

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 16862-910

DAEDONG-USA, INC.,

Plaintiff,

v.

KI FINANCE, INCORPORATED;
PETER DONGKYUN KIM; DAE
YOON KIM; and YUNG KI PARK,

Defendants.

**ORDER ON MOTION FOR
TEMPORARY RESTRAINING ORDER**

1. **THIS MATTER** is before the Court on Plaintiff Daedong-USA, Inc.'s ("Plaintiff") Motion for Temporary Restraining Order ("TRO Motion," ECF No. 3).

2. The Court, having considered the TRO Motion, the Complaint (Compl., ECF No. 3), the parties' affidavits and exhibits, and the arguments of counsel, **CONCLUDES**, in its discretion, that the TRO Motion should be **DENIED** for the reasons set forth below.

PROCEDURAL HISTORY

3. Plaintiff filed a combined Complaint and TRO Motion against Defendants KI Finance, Incorporated ("KI Finance"), Peter Dongkyun Kim ("Peter Kim"), Dae Yoon Kim ("Dae Kim"), and Yung Ki Park ("Yung Park," collectively with Peter Kim and Dae Kim, the "Individual Defendants") on 30 May 2024, alleging claims for declaratory judgment, constructive fraud, conspiracy to commit constructive fraud, and unjust enrichment.

4. This case was designated a complex business case on 31 May 2024 and assigned to the undersigned that same day. (ECF No. 1.)

5. On 31 May 2024, the Court held a hearing on the TRO Motion via WebEx at which all parties were represented by counsel.

6. The TRO Motion is now ripe for resolution.

FINDINGS OF FACT

7. The Court's factual findings are made solely for purposes of deciding the present Motion and are not binding in any subsequent proceedings in this action. *See DaimlerChrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 578 (2002) (citing *Kaplan v. Prolife Action League of Greensboro*, 111 N.C. App. 1, 16 (1993)).

8. Plaintiff is a company that manufactures tractors, utility vehicles, zero turn mowers, attachments, and other implements. (Compl. ¶ 1.) It distributes these products to dealers under the brand name "KIOTI." (Compl. ¶ 2.)

9. Plaintiff is incorporated under North Carolina law and has its principal place of business in Wendell, North Carolina with additional offices in Raleigh. (Compl. ¶¶ 1, 9.)

10. Peter Kim is Plaintiff's former President and Chief Executive Officer ("CEO"). (Compl. ¶ 11.)

11. Yung Park is Plaintiff's former Chief Financial Officer ("CFO"). (Compl. ¶ 17.)

12. Dae Kim was hired as an employee of Plaintiff in or around 2011 and later became Plaintiff's Director of Finance in or around February 2020. (Compl. ¶ 16.)

13. Plaintiff alleges that in 2016 it executed two agreements (the “DataScan Contracts”) with a third-party called DataScan Technologies LLC (“DataScan”) regarding the use of software designed to help Plaintiff manage its inventory and accounts receivable (the “DataScan Portal”). (Compl. ¶¶ 23–24.)

14. Plaintiff asserts that the DataScan Portal “allows [Plaintiff] to connect and interface with its dealers and financial institutions[,]” (Compl. ¶ 25), and that it “helps manage [Plaintiff’s] floorplan audits and tractor inventory risk[.]” (Compl. ¶ 26.) Plaintiff further contends that its dealer customers routinely remit around \$2 million in payments per day via the DataScan Portal and that these payments constitute Plaintiff’s primary source of revenue. (Compl. ¶ 28.)

15. From 2016 to 2022, day-to-day management of the DataScan Portal was handled by Plaintiff’s in-house Finance Department. (Compl. ¶ 27.)

16. Beginning in 2022, Plaintiff contends that the Individual Defendants began conspiring to siphon millions of dollars away from Plaintiff by abusing their positions within the company in order to effectuate a series of self-dealing transactions. (Compl. ¶¶ 2–3.)

17. Plaintiff alleges that this conspiracy originated in June 2022 when several of Plaintiff’s executives at that time—including Peter Kim and Yung Park—“devised and agreed to effectuate a plan to transfer [Plaintiff’s] Finance Department function[s] and employees” to a newly created entity called KI Finance. (Compl. ¶ 17.)

18. KI Finance is a company that is incorporated under the laws of North Carolina and maintains its principal place of business in Raleigh. (Compl. ¶ 10.)

19. In its Complaint, Plaintiff asserts that in addition to his employment with Plaintiff, Dae Kim ultimately became president of KI Finance, (Compl. ¶ 4), and between June and November of 2022 was KI Finance’s sole employee. (Compl. ¶ 35.) At all relevant times, Plaintiff was allegedly KI Finance’s only customer. (Compl. ¶ 4.)

20. Plaintiff contends that on 1 September 2022 Peter Kim and Dae Kim caused Plaintiff and KI Finance to enter into a “Services Agreement” (Compl., at 39–53).¹ Pursuant to the Services Agreement, many of the DataScan Portal management responsibilities previously managed by Plaintiff’s in-house financial team—including the provision of “[r]eal time web access for invoices, inventory management . . . [and] payments” and “[r]eal time cashflow management for [Plaintiff’s] operations”—were transferred to KI Finance. (Compl., at 51.)

21. Plaintiff alleges that on 1 September 2022, Yung Park—in his capacity as Plaintiff’s CFO—caused Plaintiff to assign the DataScan Contracts to KI Finance (the “Assignments”). (Compl. ¶ 33.) Pursuant to the Assignments, KI Finance obtained control of the DataScan Portal, which it proceeded to operate on Plaintiff’s behalf based on the terms of the Services Agreement. (Compl. ¶ 34.)

22. Plaintiff contends that beginning on 20 September 2022 it began receiving invoices for several hundreds of thousands of dollars as payments for KI Finance’s services. (Compl. ¶ 35.) Plaintiff further alleges that by November 2022,

¹ Plaintiff contends that it has been unable to locate an original, signed copy of the Services Agreement and that the copy attached as Exhibit A to the Complaint is “[w]hat Defendants claim to be the Services Agreement.” (Compl. ¶ 22.)

Peter Kim and Yung Park—in their capacities as Plaintiff’s CEO and CFO, respectively—had caused Plaintiff to pay approximately \$1.1 million to KI Finance. (Compl. ¶¶ 36–27.)

23. Beginning in November 2022, Peter Kim and Yung Park allegedly caused Plaintiff to transfer some of the employees from Plaintiff’s in-house Finance Department to KI Finance. (Compl. ¶ 37–38.) These employee transfers are alleged to have taken place in such a way that the affected employees “did not even realize that they were working for a different company and they continued to perform the same work in the same space.” (Compl. ¶ 39.)

24. Plaintiff asserts that it continued to pay the salaries of its transferred employees. (Compl. ¶ 40.)

25. Ultimately, Plaintiff re-hired many of the employees whom it had transferred to KI Finance. (Compl. ¶ 43–45.) However, Plaintiff asserts that despite the ensuing reduction in the number of KI Finance’s employees, there was no corresponding decrease in the monetary amounts for which KI Finance was continuing to invoice Plaintiff for services. (Compl. ¶ 46.)

26. Altogether, between September 2022 and December 2023, Plaintiff allegedly paid a total of \$7,686,233 to KI Finance for the latter’s services. (Compl. ¶ 54.) According to Plaintiff, this amount was “exorbitantly in excess of the amount other third-party services providers charged for similar services to customers in the market and the internal costs that [Plaintiff] incurred when the Finance Department

had operated in-house without the injection of KI Finance between [Plaintiff] and DataScan.” (Compl. ¶ 54.)

27. Beginning in December 2023, Plaintiff’s Board of Directors appointed new senior leaders at the company, and the Individual Defendants resigned from their positions with Plaintiff. (Compl. ¶¶ 51–53.)

28. Plaintiff alleges that shortly after the new management team came on board, it began an investigation to uncover alleged “self-dealing transactions by the Individual Defendants.” (Compl. ¶ 7.) Plaintiff asserts that the investigation remains ongoing.

29. On 25 March 2024, KI Finance—through its counsel—sent a letter to Plaintiff demanding payment of \$1,055,985.19 (Compl., at 60.) This demand was apparently for “services rendered under the Services Agreement since January 2024.” (Compl. ¶ 63.)

30. On 11 April 2024, Plaintiff’s Executive Vice President and Deputy CEO, Chiwhan Yoon (“Yoon”), responded via a letter notifying KI Finance “that the Services Agreement [was] nulled and void and [was] not effective.” (Compl., at 62.) The reasons stated in the letter for nullifying the Services Agreement included a lack of proper approval for the agreement, “constructive fraud,” and KI Finance’s allegedly incurable “material breach.” (Compl., at 62.)

31. On 15 April 2024, KI Finance—through counsel—sent a letter to Plaintiff stating its position that the Services Agreement was still “valid and

enforceable” but offering to terminate the agreement provided that Plaintiff continue to pay for services through and including 30 April 2024. (Compl., at 65.)

32. On 1 May 2024, KI Finance’s counsel sent another letter to Plaintiff that contained a formal notice of default and commencement of a sixty-day cure period pursuant to Article II, Section 2 of the Services Agreement. This letter also included a demand for reimbursement of \$2,249,460.29 for services provided by KI Finance since January 2024 that Plaintiff had allegedly accepted. (Compl., at 68.)

33. On 2 May 2024, Plaintiff’s counsel sent counsel for KI Finance a letter regarding Plaintiff’s ongoing investigation into “the facts and circumstances surrounding the Services Agreement and evident self-dealing” of Dae Kim and others. (Compl., at 88.) In the letter, Plaintiff’s attorney stated that Plaintiff refused to remit the \$2,249,460.29 in unpaid fees to KI Finance. (Compl., at 89.)

34. Plaintiff contends that instead of responding to the 2 May Letter, KI Finance and Dae Kim began taking a series of “unauthorized, malicious and retaliatory actions” that were intended to “extort” Plaintiff. (Compl. ¶ 69.) Specifically, on 14 May 2024, Plaintiff alleges that KI Finance “suddenly locked [Plaintiff] out from administrative access to certain aspects of the DataScan [Portal][.]” (Compl. ¶ 70.)

35. On 20 May 2024, one of Plaintiff’s employees, Alyssa Prince, responded in an email (the “20 May Email”) to an unrelated proposal sent by a KI Finance employee, Greg Rupp, to “migrate” certain DataScan Portal systems into other software. (Compl., at 92–93.) In Prince’s email, she objected to the proposed

migration and reiterated that Plaintiff had “final authority on all matters relating to its operations or services provided under the [S]ervices [A]greement.” (Compl., at 92.) Prince’s 20 May Email also stated that “none of KI Finance [sic], its personnel or its representatives are authorized to contact dealers/users. This relationship and interaction are exclusively reserved for [Plaintiff].” (Compl., at 92.)

36. Three days later, on 23 May 2024, Dae Kim sent an email to Prince and another one of Plaintiff’s employees—Stephen Marrujo—stating, in relevant part:

I have received a copy of your email to Greg Rupp of Monday, May 20 stating that . . . you are instructing us not to contact your dealers, which obviously prevents KI Finance from performing services during the notice and cure period provided for in our contract. [Plaintiff] has unequivocally repudiated its obligations under its agreement with KI Finance and expressed its clear intention not to cure its breach. KI Finance, therefore, will suspend performance of services under the agreement on 05/25/2024 and will proceed to exercise all of its rights and remedies for [Plaintiff’s] breach of contract. Please be aware that [Plaintiff] has continuously used and is currently using KI Finance’s services to receive payment files through its portal to forward to [Plaintiff’s] bank. This will cease when we suspend performance. I trust that [Plaintiff] has made alternative provisions for this, given the profound impact that having no such portal will have on [Plaintiff’s] business.

(Compl., at 91.)

37. On 28 May 2024, counsel for KI Finance sent an email to Plaintiff’s counsel confirming that KI Finance had fully blocked Plaintiff’s access to the DataScan Portal. (Compl. ¶ 83.) Plaintiff’s counsel alleges that this act by KI Finance is actively preventing Plaintiff from receiving nearly \$2 million in daily payments from its customers and that Plaintiff is unable to access its customer and inventory data. (Compl. ¶ 83.)

38. On 29 May 2024, Plaintiff requested that KI Finance restore its access to the DataScan Portal pending resolution of the underlying dispute. However, KI Finance has refused to do so. (Compl. ¶ 83.)

39. On 30 May 2024, Plaintiff initiated this action by filing a Complaint in Wake County Superior Court against KI Finance, Peter Kim, Dae Kim, and Yung Park. In its Complaint, Plaintiff asserted claims for declaratory judgment against KI Finance, constructive fraud against the Individual Defendants, conspiracy to commit constructive fraud against the Individual Defendants, and unjust enrichment against all Defendants. Plaintiff's Complaint also contains a TRO Motion in which it seeks an order requiring KI Finance to "restore [Plaintiff's] access to the DataScan portal to the same level of access [Plaintiff] had prior to May 2024[.]" (Compl. ¶ 98.)² In addition, Plaintiff seeks the issuance of a preliminary injunction. (Compl. ¶ 98.)

CONCLUSIONS OF LAW

40. Based upon the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

41. Any Finding of Fact that is more appropriately deemed a Conclusion of Law, and any Conclusion of Law that is more appropriately deemed a Finding of Fact, shall be so deemed and incorporated by reference as a Finding of Fact or Conclusion of Law, as appropriate.

² The Complaint also requested that any TRO entered by the Court provide certain other relief relating to the above-referenced "migration" issue. However, at the 31 May hearing, counsel for Plaintiff informed the Court that it was no longer seeking this additional relief.

42. “The purpose of a TRO is to preserve the status quo between the parties until such time as a motion for preliminary injunction can be properly heard.” *Nat’l Surgery Ctr. Holdings, Inc. v. Surgical Inst. of Viewmont, LLC*, 2016 NCBC LEXIS 41, at *7 (N.C. Super. Ct. May 12, 2016). A TRO is—by its very nature—a “drastic procedure that operates within an emergency context which recognizes the need for swift action[.]” *Vanguard Grp., Inc. v. Snipes*, 2022 NCBC LEXIS 55, at *7 (N.C. Super. Ct. June 6, 2022) (cleaned up).

43. “The burden is on the moving party to establish its right to a temporary restraining order, but the remedy ‘should not be lightly granted.’” *Old Battleground Props. v. Cent. Carolina Surgical Eye Assocs., P.A.*, 2015 NCBC LEXIS 19, at **18 (N.C. Super. Ct. Feb. 25, 2015) (citing *GoRhinoGo, LLC v. Lewis*, 2011 NCBC LEXIS 39, at **17 (N.C. Super. Ct. Sept. 29, 2011)). As this Court has recognized, “a court of equity must weigh all relevant facts before resorting to the extraordinary remedy of an injunction.” *RCR Enters., LLC v. McCall*, 2014 NCBC LEXIS 69, at *8 (N.C. Super. Ct. Dec. 19, 2014) (cleaned up).

44. Ultimately, “[t]he issuance of a TRO ‘is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.’” *Id.* (citing *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400 (1983)). North Carolina courts have long held that immediate injunctive relief will only be issued upon satisfaction of two conditions:

- (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and
- (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is

necessary for the protection of a plaintiff's rights during the course of litigation.

Nat'l Surgery Ctr. Holdings, Inc. v. Surgical Inst. of Viewmont, LLC, 2016 NCBC LEXIS 41, at *7 (N.C. Super. Ct. May 12, 2016) (citing *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983)).

45. Here, the Court need not reach the second prong of the test because it concludes that Plaintiff has failed to show a reasonable likelihood of success on the merits.

46. This lawsuit is based upon Plaintiff's contention that the Individual Defendants—through the creation of KI Finance—concocted a scheme to “siphon[] millions of dollars from [Plaintiff] without detection[.]” (Compl. ¶ 17.)

47. For purposes of its TRO Motion, Plaintiff contends that it has shown a reasonable likelihood of success on the merits of its declaratory judgment claim. The Court disagrees.

48. Plaintiff's declaratory judgment claim seeks a judicial determination pursuant to N.C.G.S. § 55-8-31 that the Services Agreement and the Assignments are voidable because they were transactions effectuated despite the Individual Defendants' conflict of interest. In furtherance of this contention, Plaintiff argues that (1) the Individual Defendants had material financial interests in KI Finance at all relevant times that conflicted with the duties they owed to Plaintiff; (2) in order for these transactions to have been permissible, a disinterested committee (or subcommittee) of Plaintiff's board of directors or its shareholders—after full disclosure of the conflict of interest— would have had to vote to approve or ratify the

transactions; and (3) no such disclosure, approval, or ratification occurred. (Compl. ¶¶ 99–119.)

49. N.C.G.S. § 55-8-31 specifically defines a “conflict of interest transaction” as “a transaction with the corporation in which a director of the corporation has a direct or indirect interest.” As a general proposition, unless a conflicted transaction falls within one of the enumerated exceptions listed in the statute, the transaction will be voidable. *See* N.C.G.S. § 55-8-31.

50. As noted above, Plaintiffs’ TRO Motion hinges on the proposition that the Individual Defendants possessed a conflict of interest with regard to the Services Agreement and the Assignments based on their undisclosed financial interests in KI Finance. But key allegations in the Complaint seeking to establish this proposition are merely alleged “upon information and belief”—a phrase that appears nineteen times throughout Plaintiff’s Complaint. The following examples are illustrative:

Upon information and belief, at the time it purported to enter into the Services Agreement, Defendant KI Finance was essentially a shell company with only one employee, Defendant Dae Kim, and only one customer, [Plaintiff].

...

Upon information and belief, over a 16-month period through December 2023, over \$7.6 million was siphoned from [Plaintiff] to KI Finance under the auspices of the Services Agreement, the proceeds of which benefited at least the Individual Defendants.

...

Upon information and belief, in 2022, the former C-suite executives of [Plaintiff], including [Plaintiff’s] President and CEO, Defendant Peter DK Kim; [Plaintiff’s] Chief Financial Officer, Defendant Yung Ki Park; and [Plaintiff’s] Chief Operations Officer, Anna Kim, devised and agreed to effectuate a plan to transfer [Plaintiff’s] Finance Department function

and employees to a new corporate entity that would be created for the purpose of siphoning millions of dollars from [Plaintiff] without detection by purportedly providing outsourced, fee-based financial management and accounting services for [Plaintiff].

...

Upon information and belief, in allowing [Plaintiff] to purportedly enter into the commercially unreasonable and exploitive Services Agreement and the Assignments, the Individual Defendants benefited themselves financially to the detriment of [Plaintiff].

...

KI Finance is a party to the Services Agreement. . . . *Upon information and belief*, Defendant Peter DK Kim has had a material financial interest in KI Finance at all relevant times. Therefore, under N.C.G.S. § 55-8-31(b), Defendant Peter DK Kim had an indirect interest in the Services Agreement transaction, making the Services Agreement transaction a conflict of interest transaction within the meaning of N.C.G.S. § 55-8-31(a).

...

KI Finance is a party to the Assignments. Ex. B. *Upon information and belief*, [] Yung Ki Park has had a material financial interest in KI Finance at all relevant times. Therefore, under N.C.G.S. § 55-8-31(b), Yung Ki Park had an indirect interest in the execution of the Assignments, making the execution of the Assignments a conflict of interest transaction within the meaning of N.C.G.S. § 55- 8-31(a).

...

Upon information and belief, the Individual Defendants have disbursed a significant portion of the \$7,686,223 siphoned from [Plaintiff] to KI Finance from September 2022 through December to themselves and potentially others.

...

Upon information and belief, in allowing the commercially unreasonable Assignments to occur, the Individual Defendants sought to benefit themselves financially to the detriment of [Plaintiff].

Upon information and belief, Defendants Peter DK Kim and Yung Ki Park also sought to benefit themselves and Defendant Dae Kim

financially in approving or directing approval of payments on the invoices that KI Finance issued to [Plaintiff] from September 2022 through December 2023, and directing or allowing \$7,686,223 dollars in payments to be remitted on those invoices.

...

Upon information and belief, in 2022, the Individual Defendants and others devised and agreed to effectuate a plan to transfer [Plaintiff's] wholesale operations/finance function and employees to a new corporate entity that would be created for the purpose of siphoning millions of dollars from [Plaintiff] without detection by purportedly providing outsourced, fee-based financial management and accounting services for [Plaintiff].

Upon information and belief, the Individual Defendants and others agreed to exploit their respective positions of trust, confidence, and influence to effectuate their plan and ultimately to financially benefit at least the Individual Defendants.

...

KI Finance's use of [Plaintiff's] office space conferred a measurable benefit to Defendants by allowing KI Finance to operate with lower overhead costs and therefore maximize its profits, which, *upon information and belief*, were distributed to individuals including the Individual Defendants.

(Compl. ¶¶ 4–5, 17, 36, 61, 104, 106, 124–27, 131–32, 136.) (emphasis added).

51. Moreover, although Plaintiff's Complaint purports to be verified by Yoon, Plaintiff's Executive Vice President and Deputy CEO, the actual verification page consists of the following somewhat odd wording:

I am over eighteen years of age; I have not been declared incompetent; I am the Executive Vice President and Deputy CEO of [Plaintiff]; I am authorized to make verifications on behalf of [Plaintiff]; I have read the foregoing Verified Complaint; the Verified Complaint was prepared with the advice and assistance of counsel upon whom he relied; and pursuant to North Carolina General Statute § 1A-1, North Carolina Rule of Civil 11(b), the contents thereof are true of my own knowledge or based upon records in the possession and custody of [Plaintiff] and, therefore, within my knowledge, and as to those instances in which allegations are made

upon information and belief, are true to the best of my knowledge, information, and belief.

(Compl., at 37.)

52. When questioned by the Court during the 31 May hearing on this issue, Plaintiff's counsel candidly conceded that Yoon lacked personal knowledge of any events that had taken place prior to December 2023—a troubling admission given that many of the key events in the Complaint occurred *before* December 2023.

53. In addition, at the 31 May hearing, Plaintiff's counsel admitted that his arguments were “inferential” and “needed more investigation.”

54. It is the burden of a plaintiff seeking a TRO to demonstrate its entitlement to such extraordinary relief. “[C]onclusory assertions made ‘upon information and belief’ ” are not sufficient. *See Vanguard Grp., Inc.*, 2022 NCBC LEXIS 55, at *14. In cases where a party's request for a TRO is grounded in speculation, “[t]he Court will require further evidence before it can reach the conclusions that [the party] seeks.” *Id.* at *15.

55. The Court further notes that many of Plaintiff's key allegations are directly rebutted by affidavits submitted by Defendants, which—at the present stage of this litigation—the Court finds to be more credible than the contrary allegations in the Complaint.

56. In the affidavit of Dae Kim, he testified as follows: (1) Neither Peter Kim nor Yung Park ever received any personal benefits from the Services Agreement and were never shareholders, officers, directors, or employees of KI Finance; (2) Plaintiff's own outside corporate counsel drafted the Services Agreement (Compl. ¶ 55)); (3)

Plaintiff's senior executives were informed about the terms of the Services Agreement through a PowerPoint and also compared the projected costs of using KI Finance's services with those of a different company providing similar services; (4) KI Finance's billings to Plaintiff were consistent with Yung Park's cost projections; (5) KI Finance bore (and continues to bear) all costs associated with the assignment of the DataScan Contracts, which amount to roughly a quarter of the fees charged to Plaintiff; (6) KI Finance's fees are standard for this particular industry; (7) Plaintiff had six weeks between Yoon's 11 April 2024 letter stating Plaintiff's belief that the Services Agreement was "nulled and void" and the filing of this lawsuit to take remedial action; and (8) "[n]otwithstanding [Plaintiff's] lack of payment, KI Finance continued to perform services and incur expenses for personnel, Data[S]can, and other costs." (Dae Kim Aff. ¶¶ 3–4, 6–8, 12, 19–20, ECF No. 6.)

57. In addition, the affidavit of Anna Kim likewise states that the Services Agreement was drafted by Plaintiff's own outside counsel, which is at odds with Plaintiff's characterization of that contract as containing "commercially unreasonable terms." (Anna Kim Aff. ¶ 6, ECF No. 7; Compl. ¶ 55)

58. For all of these reasons, based on the Court's thorough consideration of the PI Motion, the record, and the parties' submissions and arguments, the Court, in the exercise of its discretion, concludes that Plaintiff has failed to meet its burden of showing a reasonable likelihood of success on the merits of its declaratory judgment claim for purposes of its TRO Motion.

59. Therefore, the Court need not reach the issue of whether Plaintiff has adequately shown the existence of irreparable harm in the absence of a TRO. *See Fairleigh v. Wegner*, 2024 NCBC LEXIS 67, at *11 (N.C. Super. Ct. May 9, 2024) (“[T]he Court need not reach the issue of irreparable harm because it concludes that [Plaintiff] has failed to demonstrate a likelihood of success on the merits—a failure that precludes the granting of injunctive relief.”)

CONCLUSION

THEREFORE, IT IS ORDERED that Plaintiff’s TRO Motion is **DENIED**.

SO ORDERED, this the 4th day of June, 2024.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases