STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2026-CP-10-00881

EDWARD E. SCHATZ, JR., individually and derivatively on behalf of BAJÍO, INC,

Plaintiff,

v.

ALVIN P. PERKINSON, III; MATTHEW BANKER; PAUL R. VIGANO; and, as a nominal Defendant, BAJÍO, INC.,

Defendants.

ORDER

This matter came before the Court on Plaintiff Edward E. Schatz, Jr.'s Motion for Preliminary Injunction. On May 22, 2026, the Court held a hearing on the motion. All Parties had notice of the hearing and were represented by counsel at the hearing. Attorneys Rutledge Young and Wilson Daniel appeared on behalf of Plaintiff. Attorney Ryan Ellard appeared on behalf of Defendants.

Having considered Plaintiff's Verified Complaint, the memoranda and affidavits filed by the Parties, the evidence and testimony submitted at the hearing, and the arguments of counsel, the Court hereby GRANTS Plaintiff's Motion for Preliminary Injunction and, pursuant to Rule 65, issues a preliminary injunction enjoining and restraining Defendants as outlined herein.

I. BACKGROUND

Bajío, Inc. ("Bajío" or the "Company") was organized as a corporation pursuant to the General Corporation Law of the state of Delaware on May 5, 2020. Bajío is governed primarily by three documents: (1) the Certificate of Incorporation (the "Certificate"), (Pl's Ex. 7)[1]; (2) the

[1] All citations to Exhibits refer to the exhibits submitted by the Parties at the hearing held on May 22, 2026.

Bylaws (Pl's Ex. 20); and (3) the Stockholders' Agreement (Pl's Ex. 18). Bajío is operated by a Board of Directors, which is comprised of five directors. Plaintiff is a preferred stockholder of Bajío.

Plaintiff filed this action on February 19, 2026, seeking declarations regarding the true composition of Bajío's Board of Directors. Plaintiff filed the instant motion for preliminary injunction with the Verified Complaint. At the hearing, Plaintiff presented Ed Schatz. Counsel for Defendants thoroughly cross-examined Mr. Schatz, and I found Mr. Schatz to be credible. Defendants presented no witnesses in support of their arguments, but rather presented affidavits which the Court has considered in issuing this Order. The Court also admitted evidence submitted by the Parties and received oral arguments from counsel.

II. LEGAL STANDARD

Rule 65 authorizes a Court to issue temporary injunctive relief. A preliminary injunction is appropriate where the moving party establishes that: "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). "Actions seeking relief by injunction are equitable in nature." *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 522 S.E.2d 153 (Ct. App. 1999), *rev'd other grounds*, 543 S.E.2d 538 (2001). Whether to issue a preliminary injunction rests in the sound discretion of the trial court. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 49, 674 S.E.2d 505, 507 (Ct. App. 2009).

III. FINDINGS OF FACT[2]

[2] All findings of fact and conclusions of law indicated in this order are made for the purpose of ruling on this motion only.

Having considered the testimony and evidence submitted to the Court and all arguments of counsel, the Court makes the following findings of fact:

1. The Company's Governing Documents Select Charleston, South Carolina as Venue.

The Certificate includes a forum-selection provision in favor of Charleston, South Carolina. (Pl's Ex. 7 at 22).

2. The Certificate Grants the Preferred Stockholders Rights to Remove and Elect Two Directors.

Section 3.2 of the Certificate grants the Preferred Stockholders the exclusive and express right to elect two directors to the Company's Board as the Preferred Directors:

> [T]he holders of record of the shares of Preferred Stock, exclusively and voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect two (2) directors of the Corporation[.]

(Pl's Ex. 7 at 7, Sec. 3.2). The same section further grants the Preferred Stockholders the exclusive right to remove any Preferred Directors so elected, either by vote at a special meeting or by written consent:

> Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders.

(Id. at 7–8, Sec. 3.2).

Section 3.2 of the Certificate also addresses the resulting vacancy when a director has been removed. It provides that if the Preferred Stockholders fail to elect two replacement directors, the directorships remain vacant until the Preferred Stockholders elect a person to fill the vacancy by vote or written consent. The Certificate provides that the Preferred Stockholders have the sole and exclusive right to elect replacement Preferred Directors if they have removed the Preferred

Directors. (Id. at 8, Sec. 3.2). The same subsection states: "Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series pursuant to this Subsection 3.2." (Id.).

Bajío's Bylaws are consistent with the structure set forth in the Certificate. Section 2.13 generally authorizes stockholder action by written consent without a meeting, without prior notice, and without a vote. (Pl's Ex. 20 at 6, Sec. 2.13). Section 3.2 of the Bylaws makes the default vacancy and removal provisions expressly subject to the Certificate. (Id. at 7, Sec. 3.2).

3. The Preferred Stockholders Removed Mr. Banker and Mr. Vigano and Elected Mr. Schatz and Mr. Gregory.

On January 22, 2026, the Preferred Stockholders, acting by majority, effected a written consent (the "Preferred Written Consent") that removed the then-serving Preferred Directors (Defendants Banker and Vigano) and elected two replacement Preferred Directors (Plaintiff Edward Schatz and Marshall Gregory). The Preferred Written Consent was signed by eighteen Preferred Stockholders, who together held a majority of the Company's preferred stock. It was delivered to the Company on January 23, 2026 in the manner required by the Bylaws.

The Court finds, as a finding of fact, that the actions of the Preferred Stockholders were valid and effective. Because the Preferred Stockholders had previously elected Mr. Banker and Mr. Vigano, the Certificate granted the Preferred Stockholders the exclusive right to remove them. (Pl's Ex. 7 at 7, Sec. 3.2). Further, the Certificate granted the Preferred Stockholders the exclusive right to elect the replacement directors, Mr. Schatz and Mr. Gregory. (Id. at 7–8, Sec. 3.2). Accordingly, the Court finds that the Preferred Written Consent was effective in removing Mr. Banker and Mr. Vigano and in electing Mr. Schatz and Mr. Gregory.

4. Defendant Perkinson Declared the Removal and Election Invalid and Purported to Divest the Preferred Stockholders of Their Voting Rights.

On January 28, 2026, Defendant Perkinson, purporting to act on behalf of the Board, took the position that the actions of the Preferred Stockholders were invalid. Mr. Perkinson sent a letter to the Preferred Stockholders who signed the Preferred Written Consent, stating that "the Board does not recognize the [Preferred Written] Consent as evidence of the removal of the [Preferred] Directors nor as evidence of the election of two new directors." (Pl's Ex. 17). Mr. Perkinson further took the position that he, as president of Bajío, held an irrevocable power of attorney and proxy over all the votes of the Preferred Stockholders, and that he unilaterally exercised that power of attorney to "revoke" the Preferred Stockholders' votes in favor of removing Mr. Banker and Mr. Vigano and to recast those votes in favor of re-electing Mr. Banker and Mr. Vigano. (Id. at 1–2). Mr. Perkinson's efforts were in direct violation of Bajío's Certificate and Bylaws.

5. Plaintiff Filed This Action to Challenge Defendant Perkinson's Improper Actions.

Plaintiff filed this action on February 19, 2026, challenging Defendant Perkinson's declaration that the actions of the Preferred Stockholders were invalid and seeking to enjoin Defendant Perkinson from taking actions inconsistent with the rightful composition of the Company's Board.

IV. CONCLUSIONS OF LAW

Based on all the evidence before it and all arguments of counsel, the Court makes the following conclusions of law:

1. The Certificate Controls the Voting Rights of Preferred Stockholders.

Under Delaware law,[3] a corporation's certificate of incorporation is the corporate constitution and ultimate authority that establishes the powers and responsibilities of a corporation and its agents. The certificate of incorporation serves as the foundational contract among stockholders, and stockholder rights are determined according to the certificate. *See, e.g.*, *Ellingwood v. Wolf's Head Oil Refining Co.*, 27 Del. Ch. 356, 362, 38 A.2d 743, 747 (1944) ("[T]he rights of stockholders are contract rights and [] it is necessary to look to the certificate of incorporation to ascertain what those rights are.").

2. The Stockholders' Agreement Cannot Override the Company's Certificate.

At the hearing, Defendants took the position that the Preferred Stockholders' actions were invalid because Section 6.2(c) of the Stockholders' Agreement requires any Preferred Director to first be nominated by the Board before he or she could be elected by the Preferred Stockholders. (Pl's Ex. 18 at 11, Sec. 6.2(c)). Defendants' reading of the Stockholders' Agreement would divest the Preferred Shareholders of their election rights established by the Certificate, and Delaware law provides that a provision of a stockholders' agreement which conflicts with a Certificate of Incorporation cannot be enforced. Defendants' legal arguments are unpersuasive on their merits. *See* Del. Code Ann. Tit. 8, § 122(18) ("No provision of [a stockholders' agreement] shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation[.]").

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[3] Under South Carolina's choice-of-law rules, Delaware law governs this dispute. "The choice of law rule generally applied to corporate law issues is the internal affairs doctrine, which provides that the internal matters of corporate governance are governed by the law of the state of incorporation." *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 649, 817 S.E.2d 273, 277 (2018). Bajío was incorporated in Delaware. Moreover, the Stockholders' Agreement includes a choice-of-law provision in favor of Delaware law. (Pl's Ex. 18 at 19, Sec. 9.11.)

Delaware law requires that voting rights and powers of corporate stock be set forth in the Certificate of Incorporation. *In re Farm Indus., Inc.*, 41 Del. Ch. 379, 392, 196 A.2d 582, 590 (1963) (Delaware law "govern[s] the existence of the voting rights" and "such provisions in substance require that the voting rights and powers of corporate stock be set forth in the certificate.") The Delaware Supreme Court has consistently held that "the rights of stockholders are contract rights and must be determined from certificate of incorporation." *Ellingwood*, 27 Del. Ch. at 362, 38 A.2d at 747.

An agreement between stockholders may expound upon the rights established by a Certificate or may explain how stockholders "will exercise stockholder-level rights" guaranteed by a Certificate. *New Enter. Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 570 (Del. Ch. 2023). Such contracts are valid as between stockholders to create agreements regarding proxies or voting blocks. Id. However, Delaware law is clear that no provision in a stockholders' agreement may be enforced to override an express provision in a Certificate of Incorporation. Del. Code Ann. Tit. 8, § 122(18) ("No provision of [a stockholders' agreement] shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation[.]").

As the Delaware Court of Chancery has explained, Delaware law "expressly authorizes stockholders to enter into agreements about how they will exercise their voting rights," but Delaware law "does not greenlight governance provisions that appear in stockholder agreements rather than in the charter." *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 311 A.3d 809, 861 (Del. Ch. 2024). In other words, a stockholders' agreement may not alter voting rights established by the Certificate, nor may it amend governance provisions mandated by the Certificate. Id. A provision in a stockholders' agreement that purports to effect such a change is invalid and unenforceable. Del. Code Ann. Tit. 8, § 122(18).

Here, Defendants' reading of the Stockholders' Agreement attempts to do that which Delaware law prohibits. Section 3.2 of the Certificate provides Preferred Stockholders the express right to elect the Preferred Directors. Conversely, under Defendants' reading, Section 6.2(c) of the Stockholders' Agreement divests the Preferred Stockholders of that right, permitting the Preferred Stockholders to vote for a candidate only if that candidate is first nominated by the Board. These conflicts cannot be reconciled. A provision that attempts to transform an exclusive right to elect two board members into a mere up-or-down vote on Board-selected candidates is not a provision that merely expounds upon established voting rights, nor is it one that explains how stockholders "will exercise stockholder-level rights" guaranteed by a Certificate. *See New Enter. Assocs.*, 295 A.3d at 570. Rather, it is an impermissibly conflicting provision that seeks to fundamentally alter stockholder rights and governance provisions established in the Certificate. In other words, enforcing Defendants' reading of Section 6.2 of Stockholders' Agreement over Section 3.2 of the Certificate would divest the Preferred Stockholders of their right to elect the Preferred Directors, and it would fundamentally alter governance provisions regarding the election of directors. Delaware law expressly prohibits that outcome.

3. Plaintiff Has Satisfied All Elements Required For a Preliminary Injunction Under Rule 65.

The Court finds that Plaintiff has met its burden of proof and is entitled to a preliminary injunction.

a. Likelihood of Success on the Merits.

In this action, Plaintiff seeks declarations: (a) that the Company validly removed Mr. Banker and Mr. Vigano from the Board of Directors pursuant to Section 3.2 of the Certificate, and (b) that the Company duly elected Mr. Schatz and Mr. Gregory to the Board of Directors pursuant to Section 3.2 of the Certificate. Verified Compl. ¶¶ 43–47. Based on the above findings of fact and conclusion of law, the Court holds that Plaintiff has demonstrated a likelihood of success on the merits of his claim for declaratory judgment.

b. Irreparable Harm

Under Delaware law, Defendants' attempt to deny Plaintiff and other Preferred Stockholders of their voting rights constitutes *per se* irreparable harm because the value of the harm cannot be reasonably or fairly calculated or compensated. "It is well established that corporate management subjects stockholders to irreparable harm by denying them the right to vote their shares." *Benchmark Cap. Partners IV, L.P. v. Vague*, No. CIV.A. 19719, 2002 WL 1732423, at *14 (Del. Ch. July 15, 2002), *aff'd sub nom. Benchmark Cap. Partners IV, L.P. v. Juniper Fin. Corp.*, 822 A.2d 396 (Del. 2003) (collecting cases); *see also Pell v. Kill*, 135 A.3d 764, 793 (Del. Ch. 2016) ("Absent an injunction, the Company's stockholders will be prevented from exercising their voting rights . . . This loss of voting power constitutes irreparable injury.") (also collecting cases).

Moreover, the Parties agreed in the Stockholders' Agreement that any breach thereof would cause irreparable harm and entitle the non-breaching party to injunctive relief. (Pl's Ex. 18 at 15, Sec. 8.2) ("Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of the Company and the Stockholders shall be entitled to an injunction to prevent breaches of this Agreement . . . in any action instituted in any court of the United States or any state having subject matter jurisdiction.").

c. Inadequate Remedy at Law

"The adequacy of a legal remedy is a pragmatic determination based upon the certainty of fixing damages, the practicality of obtaining relief, and the efficiency of the legal remedy in the particular circumstances." FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE § 508 (2nd ed. 1996). In any event, "whether there is an adequate remedy at law for a wrong [is a] question[] that [is] not decided by narrow and artificial rules." *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13, 15 (1939).

Based on the governing law and the evidence before it, the Court finds that there is no legal remedy available to Plaintiff, other than an injunction, that would adequately protect Plaintiff, the other Preferred Stockholders and the Company from Defendants' divestment of voting rights and seizure of two Board seats which belong to the Preferred Stockholders. Any legal remedy available to Plaintiff at the conclusion of these proceedings will come too late, as Defendants have already divested the Preferred Stockholders of their voting rights.

d. Status Quo

The Court finds that Defendant Perkinson disrupted the legal status quo on January 28, 2026, by purporting to reject the valid actions taken by the Preferred Stockholders, purporting to exercise an irrevocable power of attorney over the Preferred Stockholders' votes, and purporting to cast those votes in favor of the Preferred Directors that had been validly removed. (Pl's Ex. 17). The purpose of the injunction issued herein is to preserve the legal status quo as it existed on January 23, 2026, the effective date of the Written Consent removing Mr. Banker and Mr. Vigano and electing Mr. Schatz and Mr. Gregory.

e. Bond

Rule 65(c) requires the Court to set a bond in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred by the enjoined party in the event that the injunction is later deemed wrongful. Because Defendant Perkinson violated the Certificate and has no right to elect the Preferred Directors to the Company's Board, the Court finds that a bond or surety of $250,000.00 is appropriate security for the issuance of the instant injunction. In setting that amount, the Court has considered the suggestion of the Defendant balanced against the fact that the injunction is directed to governance recognition and Preferred Stockholder voting rights and does not restrain Bajío's ordinary-course commercial operations, customer relationships, product sales, employment decisions, or vendor relationships.

V. CONCLUSION

Accordingly, the Court hereby **ISSUES** a preliminary injunction and **ORDERS** that Defendants, and all others in active concert or participation with Defendants, shall be temporarily enjoined and restrained as follows:

1. Defendants are prohibited from taking any action on behalf of Bajío, Inc. inconsistent with the removal of Banker and Vigano from the Board of Directors of Bajío, Inc.;
2. Defendants are prohibited from taking any action on behalf of Bajío, Inc. inconsistent with the election of Schatz and Gregory to the Board of Directors of Bajío, Inc.; and
3. Defendants Banker and Vigano are prohibited from holding themselves out as members of the Board of Directors of Bajío, Inc.

The injunctive relief issued herein shall be effective until the final resolution of this matter or until further order of the Court.

AND IT IS SO ORDERED.

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The Honorable Dale E. Van Slambrook

July 2, 2026
Charleston, South Carolina

Charleston Common Pleas

Case Caption: Edward E Schatz Jr , plaintiff, et al VS Alvin P Perkinson III , defendant, et al

Case Number: 2026CP1000881

Type: Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge #2781