

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 23-CVS-6408

STATE OF NORTH CAROLINA, ex rel.
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

MV REALTY PBC, LLC, MV REALTY OF
NORTH CAROLINA, LLC, MV
BROKERAGE OF NORTH CAROLINA,
LLC, AMANDA ZACHMAN, ANTONY
MITCHELL, DAVID MANCHESTER, and
DARRYL COOK,

Defendants.

**PRELIMINARY INJUNCTION
ORDER**

THIS MATTER is before the Court on Plaintiff's Amended Motion for Preliminary Injunction (ECF No. 31).

On 30 August 2023, the Court entered an Order and Opinion on Plaintiff's Amended Motion for Preliminary Injunction" ("30 August Opinion," ECF No. 60), and incorporates herein its findings of fact and conclusions of law from that Opinion. Although the Court's 30 August Opinion granted Plaintiff's Amended Motion for Preliminary Injunction, the Court deferred setting out the specific terms of the injunctive relief to which Plaintiff is entitled in order to allow the parties an opportunity to each submit (1) a proposed preliminary injunction order; and (2) a supporting brief. The parties have now each submitted their proposed orders (ECF Nos. 62, 65) and supporting briefs (ECF Nos. 63, 64).

THE COURT, in the exercise of its discretion, having carefully considered the parties’ proposed preliminary injunction orders, supporting briefs, and all other appropriate matters of record, **ORDERS** that Defendants are **IMMEDIATELY ENJOINED** and **PROHIBITED**, directly or indirectly, alone or in concert with others, during the pendency of this lawsuit or until further order from this Court from:

1. Recording a Memorandum of Homeowner Benefit Agreement (“Memorandum” or, in the plural form, “Memoranda”) on the property of any North Carolina homeowner¹ who entered into a Homeowner Benefit Agreement (“HBA”) with MV Realty² prior to 24 August 2023—the effective date of the North Carolina Act to Prohibit Unfair Real Estate Service Agreements for Residential Real Estate, 2023 N.C. Sess. Laws 117³;
2. Asserting or representing to any North Carolina homeowner, title agent, real estate agent, closing attorney, lender, prospective purchaser, or in any legal action or arbitration proceeding involving a North Carolina homeowner who has signed an HBA, that MV Realty holds any valid lien,

¹ As used in this Order, the phrase “North Carolina homeowner” also includes any successor-in-interest to a North Carolina homeowner’s property.

² Throughout this Order, Defendants are referred to collectively as “MV Realty.”

³ As the Court noted in its 30 August Opinion, on 24 August 2023, Governor Roy Cooper signed House Bill 422 into law. 2023 N.C. Sess. Laws 117 § 3. That law prohibits MV Realty from entering into new HBAs (in their current form) with North Carolina homeowners going forward. (See 30 August Opinion ¶ 49.) The law “applies to unfair real estate service agreements that are executed, modified, extended, or amended on or after that date.” 2023 N.C. Sess. Laws 117 § 3. All provisions in this Order apply only to HBAs that MV Realty entered into with North Carolina homeowners prior to the effective date of 2023 N.C. Sess. Laws 117.

- security interest, real covenant, or any other encumbrance or cloud on title on the home of any North Carolina homeowner or that MV Realty may recover an Early Termination Fee or liquidated damages from a North Carolina homeowner in connection with an HBA;
3. Recovering or attempting to recover any Early Termination Fee or penalty relating to an HBA signed by a North Carolina homeowner, provided that MV Realty may collect (a) a commission provided for in the applicable HBA in cases in which MV Realty performed its services as a listing agent or cooperating broker as set out in the HBA or the listing agreement; and (b) an administrative fee associated with the performance of the services referenced in subpart (a), but only to the extent that said administrative fee was clearly identified in a listing agreement that was either attached to the HBA signed by the North Carolina homeowner or accessible via a URL link contained in the HBA signed by the North Carolina homeowner;
 4. Filing or causing to be indexed a *lis pendens* on a property that is the subject of an existing HBA signed by a North Carolina homeowner; and
 5. Commencing or continuing to prosecute or maintain any legal action or arbitration proceeding to enforce an Early Termination Fee, lien, security interest, or other encumbrance allegedly arising from an HBA signed by a North Carolina homeowner, except that MV Realty shall be permitted to file a legal action or arbitration proceeding (consistent with the terms of the

applicable HBA signed by the North Carolina homeowner) to recover damages for breach of the HBA (or to negotiate a settlement of its claim).

THE COURT FURTHER ORDERS as follows:

6. Defendants shall record terminations of all Memoranda they have filed on the properties of North Carolina homeowners associated with an HBA signed by a North Carolina homeowner by the earlier of:
 - a. Thirty (30) days from the date of this Order, or
 - b. Within five (5) days of notification from any North Carolina homeowner, title agent, real estate agent, closing attorney, lender, or prospective purchaser who requires a termination to be recorded in order to proceed with any transaction related to a North Carolina homeowner's property, including but not limited to, a loan, refinancing, or sale of the property.

These terminations shall remain in place during the pendency of this action or until further order of this Court.

7. Within fourteen (14) days of the date of this Order, Defendants shall file cancellations of all *lis pendens* they have previously filed on the properties of North Carolina homeowners associated with any HBA signed by a North Carolina homeowner, and shall take all necessary steps to remove any references to a *lis pendens* from their pleadings in any existing or future legal actions or arbitration proceedings for breach of an HBA against a North Carolina homeowner.

8. In accordance with Rule 65(c) of the North Carolina Rules of Civil Procedure, Plaintiff shall not be required to post an injunction bond.

SO ORDERED this the 18th day of September, 2023.

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge
for Complex Business Cases