate review, the issue must have been: 1) raised to and ruled upon by the lower court; 2) raised by the appellate; 3) raised by the appellant; and 4) raised to the lower court with sufficient specificity. S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007).

Regardless, the lower court did not err. Appellant's argument is that this action seeks only equitable relief: "The final remedy [Appellant] seeks in the Second Suit is a ruling that the transfers were fraudulent, a ruling that the transfers are required to be unwound, and that the assets should be held by [Respondent] individually." App. Brief, p. 21. Notably, Appellant ignores that it has also asserted a civil conspiracy claim seeking money damages. And, of course, throughout the remainder of its brief, Appellant repeatedly argues that it risks losing the opportunity to collect on a money judgment in the absence of an injunction. In other words, it is seeking the injunction in order to aid it in collecting a money judgment that it anticipates obtaining at some point in the future.

Appellant cites the following excerpt from U.S. ex rel. Rahman v. Oncology Assocs., 198 F.3d 489, 496 (4th Cir. 1999) in support of its argument that an injunction should be issued by the court pursuant to its equitable powers:

> First, where a plaintiff creditor has no lien or equitable interest in the assets of a defendant debtor, the creditor may not interfere with the debtor's use of his property before obtaining judgment. A debt claim leads only to a money judgment and does not in its own right constitute an interest in specific property. Accordingly, a debt claim does not, before reduction to judgment, authorize prejudgment execution against the debtor's assets.
>
> On the other hand, when the plaintiff creditor asserts a cognizable claim to specific assets of the defendant or seeks a remedy involving those assets, a court may in the interim invoke equity to preserve the *status quo* pending judgment where the legal remedy might prove inadequate and the preliminary relief furthers the court's ability to grant the final relief requested.

Appellant contends that the present matter, and the relief it seeks, falls in that latter category.

However, Appellant's argument is misplaced in that the injunctive relief it seeks is freezing all of Respondent's assets and stripping his ability to conduct business. The Rahman decision, and the precedent on which it relies, does not permit such relief. Assuming for the sake of argument that Appellant seeks only equitable relief in this action, which is not the case, Rahman requires there to be some "nexus between the assets sought to be frozen…and the ultimate relief requested in the lawsuit…" Id. at 496-497. In other words, Rahman does not permit a blanket freeze on assets. If it were applicable in the first place, it would allow, at most, the specific properties at issue (i.e., the properties alleged to have been fraudulently transferred) to be subject to an injunction. That is not what was requested by Appellant.

This argument was not preserved for review, it is misplaced, and its applicability to the present matter is doubtful. See Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 907 (declining to apply U.S. Supreme Court decision concerning a federal court's equitable powers because it was not dispositive of whether a state court judge may restrain a defendant's assets prior to the attachment of a money judgment and there was no federal question at issue that would cause it to be binding).

CONCLUSION

The lower court correctly determined that Appellant is not entitled to a preliminary injunction. Appellant failed to show irreparable harm or the lack of an adequate remedy at law. As an additional sustaining ground, it is also unable to show a likelihood of success on the merits. Moreover, an injunction is not necessary to preserve the status quo. Rather, the injunction sought by Appellant would drastically alter the status quo and impose a very real and substantial hardship on Respondent. The lower court's Order should be affirmed.

Respectfully Submitted,

/s/ Elizabeth J. Palmer_____

Elizabeth J. Palmer (SC Bar #73680)
Saxton & Stump, LLC
151 Meeting St., Suite 400
Charleston, SC 29401
(843) 414-5080
ep@saxtonstump.com

Attorneys for Respondent
Gary C. Johnson

January 2, 2024