

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BYRDNEST, LLC, CRAIG SEDMAK,
STEPHANIE SEDMAK, AND WESLEY
NAU,

Plaintiffs,

v.

JOHNATHAN RAMACI, HAVERLY
RAMACI, RICHARD SCOTT, AND
BILLY ULM,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-4874

ORDER

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SC Court of Appeals

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This matter came before the Court on several motions filed by Defendants Johnathan Ramaci and/or Haverly Ramaci: two motions for summary judgment pertaining to crossclaims filed by Defendant Billy Ulm; a motion for judgment on the pleadings pertaining to crossclaims filed by Ulm; a motion for injunctive relief pertaining to crossclaims filed by Ulm; Johnathan Ramaci's motion for summary judgment as to Plaintiffs' claims; Johnathan and Haverly Ramaci's motion for judgment on the pleadings as to certain causes of action in Plaintiffs' Complaint; John and Haverly Ramaci's motion to reopen depositions; and Haverly Ramaci's motion for summary judgment. This Court heard argument from all counsel and has fully considered all issues raised by the memoranda submitted in support of and in opposition to these motions.

Through this order, this Court rules on all issues raised by the operative motions. The Court denies Johnathan Ramaci's motions for summary judgment; denies in part and grants in part the motions for judgment on the pleadings; denies Johnathan Ramaci's motion for injunctive relief;

denies the motion to reopen depositions; and grants in part and denies in part Haverly Ramaci's motion for summary judgment.

FACTUAL BACKGROUND

1. Factual Background as to Plaintiffs' Claims

The Plaintiffs claim, *inter alia*, that Johnathan Ramaci induced the Plaintiffs to invest \$850,000 into a technology startup ("iCache") of which Johnathan Ramaci was Chief Executive Officer. The Plaintiffs allege that their investment was induced by a series of false allegations which appeared in the "pitchbook" and by his oral representations.

Among the misrepresentations the Plaintiffs allege are: the inaccurate and materially incomplete representation that the company was debt-free; and the inaccurate and materially incomplete statement that the company owned all of the critical intellectual property needed to get the product to market. They further allege that Johnathan Ramaci and the Director Defendants, Billy Ulm and Richard Scott, failed to disclose material information which they knew or should have known concerning the company's record-keeping and business operations.

The Plaintiffs assert causes of action for negligence, breach of fiduciary duty, conversion, negligent misrepresentation, fraud, violations of South Carolina's Uniform Securities Act and Unfair Trade Practices Act, and equitable claims under the related doctrines of unjust enrichment, restitution, and constructive trust.

2. Factual Background as to Defendant Ulm's Crossclaims

Defendant Billy Ulm was not only a member of the board of directors but also purchased shares of iCache stock through his trust, The William L. Ulm, Sr. 2006 Delaware Trust ("the Trust") in April and December of 2011. On January 23, 2014, Ulm amended his answer and asserted cross-claims against Johnathan Ramaci, alleging negligent misrepresentation, breach of

fiduciary duty and negligence. Ulm alleges that Johnathan Ramaci induced the Trust's investments, and Ulm's agreement to serve on the board of directors, through a series of direct, false and misleading representations and failures to disclose the true financial and business state of iCache. On February 19, 2016, the Trust assigned all of its rights to prosecute the crossclaims to Ulm via execution of a notarized Assignment of Claims. Pursuant to the Assignment of Claims, the Trust "without recourse, representation or warranty" assigned to Ulm all of its "interests and rights in [the] crossclaims and any other claims [the Trust] has or may have in the litigation." The Trust retained ownership of the subject stock, but as a result of the Assignment of Claims, Ulm was vested with the authority to prosecute the crossclaims in this litigation. The Trust was not made a party to this action.

Johnathan Ramaci has filed several motions to dispose of Ulm's crossclaims. On November 24, 2015, Johnathan Ramaci filed a motion for judgment on the pleadings. On February 4, 2016, Johnathan Ramaci filed a motion for summary judgment on the basis of standing. On February 24, 2016, Johnathan Ramaci filed a motion for injunctive relief seeking to enjoin the Trust's assignments of the crossclaims to Ulm—which had already occurred at the time Johnathan Ramaci filed his motion—or, in the alternative, seeking an order enjoining Ulm from exercising the rights he obtained pursuant to the assignment of the Trust's claims against Johnathan Ramaci, because such claims were time-barred. Based on the injunctive motion, on March 24, 2016, Johnathan Ramaci filed a second motion for summary judgment contending that Ulm's crossclaims are barred by the statute of limitations.

ANALYSIS

I. THE COURT DENIES ALL MOTIONS FOR SUMMARY JUDGMENT FILED BY JOHNATHAN RAMACI AND DENIES IN PART AND GRANTS IN PART HAVERLY RAMACI'S MOTION FOR SUMMARY JUDGMENT.

Summary judgment is only proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. An opposing party need only present a mere scintilla of evidence to survive summary judgment in cases where the burden of proof is the preponderance of the evidence standard. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

1. The Court denies Johnathan Ramaci's motions for summary judgment as to Ulm's Crossclaims.

a. The Court denies Johnathan Ramaci's motion for summary judgment filed February 4, 2016.

Because the Trust owns the subject iCache stock and Ulm does not, Johnathan Ramaci moves for summary judgment on the claim that Ulm is not the real party in interest and therefore lacks standing to prosecute the crossclaims. The Court finds that the Trust's February 19, 2016 assignment of the crossclaims to Ulm during this case was valid and, thus, Ulm now has standing to prosecute the crossclaims. The Court denies Johnathan Ramaci's February 4, 2016 motion for summary judgment.

Ulm is a real party in interest and has standing to prosecute the crossclaims against Johnathan Ramaci. "Generally, a party must be a real party in interest to the litigation to have standing." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). Pursuant to South Carolina law the "real party in interest" is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with the action. *Dockside Ass'n v. Detyens, Simmons and Carlisle*, 285 S.C. 565, 330 S.E.2d 537 *aff'd as mod.* 287 S.C. 287, 337 S.E.2d 887 *appeal after remand* 297 S.C. 91, 374 S.E.2d 907 (Ct. App. 1985). Where an action is

brought by one other than the real party in interest, dismissal for lack of subject matter jurisdiction is not the proper remedy. S.C. R. Civ. P 17(a) (“No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.”).

The Trust’s assignment of the crossclaims to Ulm was valid under South Carolina law. Our “jurisprudence has long recognized that a [claim for relief] can be validly assigned in either law or equity.” *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007) *aff’d*, 383 S.C. 583, 681 S.E.2d 875 (2009); *Slater Corp. v. S.C. Tax Comm’n*, 280 S.C. 584, 587, 314 S.E.2d 31, 33 (Ct. App. 1984). Here, Ulm, as the assignee of a claim stands in the shoes of the Trust, the assignor, and Ulm has “all the same rights and privileges” as the Trust. *Id.*; *Twelfth RMA Partners, L.P. v. Nat’l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999). The assignment was not required to be executed before the commencement of litigation. *Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 515 F. Supp. 64, 84 (D.S.C. 1979) *aff’d sub nom. Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 644 F.2d 877 (4th Cir. 1981) (stating “even when the claim is not assigned until after the action has been instituted the assignee is the real party in interest and can maintain the action.”). By virtue of the Trust’s assignment of its claims to Ulm, Ulm is the real party interest with standing to prosecute the crossclaims. Johnathan Ramaci’s motion for summary judgment is therefore denied.

b. *The Court denies Johnathan Ramaci's motion for summary judgment filed March 24, 2016.*

Johnathan Ramaci argues that the relevant statutes of limitation render the Ulm crossclaims time-barred. The Court disagrees and also denies Johnathan Ramaci's second motion for summary judgment.

The Court finds that at the time of the Trust's assignment of the crossclaims to Ulm, the statute of limitations defense did not bar the claims of the assignor Trust because the Ulm crossclaims had already been filed within the three-year statute of limitations prescribed by Section 15-3-530 of the South Carolina Code.¹

An assignor cannot convey to an assignee rights he does not have. *See Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007). Johnathan Ramaci relies on a line of cases which neither reflect the law of South Carolina nor present similar factual circumstances. *See generally Murphy*, 657 F. Supp. 2d 683; *U.S. v. Taylor*, 144 F. Supp. 15 (E.D. Pa. 1956); *Vaughan v. Moore*, 366 S.E.2d 518 (1988); *Madison Fund, Inc. v. Midland Glass Co.*, No. 394 CIV.A. 1974, 1980 WL 332958, at *1 (Del. Super. Aug. 11, 1980); *Woolett v. Am. Employers Ins. Co.*, 77 Cal. App. 3d 619, 143 Cal. Rptr. 799 (Ct. App. 1978). In each of these cases, the claims were not filed until *after* the applicable statutes of limitations had run or assignors/assignees who learned of claims at different times. Those cases have no application here and Johnathan Ramaci's motion for summary judgment is denied.

¹ Johnathan Ramaci correctly states that an assignee takes such assignment subject to the same defenses that would be applicable to the assignor. *See, e.g., Chet Adams Co. v. James F. Pedersen Co.*, 418 S.E.2d 337, 338 (S.C. Ct. App. 1992) (“[T]he assignee of a non-negotiable chose in action takes it subject to all equities and defenses which could have been set up against the assignor at the time of the assignment.”).

2. Johnathan Ramaci's Motion for Summary Judgment on the Plaintiffs' Claims is Denied.

Johnathan Ramaci claims that he is entitled to summary judgment on all claims asserted by the Plaintiffs because he has been released from liability for the alleged wrongful conduct via what Johnathan Ramaci asserts is a viable settlement agreement ("Purported Release") under which iCache released him from all liability to the company. The Court finds and concludes that the Purported Release does not support summary judgment. First, there is a triable factual issue as to whether the Purported Release required subsequent shareholder approval, which never was obtained, after being signed by Johnathan Ramaci and Richard Scott. Second, even if consummated, the Purported Release would have no effect on the Plaintiffs' individually-held, pre-investment claims asserted in this lawsuit.

a. A factual issue exists as to whether the Purported Release required subsequent shareholder approval, which never was obtained, in order to be consummated.

The Court finds that there is a genuine issue of fact as to whether the Purported Release was consummated: specifically, though Johnathan Ramaci and Mr. Scott appear to have signed the document, a jury could fairly conclude that consummation of the Purported Release required subsequent shareholder approval, which no evidence in the record indicates was obtained. As Johnathan Ramaci concedes in his memorandum, at page 6, the Purported Release on its face anticipates "an additional shareholder vote". Further, a jury could find both in the body of the Purported Release (agreement effective "upon the authorization and approval of the shareholders") and at Richard Scott's signature (agreement subject to "final shareholder approval") evidence that the Purported Release expresses the intention that the Agreement be contingent upon a full shareholder approval.

Substantial evidence in the record also indicates that the “final shareholder approval” contemplated in the January 22nd, 2013 Purported Release never was obtained. As set forth in the Memorandum in Opposition, Mr. Scott wrote a letter dated January 25th, 2013 to the shareholders to preview the upcoming shareholder meeting, which confirmed his understanding that “subsequent shareholder approval” was required: “During this past month we have finalized and signed a **Settlement and Release Agreement** document between iCache and Jonathan Ramaci. *This agreement must be voted on and approved by a majority of the shareholders for it to take effect.*” The Plaintiffs also cite the agenda for the February 23rd, 2013 shareholder meeting, which includes “Vote on...Ramaci Settlement and Release Agreement” in its action items. At the meeting where the “subsequent shareholder approval” was to be sought, the record reflects that no quorum was achieved, and no vote taken: “[Richard Scott] brought [the Purported Release] to the meeting. He showed it. He proposed a vote on it, and he couldn’t get a quorum at the meeting... [l]ike I said, he signed it subject to shareholder approval.” (Deposition of Jeff Byrd, p. 154, line 8 – p. 155, line 1; Memorandum in Support, Exhibit #2.)

For these reasons, the Court finds the following triable issues of material fact: whether the Purported Release ever became a binding contract; whether the Purported Release required “subsequent shareholder approval”, and whether “subsequent shareholder approval” ever was obtained.

In the alternative, and irrespective of “subsequent shareholder approval”, Johnathan Ramaci argues that his and Richard Scott’s signatures, in and of themselves, constitute full consummation of the Purported Release, because Johnathan Ramaci and Richard Scott were or may have constituted a majority shareholder bloc. Importantly, though, Johnathan Ramaci’s own expert, Prof. Martin McWilliams, has acknowledged what the Plaintiffs argue at page three of their

Memorandum in Opposition: that Richard Scott and Johnathan Ramaci were free to structure the Purported Release such that subsequent shareholder action was required in order for the Purported Release to be valid; and Prof. McWilliams further concedes that, indeed, the Purported Release, on its face, can be construed as calling for such subsequent shareholder action. (Deposition of Martin McWilliams, p. 132-136, Exhibit #1 to Plaintiffs' Supplemental Memorandum in Opposition.)

For these reasons, the question of the Purported Release's enforceability and operation present triable issues, and the motion is denied.

b. The Purported Release, even if enforceable, has no effect on the Plaintiffs' individually held claims.

As a separate and alternative basis for denying the motion, the Court finds that even if the Purported Release is enforceable, it would release only claims held by the Plaintiffs in their capacity as iCache shareholders, because iCache is the only releasing party identified in the Purported Release. Even if the company itself—and, by extension, its shareholders, in their capacity as shareholders—released Johnathan Ramaci, the Plaintiffs themselves, individually, did not: claims they held individually—i.e., not in their capacity as iCache shareholders—would be unaffected because the Plaintiffs never signed—nor even were named in—the Purported Release.

Johnathan Ramaci's memorandum relies on the notion that "[t]he broad language of this release encompasses the Plaintiffs in this case because they are shareholders of the corporation." (Memorandum in Support, p. 5.) The Court is aware of no authority—and none is cited—for the proposition that a shareholder majority can terminate the rights of private citizens who, after the rights arose, became minority shareholders. Prof. John Freeman, expert for the Plaintiffs, opines that the Purported Release, even if given full effect, would have no effect on these individually held claims. (Deposition of John Freeman, p. 236-238, Exhibit #2 to Plaintiffs' Supplemental

Memorandum in Opposition.) That the Plaintiffs assert causes of action grounded in individually held rights is clear: the Plaintiffs' allege misrepresentations made before the Plaintiffs were shareholders, and therefore give rise to causes of action which are held by the Plaintiffs individually. (Complaint, Paragraphs 13-15; Exhibit #1 to Memorandum in Support.)

For these additional reasons, the motion is denied with respect to all causes of action which are individually held by the Plaintiffs.

c. Johnathan Ramaci's promissory estoppel argument does not support summary judgment because no evidence supports that Byrd or Sedmak made the promises alleged.

Johnathan Ramaci asserts that summary judgment is appropriate because promissory estoppel bars Byrd's and Sedmak's claims. I disagree. Johnathan Ramaci correctly notes that the first element of the defense is "the presence of a promise unambiguous in its terms", but provides no evidence that either Mr. Byrd or Mr. Sedmak made any promise. Johnathan Ramaci appears to discern a "promise" in the Purported Release, a document which neither Mr. Byrd nor Mr. Sedmak either drafted or signed, and in Johnathan Ramaci's assertion in his affidavit that Mr. Sedmak "wanted to obtain control of iCache." The Court finds as a matter of law that neither of these assertions constitutes a promise unambiguous in its terms and deny the motion to the extent it relies on the promissory estoppel.

Based on these findings of fact and conclusions of law, Johnathan Ramaci's motion for summary judgment on all claims by the Plaintiffs is denied.

3. Haverly Ramaci's motion for summary judgment is granted in part and denied in part.

In light of Plaintiffs' counsel's stated consent, I dismiss the Plaintiff's claims against Haverly Ramaci for violations of the South Carolina Uniform Securities Act. Finding that the Plaintiffs have an adequate remedy at law, the Court grants Haverly Ramaci's motion for summary

judgment on the Plaintiffs' unjust enrichment claims. The Court finds that there is a genuine, triable issue of fact concerning the Plaintiffs' conversion and breach of fiduciary duty causes of action, and therefore deny Haverly Ramaci's motion for summary judgment as to these two causes of action.

II. THE COURT DENIES IN PART AND GRANTS IN PART JOHNATHAN RAMACI'S MOTIONS FOR JUDGMENT ON THE PLEADINGS.

1. The Court denies in part and grants in part the motion for judgment on the pleadings as to Ulm's crossclaims.

Johnathan Ramaci argues that Ulm's crossclaims for negligence and breach of fiduciary duty are derivative claims which must be dismissed for failure to comply with the pleading requirements of Rule 23 of the South Carolina Rules of Civil Procedure. Johnathan Ramaci's motion for judgment on the pleadings is denied in part and granted in part.

A shareholder may bring a direct claim against a corporation or its officers and directors "if his loss is separate and distinct from that of the corporation." *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), *overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995); *see also Todd v. Zaldo*, 304 S.C. 275, 278, 403 S.E.2d 666, 668 (Ct. App. 1991) ("If an individual stockholder has suffered a particular loss due to mismanagement of a corporation then the stockholder may bring an action for his loss since it is his personal asset."). Because Ulm did not state a cause of action distinct from that of other shareholders, the claim for negligence is an improperly-pled derivative claim. Johnathan Ramaci's motion for judgment on the pleadings is granted as to Defendant Ulm's cross-claim for negligence.

The law in South Carolina is plain. The wrongful inducement of an investment constitutes a separate and distinct injury that allows an investor to bring direct claims against a corporate director or officer. *Bivens v. Watkins*, 313 S.C. 228, 232, 437 S.E.2d 132, 134 (Ct. App. 1993)

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(“We find [the Plaintiff] has standing to assert some of the causes of action alleged in her complaint, particularly the fraud and negligent misrepresentation causes of action. [Plaintiff] asserts that the actions of [Defendants], as individuals, induced her to invest in and surrender her assets to the new business. Injuries emanating from such an inducement are different from injuries arising from any actions these individuals may have taken as officers, directors, and managers of the new corporation in dissipating or wasting its assets. In that regard, [Plaintiff’s] alleged injury is separate and distinct from that of the corporation.”).

“An individual action is also allowed if the alleged wrongdoers owe a fiduciary relationship to the stockholder and full relief to the stockholder cannot be had through a recovery by the corporation.” *Brown*, 348 S.C at 50, 557 S.E.2d at 685; *see also In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319, 327 (Del. 1993), as corrected (Dec. 8, 1993). Finally, those who execute a contract with a corporation may bring a direct action to recover for damages stemming from that contract. *See Lipton v. News Int’l, Plc*, 514 A.2d 1075, 1078 (Del. 1986), *disapproved of by Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004).

The Court finds that Ulm seeks damages for Johnathan Ramaci’s breaches of fiduciary duty which induced him to invest in iCache. *Id.* Ulm alleges that Johnathan Ramaci’s misrepresentations were made directly to Ulm during multiple meetings between Johnathan Ramaci and Ulm, causing Ulm harm distinct from that of other shareholders. Ulm’s claim for breach of fiduciary duty is therefore separate and distinct from the claims of other shareholders, which seek redress for diminution in stock value due to Johnathan Ramaci’s mismanagement of iCache. Johnathan Ramaci’s motion for judgment on the pleadings is therefore denied as to Defendant Ulm’s cross-claim for breach of fiduciary duty.

2. The Court denies in part and grants in part the motion for judgment on the pleadings as to certain causes of action in Plaintiffs' complaint.

a. The Plaintiffs' UTPA claims are dismissed.

At oral argument on this matter, Plaintiffs' counsel consented to the dismissal of their Unfair Trade Practices Act claim; accordingly, the Plaintiffs' UTPA claims against the Ramaci Defendants are dismissed.

b. The Plaintiffs' claims against John and Haverly for unjust enrichment, restitution and constructive trust are dismissed.

The Court finds that the Plaintiffs' legal and statutory causes of action afford them a remedy which is as certain, practical, complete, and efficient to attain the ends of justice as would be the remedies afforded under their equitable causes of action: unjust enrichment, restitution, and constructive trust. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 379 S.E.2d 119, 123 (S.C. 1989). Because equitable relief is only available where there is no adequate remedy at law, *ZAN, LLC v. Ripley Cove, LLC*, 751 S.E.2d 664, 669 (S.C. App. 2013), the Court finds that the Plaintiffs' equitable causes of action against John and Haverly Ramaci—unjust enrichment, restitution, and constructive trust—are improper, and should be and hereby are dismissed.

c. The Plaintiffs' conversion claim against John and Haverly Ramaci is dismissed.

The Court finds that the Plaintiffs' conversion claim against Johnathan Ramaci is based upon allegations that relate to mismanagement of the company which occurred after the Plaintiffs' investment, and therefore during their time as shareholders. With reference to the legal authorities cited in Ramaci's memorandum, the Court finds that these claims could be brought only in the posture of a shareholder derivative claim. Because the Plaintiffs do not proceed in a derivative posture, I dismiss the Plaintiffs' claims for conversion against Johnathan and Haverly Ramaci.

d. The motion for judgment on the pleadings with respect to the Plaintiffs' negligence and breach of fiduciary duty claims is denied.

The Court finds that the Plaintiffs seek damages under the negligence and breach of fiduciary duty causes of action based on Defendants' alleged wrongful conduct in soliciting the Plaintiffs' investment in iCache. Because these causes of action arose prior to the Plaintiffs' becoming iCache shareholders, these claims were held in the Plaintiffs' individual capacity, and need not have been pursued as shareholder derivative claims. Therefore, viewed in the light most favorable to the Plaintiffs, the Complaint raises an issue of fact that would entitle the Plaintiffs to relief on these claims.

III. THE COURT DENIES JOHNATHAN RAMACI'S MOTION FOR INJUNCTIVE RELIEF AS TO ULM'S CROSSCLAIMS.

On February 24, 2016, Johnathan Ramaci moved to permanently enjoin the assignment of claims by and between Ulm and the Trust. In the alternative, Johnathan Ramaci seeks an order enjoining Ulm from attempting to assert any claims acquired in the assignment in the pending action. The Court denies Johnathan Ramaci's motion for injunctive relief.

An injunction is a drastic equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013) (citing *Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010)). A party is only entitled to injunctive relief if the party demonstrates: (1) it would suffer irreparable harm if the injunction is not granted; (2) a likelihood of success on the merits; and (3) there is an absence of an adequate remedy at law. *See Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010); *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). Johnathan Ramaci, as the party seeking the injunction, has the burden of demonstrating facts and circumstances warranting such remedy. *See Strategic Res.*

Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Johnathan Ramaci failed to meet this burden, and his motion is therefore denied.

1. Johnathan Ramaci failed to demonstrate irreparable harm.

The continuation of ongoing litigation to its proper resolution does not constitute irreparable harm. An injunction is not an appropriate remedy for a party who dislikes the fact that an opposing party pursues claims against him. South Carolina courts have only recognized irreparable harm in very limited circumstances. *See Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (Ct. App. 2005) (“The complete loss of a professional practice can be an irreparable harm.”); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (Ct. App. 2009) (injunction warranted where subject actions “interfered with their right to the use and enjoyment of [homeowners’] property”); *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 41-42 (Ct. App. 2005) *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (loss of physician’s referral base and competency due to practice restrictions, which could lead to the loss of her professional practice and career, can be an irreparable harm); *see generally Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011) (state’s failure to destroy inmate records as required by statute constituted irreparable harm, as it would result prevent eligibility for parole); *Parker v. S.C. Dairy Comm'n*, 274 S.C. 209, 215-16, 262 S.E.2d 38, 42 (1980) (granting injunction “to protect the consuming public of South Carolina against irreparable harm” that would result from enforcement of a price-setting order prior to a review of its constitutionality).

Further, as the United States Supreme Court observed when addressing the concept of irreparable harm:

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).

Johnathan Ramaci claims “[i]f the Court permits the Assignment and allows Billy Ulm to assert the claims of the Trust in this matter as his own claims, the Ramaci Defendants will be irreparably harmed because they will be forced to continue to litigate this case and incur substantial legal fees.” See Ramaci Motion at ¶ 8. The crossclaims against Johnathan Ramaci have been pending since January of 2014. The Court finds that the persistence of and continued costs of ongoing litigation does not constitute irreparable harm. While the Court acknowledges that litigation is a burden for *any* defendant, litigation itself does not constitute irreparable harm, otherwise all defendants would be irreparably harmed. See *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1337 (Fed. Cir. 2012) (“Litigation costs are undoubtedly undesirable and may take funds away from other endeavors, but they are not an irreparable harm in the injunction calculus. . . . Reliance on litigation costs to support a determination of irreparable harm [is] therefore legal error.”); see also *Rogers v. Comprehensive Rehab. Associates, Inc.*, 808 F. Supp. 493, 498 (D.S.C. 1992) (stating that economic losses do not justify the imposition of an injunction). No South Carolina court has held that litigation costs incurred by a defendant constitute irreparable harm, and the Court declines to do so here.

2. Johnathan Ramaci failed to demonstrate a likelihood of success on the merits.

The Court finds that there are numerous genuine issues of material fact regarding the scope of the allegations of Johnathan Ramaci’s misrepresentations and fraud in the inducement of Ulm’s investment. All parties with the exception of the Ramaci Defendants, do not dispute that Johnathan

Ramaci induced Ulm's investment in iCache, Inc. or that the company ultimately failed. There is evidence before the Court that would support the conclusion that Johnathan Ramaci misrepresented the true state of the company to induce both Ulm's and the Plaintiffs' investments. See Ulm Amended Answer and Crossclaims.

The Court finds that Johnathan Ramaci has failed to meet his burden of demonstrating likelihood of success on the merits of Ulm's crossclaims. Further, the Court finds that Johnathan Ramaci does not address this element of injunctive relief in his motion or papers.² See *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007) (ruling that a motion for an injunction will not be granted unless it includes allegations sufficient to meet all required elements of an injunction).

3. Johnathan Ramaci has an adequate remedy at law.

The Court finds that the law affords Johnathan Ramaci an adequate remedy with respect to Ulm's crossclaims. Johnathan Ramaci asserts that he "does not have an adequate remedy at law because he will be forced to continue to litigate this matter at substantial cost and effort without the means to recoup either." See Ramaci Motion at ¶ 11. Johnathan Ramaci's assertion ignores the existence of several remedies available to Johnathan Ramaci—if Johnathan Ramaci's factual arguments or legal assertions are correct, he will win in the defense of the crossclaims. This is an adequate remedy for Johnathan Ramaci.

Ulm has prosecuted these crossclaims against Johnathan Ramaci for more than two years. Throughout the duration of this litigation, Johnathan Ramaci has voraciously defended and challenged the merits of these claims. Ulm's assignment does nothing to change this. The ordinary

² Ramaci argued that the assigned claims are time-barred and that he should be granted judgment as a matter of law on this issue. The Court rejects these grounds in finding that injunctive relief is not warranted.

process of law provides Johnathan Ramaci with several legal remedies to address his contentions with respect to the Trust's assignment of the crossclaims in this litigation to Billy Ulm, two of which Johnathan Ramaci is actively pursuing: 1) Johnathan Ramaci challenges the validity of the assignment; 2) Johnathan Ramaci challenges the application of the statute of limitations; 3) Johnathan Ramaci can defend the merits of Ulm's crossclaims at trial. Any of these measures may provide Johnathan Ramaci with an adequate remedy at law. These are all not only available remedies but also very common litigation vehicles provided by our procedural rules. *See Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co.*, 272 S.C. 127, 129, 249 S.E.2d 744, 745 (1978) ("in the absence of some positive provision of the law to the contrary, an injunction will not be granted in cases where there is a choice between the ordinary processes of law and the extraordinary remedy by injunction"). Johnathan Ramaci's motion for injunctive relief is therefore denied.

IV. JOHNATHAN AND HAVERLY RAMACI'S MOTION TO REOPEN DEPOSITIONS, OR IN THE ALTERNATIVE TO REDEPOSE CERTAIN PARTIES IS DENIED.

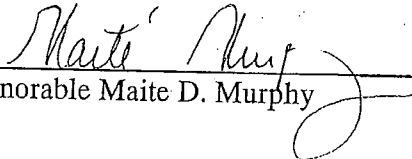
The Court finds no cause in the record of this case to permit the further or additional deposition of the witnesses identified in this motion, and therefore respectfully deny the motion.

CONCLUSION

Johnathan Ramaci has failed to demonstrate the elements necessary to warrant the imposition of a permanent injunction. Johnathan Ramaci's Motion for Permanent Injunction is therefore DENIED. Johnathan Ramaci's Motions for Summary Judgment as to the Ulm Crossclaims are DENIED. Johnathan Ramaci's Motion for Summary Judgment on the Plaintiffs' Claims is DENIED. Johnathan and Haverly Ramaci's Motion for Judgment on the Pleadings as to certain causes of action in Plaintiffs' Complaint is DENIED IN PART and GRANTED IN

PART. Johnathan Ramaci's Motion for Judgment on the Pleadings Pursuant to Rule 12(c) as to the Ulm Crossclaims is DENIED IN PART and GRANTED IN PART. Johnathan and Haverly Ramaci's Motion to Reopen Depositions is DENIED. Haverly Ramaci's Motion for Summary Judgment is DENIED IN PART and GRANTED IN PART.

AND IT IS SO ORDERED.


Honorable Maite D. Murphy