

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
OMEGA CONSTRUCTION, INC.,)
) **Plaintiff,**)
vs.)
CRAILAR, INC., d/b/a CRAILAR)
TECHNOLOGIES, INC., f/k/a)
NATURALLY ADVANCED)
TECHNOLOGIES US, INC.)
) **Defendant.**)

IN THE COURT OF COMMON PLEAS

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SC Court of Appeals

ORDER GRANTING TEMPORARY
INJUNCTION AND/OR REQUIRING
BOND

C.A. No: 2013-CP-21-2722

On October 23, 2013, the Court granted a Temporary Restraining Order on motion of Plaintiff Omega Construction, Inc. ("Omega"), pursuant to Rules 65(a) and (b), SCRPC, temporarily restraining Defendant Crailar, Inc., d/b/a Crailar Technologies, Inc., f/k/a Naturally Advanced Technologies US, Inc. ("Crailar") from removing and/or destroying certain materials and equipment, identified fully therein, located at Crailar's manufacturing facility in Florence County ("Pamplico Facility"). The Court extended this Order for good cause shown until November 22, 2013.

On October 31, 2013, this matter came before me for the hearing on Omega's Motion for Temporary Injunction. All parties received proper notice and were represented at the hearing. For the reasons set forth herein, I find in favor of granting the Temporary Injunction.

FINDINGS OF FACT

On or about May 23, 2012, it appears that Omega, as Design-Builder, entered into Design-Build contract with Crailar. This contract set forth Omega and Crailar's rights and obligations with respect to the design and construction of Crailar's manufacturing facility located

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in Pamplico, South Carolina ("Pamplico Facility"). Allegedly, despite demands for payment, Crailar did not pay pursuant to the contract. Omega claims that the outstanding amount owed to Omega is \$285,000. Crailar disputes this amount.

Omega attempted to reach an agreement with Crailar concerning the debt owed in order to avoid legal action leading up to the sudden closure of the Pamplico Facility. These attempts included discussions about an Escrow Agreement to protect Omega's interest. The parties exchanged drafts of an Escrow Agreement that was intended to hold the funds owed to Omega by Crailar, but an Escrow Agreement was never finalized.

On October 1, 2013, Omega learned that Crailar had suddenly and without notice to Omega closed the Pamplico Facility. Omega learned that Crailar had halted production in the Pamplico Facility, laid off its employees, and intended to move its production operations overseas. Although Crailar indicated that it would like to "retool" the Pamplico Facility and resume operations there at some time in the future, Crailar offered no written guarantee of payment or return of operations to the United States.

Omega has filed a proper Bond in an amount sufficient to protect Crailar's interest in the amount owed to Omega and secured by this Temporary Injunction. Crailar has not identified reliable security in the way of goods, equipment, or otherwise to satisfy the entire potential judgment amount established by Omega.

CONCLUSIONS OF LAW

The purpose of a temporary injunction is to preserve the status quo in order to avoid possible irreparable injury to a party pending litigation. I find that Omega has made a showing that (1) it will suffer irreparable harm if the injunction is not granted, (2) it will likely succeed on the merits of the case, and (3) there is an inadequate remedy at law. Peek v. Spartanburg

Regional Healthcare System, 367 S.C. 450, 626 S.E.2d 34, 36 (Ct. App. 2005); see also AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).

Irreparable Harm

Whether a wrong is irreparable in the sense to allow equity to intervene is not governed by narrow and artificial rules. The trial court must balance the equities and look at the specific facts of each case. The record reflects that Crailar may owe a substantial sum to Omega. While simultaneously purporting to negotiate the payment of this debt, it closed operations on its Pamplico Facility, fired its employees, and proceeded to move the operations overseas, all with no word to Omega. Omega only learned of these actions through another contractor. When directly addressed about the closure, Crailar representatives gave only vague assurances that it would make good on its debt. It thereafter ceased communications with Omega concerning the proposed Escrow Agreement.

Omega brought this lawsuit to protect its interest in the Pamplico Facility. This interest will be imminently and irreparably harmed by Crailar's sudden shutdown and transfer of its Pamplico Facility operations overseas. I find that granting the temporary injunction to secure enough assets to protect Omega's interest will maintain the status quo pending litigation or other disposition of the issues between the parties.

Success on the Merits

A plaintiff need not prove an absolute legal right; rather, it must only present a fair question as to the existence of such a right. The determination of whether to grant a temporary injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. Once the plaintiff has made a showing entitling him to injunctive relief, a temporary injunction will be

granted without regard to the ultimate termination of the case on the merits. Peek, 626 S.E.2d at 37; see also Atwood Agency v. Black, 646 S.E.2d 882 (2007).

In addition to requesting the Temporary Injunction, Omega has in its Complaint brought causes of action for Breach of Contract and Quantum Meruit. With respect to the contract claim, Omega has established by way of sworn testimony and exhibits the existence of the contract and the amount owed. Even if Crailar disputes the actual amount owed, Omega has established its claim for payment in equity due to its provision of services and materials to Crailar for the Pamplico Facility.

Further, even if Crailar claims that the contract requires mediation or arbitration, this does not affect the court's power to issue a temporary injunction. The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation. Powell v. Immanuel Baptist Church, 261 S.C. 219, 199 S.E.2d 60 (1973). Whether the case is ultimately subject to or resolved by mediation, arbitration, or trial, the granting of temporary relief is within the sound discretion of the trial court. City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 531 S.E.2d 518 (2000). A court can and should grant a temporary injunction in an arbitrable dispute whenever an injunction is necessary to preserve the status quo pending arbitration. The fact that a party claims arbitration should apply, or even the fact that a court orders arbitration of a dispute, does not absolve the court of its obligation to consider the merits of a requested preliminary injunction. MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003). I make no finding in this order concerning the merits of Crailar's claim that mediation or arbitration applies to Omega's claim.

Because Omega has presented a fair question to its right to both legal and equitable relief, it has met the burden of this element.

No Adequate Remedy at Law

Omega seeks relief in its Complaint by way of both legal and equitable causes of action. Omega's recovery, even though in the nature of a money judgment, is not protected by an adequate remedy at law under the unique facts and circumstances of this case.

"The basis for granting equitable relief is the **impracticality** of obtaining full and adequate compensation at law." Nutt Corp. v. Howell Road, LLC, 396 S.C. 323, 721 S.E.2d 447, 449 (Ct. App. 2011) (emphasis added). An "'adequate' remedy at law is one which is as **certain, practical, complete and efficient** to attain the ends of justice and its administration as the remedy in equity." Milliken & Co. v. Morin, 386 S.C. 1, 685 S.E.2d 828, 832 (Ct. App. 2009), citing Santee Cooper Resort, Inc. v. South Carolina Pub. Serv. Comm'n, 298 S.C. 179, 379 S.E.2d 119, 123 (1989) (emphasis added). If imminent and actual harm is threatened and the available legal remedy would result in a judgment in name that is otherwise unrecoverable, the court should not hesitate to exercise its equitable powers. 27 S.C. Jur. Injunctions § 9.

Crailar has closed the Pamplico Facility and is moving its operations out of the United States. Although Crailar claims that it intends to resume operations in Pamplico, Crailar cannot guarantee that this will occur. It has equipment, raw material, and finished material at the Pamplico Facility that could be taken out of the country to run its new facility. If this occurred, any money judgment obtained by Omega at the conclusion of this case would be unrecoverable, because Crailar no longer has a presence in the state or the United States. This empty legal judgment is not certain, practical, complete, or efficient. An injunction prohibiting the removal

of assets sufficient to protect Omega's interest is proper in order to secure the status quo pending the resolution of this case.

IT IS THEREFORE ORDERED

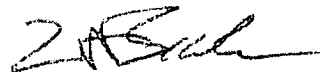
That the terms of the October 23, 2013 Temporary Restraining Order be incorporated herein and made part of this Temporary Injunction during the pendency of the underlying litigation. However said Order is hereby modified to *restrain and encumber only* (1) a 2012 Chevrolet Colorado truck, (2) a Mettler-Toledo Model VTS100 Truckmate Analog Truck Scale and (3) a Holland Tractor;

Furthermore, Crailar is hereby Ordered to immediately post a bond in the amount of \$190,246.75 in order to protect Omega's claim during the pendency of this litigation.

IT IS SO ORDERED.

November 25, 2013

By:



The Honorable William H. Seals, Jr.
Judge, Twelfth Circuit