

STATE OF NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV005586-500

SHERRY WORLEY and GINGER MASSENGILL, individually, and as members of the committees of the respective Board of Directors for ORMOND OIL & GAS COMPANY, INC., and ORMOND'S SALES AND SERVICE, INCORPORATED,

Plaintiffs,

v.

WILLIAM E. ORMOND, JR., individually, and in his capacity as an Officer, and Director of ORMOND OIL & GAS COMPANY, INC., and ORMOND'S SALES AND SERVICE, INCORPORATED; ORMOND OIL & GAS COMPANY, INC.; ORMOND'S SALES AND SERVICE, INCORPORATED; ORMOCO, LLC; R.E.S. INVESTORS, LLC; ORMOND ENERGY INVESTORS, LLC; and OFB VENTURES LLC,

Defendants.

**ORDER ON PLAINTIFFS' MOTION
FOR APPOINTMENT OF RECEIVER
AND FOR INJUNCTIVE RELIEF**

1. **THIS MATTER** is before the Court on the 3 April 2024 filing of *Plaintiffs' Motion for Appointment of Receiver over Ormond Oil & Gas Company, Inc., and Ormond's Sales and Service, Incorporated, and for Injunctive Relief Against Defendant Ormond* (the "Motion"). (ECF No. 91 ["Mot."].) Pursuant to N.C.G.S. § 1-507.20 *et seq.*, and § 55-14-32, Plaintiffs request appointment of a receiver to manage the financial and business affairs of Ormond Oil & Gas Company, Inc. ("OOG"), and Ormond's Sales and Service, Incorporated ("OSS"; together, the "Ormond Companies"). (See Mot.) Further, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure (the "Rule(s)"), Plaintiffs seek an injunction that enjoins Defendant

William E. Ormond, Jr. (“Ormond”; with the Ormond Companies, “Defendants”) from “forming new business entities in the fuel distribution business during the pendency of this litigation.” (Mot. 2.)

2. Following full briefing and the filing of supporting materials, the Court held a hearing on the Motion on 11 June 2024 (the “Hearing”), at which all parties were present and represented through counsel. (*See* ECF No. 125.)

3. Following the Hearing, the Court requested that all counsel confer and indicate to the Court whether they could reach an agreement regarding a suitable individual to serve as a limited receiver, if the Court ultimately determined that a limited receivership was warranted under the facts and circumstances. The parties were unable to reach an agreement on this issue and separately filed notices of proposed limited receiver candidates. (*See* ECF Nos. 133–34.) The Court thereafter held a supplemental hearing on the Motion on 8 July 2024 (the “Supplemental Hearing”), at which all parties were present and represented through counsel, to discuss the supplemental information filed regarding the proposed limited receivers. (*See* ECF No. 137.)

4. For the reasons set forth herein, the Court **GRANTS** in part and **DENIES** in part the Motion. The Court first considers Plaintiffs’ request for injunctive relief and then turns to the request for appointment of a receiver over the Ormond Companies.

James, McElroy & Diehl, P.A., by Fred B. Monroe and Haley Lohr, for Plaintiffs Sherry Worley and Ginger Massengill.

Goldberg Segalla, by David L. Brown, for Defendants Ormond Oil & Gas Company, Inc., Ormond's Sales and Service, Inc., and Ormond Energy Investors, LLC.

The Armstrong Law Firm, P.A., by L. Lamar Armstrong, Jr., for Defendants William E. Ormond, Jr., Ormoco, LLC, R.E.S. Investors, LLC, and OFB Ventures, LLC.

Robinson, Judge.

A. Motion for Injunctive Relief

5. Under Rule 65, the Court has discretion to issue a preliminary injunction in appropriate circumstances. See N.C.G.S. § 1A-1, Rule 65(a). The purpose of an injunction is to preserve the *status quo* pending trial on the merits. *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 400 (1983). “Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *Id.* (citation omitted). An injunction will issue only if Plaintiffs are (1) “able to show *likelihood* of success on the merits of [their] case[,]” and are (2) “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.” *Id.* at 401 (citations omitted) (emphasis in original).

6. Here, Plaintiffs request that the Court enjoin Ormond “from forming other corporate entities in the fuel distribution business in the same geographic area as OOG without first seeking permission from the Court.” (Pls.’ Br. Supp. Mot. 28, ECF No. 92 [“Br. Supp.”].) However, Plaintiffs cite to no controlling authority or record evidence for the Court to review and determine whether (1) Ormond is likely to form other corporate entities, beyond those already formed, if an injunction is not entered

prohibiting such conduct, or whether (2) Plaintiffs are likely to sustain “irreparable loss” if the injunction does not issue. In fact, the request for an injunction comprises only three sentences in Plaintiffs’ brief. (*See* Br. Supp. 28.)

7. In response, Defendants direct the Court to *Analog Devices, Inc. v. Michalski*, arguing that “Plaintiffs have presented no evidence that Defendant Ormond even has plans to form any new businesses in the fuel distribution business.” (Defs.’ Br. Opp’n Mot. 21, ECF No. 112 [“Br. Opp.”] (citing *Analog Devices, Inc. v. Michalski*, 157 N.C. App. 462 (2003).) In *Analog Devices*, our Court of Appeals stated that the purported harm must be “threatened or actually going to occur[,]” evidence of which is not demonstrated here. 157 N.C. App. at 472 (stating further that “[a]n injunction should not issue merely to allay the fears and apprehensions or to soothe the anxieties of a party” (cleaned up)). Plaintiffs did not address this argument from Defendants in reply. (*See* Pls.’ Reply Br., ECF No. 122 [“Reply”].)

8. Plaintiffs have not met their burden of demonstrating that threatened or impending harm will occur absent the issuance of the injunction sought. The Court therefore **DENIES** in part the Motion without prejudice, to the extent it requests the Court issue an injunction.

B. Motion for Appointment of Receiver

9. Plaintiffs seek appointment of a general receiver over the Ormond Companies pursuant to the North Carolina Commercial Receivership Act, N.C.G.S. § 1-507.20 *et seq.* (the “NCCRA”). (*See* Mot.; Br. Supp. 16.) Plaintiffs contend that there is a strong likelihood of success on the merits for their breach of fiduciary duty

and judicial dissolution claims, and that Plaintiffs' separate interests in the Ormond Companies are in danger of dissipation if Ormond is permitted to continue managing the companies. (Mot. ¶¶ 8, 12.) Defendants oppose the relief sought. (See Br. Opp. 9–20.)

10. Based on the submissions of the parties, the record before the Court, and the arguments of the parties' counsel during the Hearing and Supplemental Hearing, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT¹

11. Plaintiffs Sherry Worley (“Worley”) and Ginger Massengill (“Massengill”; with Worley, “Plaintiffs”) are residents of Princeton, North Carolina. (Verified Compl. ¶¶ 1–2, ECF No. 3 [“Compl.”].)²

12. Ormond is a resident of Princeton, North Carolina. (Compl. ¶ 5; William E. Ormond, Jr. Answer ¶ 5, ECF No. 24 [“Ormond Answer”].)

¹ To the extent one or more findings of fact are more properly considered conclusions of law, and vice versa, they are intended by the Court to be and should be properly categorized and considered as such.

² For purposes of resolving the Motion, the Court treats the Verified Complaint as an affidavit. See *Page v. Sloan*, 281 N.C. 697, 705 (1972); *Bauer v. Douglas Aquatics, Inc.*, 207 N.C. App. 65, 69 (2010). Notwithstanding this determination, the Verified Complaint, as any affidavit, may only be properly considered if it demonstrates by its allegations and representations that the affiant has firsthand knowledge of the facts or circumstances alleged and that the representations therein are properly considered by the Court as admissible evidence. See *Page*, 281 N.C. at 705.

Furthermore, the Court cites herein to the allegations in the Verified Complaint, rather than the First Amended Verified Complaint, as the briefing on the Motion occurred largely prior to the filing of the latter pleading. (Am. Compl., ECF No. 115 (electronically filed with the Court on 10 May 2024, after the filing of the Motion and Defendants' response to the Motion).)

13. The Ormond Companies are North Carolina corporations with their principal place of business in Princeton, North Carolina. (Compl. ¶¶ 3–4; Answer Defs. OOG & OSS ¶¶ 3–4, ECF No. 22 [“Ormond Cos. Answer”].)

14. Plaintiffs and Ormond are siblings who inherited their respective ownership interests in the Ormond Companies from their parents. (Compl. ¶¶ 19–20; Ormond Answer ¶¶ 19–20; Ormond Cos. Answer ¶¶ 19–20.) The evidence demonstrates that the siblings obtained their interests through the Family Settlement Agreement executed on 2 December 2019, which was approved in part by the Clerk of Superior Court of Johnston County on 3 February and 17 March 2020. (Exs. to Dep. Sherry Worley at Exs. 1–2, ECF No. 95.6.)

15. Ormond owns sixty-two percent (62%) of the shares of OOG and fifty-six percent (56%) of the shares of OSS, while Plaintiffs each own approximately nineteen percent (19%) of the shares of OOG and twenty-two percent (22%) of the shares of OSS. (Compl. ¶¶ 19–20; Ormond Answer ¶¶ 19–20; Ormond Cos. Answer ¶¶ 19–20.) As a result, Ormond is the majority shareholder of the entities and Plaintiffs are each minority shareholders.

16. Together, the three siblings own all outstanding shares in the Ormond Companies. (Ormond Cos. Answer ¶ 7 (“[A]dmitted that Plaintiff Worley, Plaintiff Massengill and Defendant Ormond own all shares of stock in both companies, and that Defendant Ormond owes [sic] the majority of shares in each company.”).)

1. The Proposed Transaction with New Hope Gas Company, Inc.

17. As early as March 2023, Ormond was considering the acquisition of New Hope Gas Company, Inc. (“New Hope”). (See Dep. William E. Ormond, Jr. 65:15–66:10, ECF No. 92.2 [“Ormond Dep.”].) Ormond was approached by Breen Smith (“Smith”), the owner of New Hope, about OOG’s interest in purchasing the company. (Aff. William E. Ormond Jr. ¶ 47, ECF No. 19 [“Ormond Aff.”].) Ormond testified that he first told his sisters about New Hope on 19 March 2023. (Ormond Dep. 65:15–66:10.) Ormond also testified that he discussed the deal with Worley in April and she “was dead against it[.]” (Ormond Dep. 126:21–27:4.)

18. The record demonstrates that Ormond believed New Hope to be a competitor of OOG. (Ormond Aff. ¶ 54.)

19. On 2 May 2023, the New Hope representatives provided Ormond with a nondisclosure agreement related to the New Hope transaction. (Ormond Dep. 127:8–12.) Ormond testified that he spoke with Plaintiffs about the nondisclosure agreement on the phone that same day. (Ormond Dep. 127:13–28:3.) Ormond executed the nondisclosure agreement on 5 May 2023. (Ormond Dep. 127:13–28:4; Ormond Aff. ¶ 48.) Ormond further testified that, when he and Worley spoke on 6–7 May 2023 and in June 2023, Worley expressed to Ormond that she was against both the nondisclosure agreement and the New Hope transaction. (Ormond Dep. 128:5–17.)

20. Ormond testified that Massengill was in support and gave “the thumbs up,” but, on around 17 July 2023, Worley remained “dead against” OOG acquiring New Hope. (Ormond Dep. 128:18–22, 129:15–21.)

21. In connection with the New Hope transaction, Ormond requested that Smith provide him with a “list of [New Hope’s] commercial customers, a list of residential customers, current AI, most recent year of completed auditing, financials and tax returns, . . . tanks, trucks, [and] tanks on yards”. (Ormond Dep. 155:23–56:4.) Ormond did not receive financial statements, but did receive a “list of tanks, trucks, tanks on the yard and approximately how many customers [were] on the books.” (Ormond Dep. 156:5–11.)

22. Ormond admits that he and Smith “agreed in principle about the terms for OOG to buy New Hope” sometime before 23 August 2023. (Ormond Aff. ¶ 49.)

23. Thereafter, on 23 August 2023, Plaintiffs and Ormond met to discuss New Hope. (Compl. ¶ 39; Ormond Dep. 132:5–18.) Ormond testified that he had the draft asset purchase agreement for the New Hope deal with him at the meeting, that he showed Plaintiffs the draft, but that he would not let Plaintiffs have a copy of that agreement. (Ormond Dep. 134:9–35:9, 152:15–18.) Plaintiffs’ recollection of the meeting matches that testimony. (*See* Compl. ¶ 39.) At the meeting, Massengill “notice[d] that the proposed asset list did not include the six bulk propane tanks referenced in [a] preceding paragraph[,]” so she inquired if Ormond “was buying the bulk propane storage tanks on his own separately such that he could then lease them

to” OOG. (Compl. ¶ 39.) Plaintiffs allege that Ormond refused to answer definitively. (Compl. ¶ 39.)

24. During the 23 August 2023 meeting, Plaintiffs informed Ormond that they did not approve of the transaction proposed between OOG and New Hope. (Compl. ¶ 40.) Ormond did not disclose that if OOG did not buy New Hope, Ormond would buy it himself. (Ormond Dep. 136:24–37:15.)

25. Ultimately, the OOG Board of Directors did not hold a vote on the New Hope transaction. (Ormond Aff. ¶ 53.) Nevertheless, Ormond caused OOG to pay \$1,000,000.00 to New Hope on 15 September 2023 as a downpayment, and OOG “took possession of New Hope offices to get a start on the transition.” (Ormond Aff. ¶ 55; *see* Ormond Dep. 64:3–7.) Plaintiffs allege that Ormond “indirectly” informed them after the fact that the New Hope transaction was completed on 19 September 2023. (Compl. ¶ 62.)

26. On 27 September 2023, Worley sent a letter by email to Smith indicating that Ormond was no longer authorized to enter into the New Hope transaction and attached the resolutions of the OOG Board of Directors from a 27 September 2023 special meeting of the OOG Board. (Compl. Ex. H; *see infra* ¶¶ 30–33.)

27. Thereafter, on 26 October 2023, Ormond formed OFB Ventures, LLC (“OFB”), a Delaware limited liability company. (ECF No. 48.6 (providing the application with the Secretary of State to do business in North Carolina).) Ormond did not inform Plaintiffs that he formed OFB. (Ormond Dep. 66:16–22; Second Aff. Sherry Worley ¶ 4, ECF No. 48.2 [“2d Worley Aff.”].)

28. Even though OOG had previously transferred \$1,000,000.00 to Smith as a down payment on the transaction purchasing New Hope's assets, (Ormond Aff. ¶¶ 54–55), Ormond ultimately purchased the assets of New Hope through OFB, (Fourth Aff. Fred Monroe ¶ 9, Ex. 7, ECF No. 102.4 [“4th Monroe Aff.”] (providing the asset purchase agreement)). OFB and New Hope executed an asset purchase agreement on 21 November 2023. (Shawn Wiggins Aff. ¶ 14, ECF No. 68.2.) The record demonstrates that Ormond now oversees both OOG and OFB. (Ormond Dep. 43:9–16.)

29. Ormond testified that three percent (3%) of OFB's business is selling fuel to agriculture customers with the remaining ninety-seven percent (97%) to residential customers, whereas OOG sells fifty percent (50%) of its fuel to residential customers and fifty percent (50%) to agricultural customers, if slightly more to its agricultural customers. (Ormond Dep. 34:3–16.) Additionally, OOG's Chief Financial Officer, Shawn Wiggins (“Wiggins”), maintains the financial books and records for both OOG and OFB, but is only paid by OOG. (Ormond Dep. 54:1–55:11.)

2. Document Production Prior to and During this Action

30. On 20 September 2023, Plaintiffs provided Ormond notice of a special meeting of the OOG and OSS Board of Directors to be held 25 September 2023. (Compl. Exs. A–B, ECF No. 3.2 [“Compl. Ex(s).”].) Within that notice, Plaintiffs also requested corporate records, including: (1) any documents containing the terms or proposed terms of an agreement or proposed agreement for the purchase of New Hope; (2) a list of assets that Ormond or OOG proposes to purchase from New Hope;

(3) “[d]ocumentation of any other companies[’] [or Ormond’s] involvement in the purchase of New Hope Gas/Oil’s assets that is outside of [OOG’s] purchase of assets;” and (4) year-to-date balance sheet and income statements for OSS. (Compl. Exs. A–B.)

31. After communications with Ormond about his inability to attend the 25 September meetings, (Ormond Aff. ¶¶ 59–61), Plaintiffs rescheduled the meetings to 27 September 2023, issuing notices with offers for Ormond to call in to the meeting if he could not attend in person, (*see* Compl. Exs. C–D). Each of the notices of special meeting were signed by Plaintiffs as directors and officers of the Ormond Companies, and the notices for the rescheduled meeting contained the same document inspection requests. (*See* Compl. Exs. A–D.)

32. Ormond testified that, while he received the notices for the upcoming Board meetings, which contained document requests, he did not provide Plaintiffs with the requested documents at the time. (Ormond Dep. 138:9–19, 139:19–41:19.)

33. On 27 September 2023, there was a special meeting of the OOG and OSS Board of Directors, at which Plaintiffs were in attendance but Ormond was not, by phone or otherwise. (Compl. Exs. F–G.) No documents were produced prior to that meeting, but they were requested again through Plaintiffs’ counsel on 28 September 2023. (*See* Compl. Exs. J–K.) Plaintiffs’ counsel asked that the documents be made available for inspection within five (5) days of that follow-up letter. (*See* Compl. Exs. J–K.)

34. On 6 October 2023, Worley issued another document demand to OOG with an initial inspection and copying date of 11 October 2023. (Compl. Ex. L.) On 9 October 2023, Ormond, through counsel, indicated that inspection would not occur on 11 October 2023, but that “documents requested would be produced later after being scanned and bates labeled.” (Compl. ¶ 72.)

35. This action was initiated on 12 October 2023. (*See* Compl.)

36. The Court held a hearing in this matter on 8 November 2023, following the filing of Plaintiffs’ Motion for Injunctive Relief, and in the Alternative, for Appointment of Independent Person to Lead Special Committee(s) and Make Certain Determinations on Derivative Claims. (*See* ECF Nos. 10, 16.) The Court entered an Order on that motion on 30 November 2023 (the “30 November Order”). (*See* 30 Nov. 2023 Order, ECF No. 27 [“30 Nov. Order”].)

37. In the 30 November Order, the Court, in relevant part, granted Plaintiffs’ motion to permit inspection of the corporate documents requested on 20 September 2023, 27 September 2023, and 6 October 2023. (30 Nov. Order at 16.) The Ormond Companies were required to make complete production of records requested, to the extent they exist and were in their possession, on or before 15 December 2023.³ (30 Nov. Order at 17.)

38. Following the 30 November Order, on 11 December 2023 Plaintiffs’ counsel emailed Worley’s director’s demand for records to Defendants’ counsel, whereby

³ Wiggins affirmed to the Court that the Ormond Companies “produce[d] all the documents plaintiffs’ [sic] have requested that exist except First Citizens Bank . . . account statements from 31 December 2020 through 2021.” (Aff. Shawn Wiggins ¶ 8, ECF No. 34 (emphasis removed).)

Worley sought a number of additional OOG records, requesting production within ten days of her request. (4th Monroe Aff. ¶ 2, Ex. 1.) Plaintiffs' counsel sent a follow up communication to Defendants' counsel on 4 January 2024 when those records were not received. (4th Monroe Aff. ¶ 3, Ex. 2.) As of 26 January 2024, Plaintiffs had received no responsive documents. (4th Monroe Aff. ¶ 4; *see also* 2d Worley Aff. ¶ 3.)

39. On 26 January 2024, Plaintiffs filed a motion to compel related to the 11 December 2023 records demand. (*See* ECF No. 47.) Plaintiffs also sought an order from the Court requiring Defendants to fully comply with the Court's 30 November Order. (*See* ECF No. 47.) That motion represented that Plaintiffs *still* had not received all information required by the Court's 30 November Order, including financial statements of the Ormond Companies and QuickBooks access. (ECF No. 47.)

40. On 10 April 2024, the Court reaffirmed the 30 November Order by stating that, "to the extent they have not done so already, the Ormond Companies shall produce to Plaintiffs' counsel the above-described categories of documents, to the extent they exist and are in the Ormond Companies' possession, on or before 30 April 2024." (10 Apr. 2024 Order at 7, ECF No. 101.)

41. It appears from the financial records produced to Plaintiffs that on or about 7 November 2023, OOG purchased a crane truck from OFB for \$225,000.00. (Ormond Dep. 202:25–03:19.) On 26 April 2024, Worley, through counsel, sent a records demand to Ormond's counsel, requesting in relevant part: (1) the title to the crane truck OOG purchased from OFB; (2) all documents that describe or reference the

vehicle identification number, make, and model of the crane truck; and (3) all documents that describe or reference the value of the crane truck. (Fourth Aff. Sherry Worley ¶¶ 2–3, Ex. 1, ECF No. 122.4.) Worley still had not received the demanded documents on 16 May 2024. (Fourth Aff. Sherry Worley ¶ 3, ECF No. 122.4.)

42. At the Hearing, Defendants’ counsel represented to the Court that the information requested by Worley on 26 April 2024 still had not been produced by OOG.

3. Other Relevant Transactions and Expenditures

43. It appears that OOG loaned money to Ormond and his wife, Renea Ormond, and vice versa, but that there were no written loan agreements documenting those transactions. (Compl. ¶¶ 29–30.) Plaintiffs also allege that Ormond has engaged in self-dealing transactions, such as the leasing by separate companies Ormond owns or controls of bulk propane storage tanks to OOG for his own benefit, to OOG’s detriment. (Compl. ¶¶ 35–37.) It appears that Ormond caused OOG to prepay rent on those tanks for an entire calendar year on at least one occasion. (*See* Ormond Dep. Ex. 5, ECF No. 95.4 (\$61,200.00 check from OOG to R.E.S. Investors and \$104,000.00 check from OOG to Ormoco, LLC).)

44. Ormond formed Ormond Energy Investors, LLC (“OEI”) on 31 August 2023. (Aff. Herbert Owens Davis, Jr. Ex. 12, ECF No. 102.5 [“Davis Aff.”] (providing the Articles of Incorporation filed with the North Carolina Secretary of State).) Ormond did not disclose this to Plaintiffs. (2d Worley Aff. ¶ 4.) The record demonstrates that OOG issued a check in the amount of \$5,000.00 to OEI on 11 September 2023 with

the memo line stating that it was a loan to OEI.⁴ (Davis Aff. ¶ 12, Ex. 13; 4th Monroe Aff. Ex. 4 (providing the First Citizens Bank records for OEI).) OEI thereafter transferred \$50,000.00 to an account of OFB on 9 November 2023. (4th Monroe Aff. Ex. 4 (providing the First Citizens Bank records for OEI).)

45. Around the time of the 25 September 2023 meetings, Ormond went on a trip to Florida, which was originally represented by Ormond to be for a propane conference, but the conference actually occurred one week before Ormond's trip. (*See* Ormond Dep. 142:16–47:4, 148:1–18, 149:10–14.) Ormond testified that, as a result, OOG paid for his plane ticket for a vacation trip to Florida in September 2023. (Ormond Dep. 144:24–45:4, 146:6–22.)

46. As discussed, Ormond oversees the operations of both OOG and OFB. (Ormond Dep. 43:1–16.) Ormond testified that he did not know whether title for the crane truck purchased by OOG was vested in OFB at the time of the purchase, since the crane truck was purchased by OFB from New Hope and that deal with OFB had not yet closed. (Ormond Dep. 204:20–07:23.) Neither side has presented evidence as to the value of the crane truck or whether this purchase was the result of a reasonable, independent valuation.

47. Further, in 2023, Ormond, Renea Ormond, and Wiggins received one-time bonuses from OOG when Ormond, without board approval, paid himself a \$205,000.00 bonus, his wife a \$10,000.00 bonus, and Wiggins a \$100,000.00 bonus.

⁴ Ormond testified that this loan was for the purpose of opening an account that would permit operations to flow from New Hope. (Ormond Dep. 193:17–25.) It is not clear from the record whether the \$5,000.00 loan was repaid.

(Ormond Dep. 230:14–33:1, 233:23–34:19.)⁵ Wiggins’s bonus was \$15,000.00 more than his annual salary of \$85,000.00. (Ormond Dep. 233:23–34:19, 235:14–16.)

CONCLUSIONS OF LAW

48. The NCCRA provides that

[a] limited receiver may be appointed before judgment to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, if the property or its rents and profits is being subjected to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction.

N.C.G.S. § 1-507.24(c).

49. Further, a limited or general receiver may be appointed in a number of situations, including when a company is the subject of an action for dissolution, or “in other cases as provided by law and equity.” *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 576 (1981); N.C.G.S. § 1-507.24(e)(8). Under North Carolina law, a receiver may be appointed for a going, solvent company “only in rare and drastic situations.” *Williams v. Liggett*, 113 N.C. App. 812, 816 (1994).

50. “In addition to the statutory bases for appointing a receiver, the Court has the inherent authority to do so.” *Howard v. IOMAXIS, LLC*, 2024 NCBC LEXIS 15, at *26 (N.C. Super. Ct. Jan. 25, 2024) (collecting cases where allegations of corporate mismanagement and malfeasance was at issue and the Court appointed, or should have appointed, a receiver). And, this Court has held that appointing a receiver may be appropriate where “there is a lack of transparency with respect to financial

⁵ Ormond testified that Renea Ormond does not have a formal job title at OOG, but that she is responsible for getting the mail and checks, posting onto customer accounts, and putting information into the Cargas computer database. (Ormond Dep. 233:2–17.)

information.” *Id.* at *26–27 (citing *Lowder*, 301 N.C. at 577 (appointing receiver where there was evidence of diversion of corporate funds and refusal to permit inspection of corporate books, “at least when such a refusal occurs in combination with the existence of other grounds.”), and *Blueprint 2020 Opportunity Zone Fund, LLLP v. 10 Academy Street QOZB 1, LLC*, 2023 NCBC LEXIS 49, at *11–13 (N.C. Super Ct. Mar. 9, 2023) (appointing a receiver to investigate evidence of improper self-dealing, dramatic reduction of corporate cash assets without explanation, and failure to respond to members’ request for information)).

51. The parties to this suit dispute (1) the adequacy of the Ormond Companies’ financial records and Ormond’s willingness to produce those records to Plaintiffs in their role as directors, (2) Ormond’s use of company funds for personal use, and (3) the Ormond Companies’ ability to continue doing business throughout the pendency of this litigation. For that reason, the Court concludes that a receiver with certain limited authority should be appointed on an initial and interim basis to assess the financial records and condition of the Ormond Companies and to advise the Court regarding evidence pertaining to Plaintiffs’ allegations of Ormond’s financial misconduct.

52. The parties, through their counsel, provided the Court with the names and qualifications of eight proposed receivers. (*See* ECF Nos. 133–36.) The Court has carefully studied the materials provided by the parties regarding the background, education, training, and experience of the individuals proposed by the parties and

held the Supplemental Hearing on 8 July 2024 to discuss the parties' respective candidates.

53. As a result of the information and arguments made and provided, the Court, in its discretion, determines that Plaintiffs are entitled to appointment of a limited receiver and that the receiver should be Kevin L. Sink of Waldrep, Wall, Babcock & Bailey, PLLC. The Court understands, based on representations made by Plaintiffs' counsel, that Kevin L. Sink has agreed to serve as a limited receiver in this matter for a defined and limited period of time and agrees to accept compensation later found by the Court to be reasonable under the circumstances pursuant to the factors set forth in N.C.G.S. § 1-507.31, plus reasonable expenses. Kevin L. Sink has also confirmed, through Plaintiffs' counsel, that he is available to begin the undertaking as Receiver immediately and understands that the Receivership will continue for a four-week term.

54. It appears to the Court from the information provided that Kevin L. Sink (the "Receiver") is knowledgeable and experienced in handling receivership matters, is independent as to any party in interest, and without an interest in the matter. (*See* ECF Nos. 133, 133.3.)

55. The Receiver is not a debtor, secured or unsecured creditor, lienor of, or holder of any equity interest in, any party in interest or of the proposed receivership property. (*See* ECF Nos. 133, 133.3.)

56. Following the filing of this Order, the Court asks that Kevin L. Sink, as Receiver, file an affidavit on the record affirming each of the following: (1) neither he,

nor the individuals retained by him in his role as Receiver, who perform services related to the receivership established herein, has ever been convicted of a felony or other crime involving moral turpitude, nor has he ever been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct; (2) he has not participated in any action that constitutes a violation of N.C.G.S. § 23-46; and (3) he is qualified to serve as receiver for this matter in accordance with § 1-507.25(a) of the NCCRA.

57. As a result of the disputed allegations and evidence related to the alleged financial misconduct in this case, the Court concludes that Plaintiffs are entitled to the appointment of Kevin L. Sink as a limited receiver of the Ormond Companies with the powers and authorities as set forth herein.

C. Conclusion

58. **THEREFORE**, based on the foregoing findings of fact and conclusions of law, the Court, in its discretion, hereby **GRANTS** in part the Motion and **ORDERS** as follows:

59. Kevin L. Sink is hereby appointed as limited receiver for the Ormond Companies effective upon the entry of this Order.

60. The Receiver will serve for an initial term of four (4) full weeks, with weekly reports to be submitted to the parties and the Court, on the Friday of each week, with the first report to be submitted on 19 July 2024, and continuing for the three subsequent Fridays thereafter. The Receiver will meet with the Court at the end of the initial four-week term, on or about 9 August 2024, and inform the Court

regarding: (a) the suitability, quality, and accuracy of the financial and accounting records of OOG and OSS; (b) the financial status of OOG and OSS, including whether OOG and/or OSS is or appears to be insolvent or in imminent danger of insolvency; (c) whether Ormond has engaged in one or more transactions that are or appear to constitute self-dealing with the assets of OOG and/or OSS; and (d) whether in the Receiver's professional opinion the receivership needs to continue beyond its initial term and/or needs to be converted from a limited to a general receivership. The Receiver's investigation should include consideration of Plaintiffs' specific contentions of financial and managerial misconduct on Ormond's part, including but not limited to Plaintiffs' allegations regarding loans made and bonuses, rent, and other benefits paid by the Ormond Companies to Ormond, Renea Ormond, Wiggins, Plaintiffs, or any other companies or entities owned, in whole or in part, by Ormond or his wife, and OOG's purchase of a crane truck from OFB.

61. As a result of the limited nature of the Receivership, the management of the Ormond Companies shall remain vested solely in the current management, which the Court understands to be Plaintiffs and Ormond. Notwithstanding their role as directors of the Ormond Companies, all financial action taken by the Ormond Companies, including the expenditure of funds, the incursion of any debt, and the distribution of any assets, must be disclosed to the Receiver at least forty-eight (48) hours in advance. The Receiver may, through counsel or otherwise, file with the Court, either on the public record or provisionally under seal in accordance with Business Court Rule 5.2, any documents reasonably necessary in the Receiver's

opinion to alert the Court to activity by the Board or officers of the Ormond Companies that the Receiver believes is not in the best financial interest of the Ormond Companies.

62. The Receiver shall, during the pendency of this action, have the right to apply to this Court for further instructions, directions, or authority.

63. The Receiver's duties shall include:

- a. Reviewing the Ormond Companies' books, records, accounts, and any other financial information maintained by or on behalf of the Ormond Companies as is necessary to conduct a thorough forensic accounting of the Ormond Companies' financial records. This information includes, but is not limited to, all of the Ormond Companies' financial, accounting, tax, and banking records. The Receiver shall have the authority to conduct any financial analysis at such times and places as he determines in his sole discretion;
- b. Investigating any expenses that were for personal use and any diversion of the Ormond Companies' funds, assets, or revenue streams;
- c. Investigating and reviewing inventory of the Ormond Companies, including documents and conduct relating to the leasing and maintenance/repair of oil tanks, other purchase orders, and invoices;
- d. Investigating and reviewing: (1) the documents and conduct surrounding the \$225,000.00 transaction for a crane truck purchased by OOG from OFB, as formerly owned by New Hope, including the fair market

value of the truck, who is vested with title to the truck, and when ownership of the truck changed hands; (2) the \$50,000.00 transferred from OEI to the bank account owned by OFB, (*see* 4th Monroe Aff ¶ 6, Ex. 4 at 11); and (3) the \$1,000,000.00 payment from OOG to Smith for the purchase of New Hope and the return of some or all of that sum, including the review of any available documents, due diligence, and terms of that proposed transaction; and

e. Submitting a weekly report to the Court summarizing the Receiver's tasks and the financial condition of the Ormond Companies, which includes any interim or final findings of the Ormond Companies' financial condition and any additional information the Receiver deems necessary. In preparing these reports, the Receiver shall use generally accepted accounting principles ("GAAP") and rely on his professional judgment and experience.

64. The Ormond Companies, including its officers, directors, and shareholders, shall have all the duties provided under N.C.G.S. § 1-507.30, including the obligation to:

a. Assist and cooperate fully with the Receiver in the administration of the receivership and the discharge of the Receiver's duties and to comply with all rules and orders of the Court;

b. Make available to the Receiver, promptly upon the Receiver's appointment, all the financial property in the Ormond Companies' possession, as more fully outlined below; and

c. Promptly supply to the Receiver information as requested relating to the administration of the receivership and the financial property, including information necessary to complete any reports or other documents that the Receiver may be required to file with the Court.

65. Each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over or affect the affairs of either of the Ormond Companies (collectively, the “Responsible Parties”) shall promptly comply with N.C.G.S. § 1-507.30(b) and shall perform the duties set forth therein, in addition to those duties otherwise conferred by statute or order of the Court, shall fully cooperate with the Receiver in the administration of the receivership and are hereby enjoined from knowingly interfering with the Receiver or his duly appointed agents or representatives in connection with the financial investigation and analysis, and from interfering with the operations of the Receiver as herein authorized.

66. In accordance with their obligations under N.C.G.S. § 1-507.30, the Responsible Parties are hereby **ORDERED** to comply with the reasonable requests of the Receiver for information regarding the operation and financial affairs of the Ormond Companies. In addition to other information requested by the Receiver, the Responsible Parties shall provide the Receiver no later than seven (7) days after the entry of this Order documentation regarding all transactions of both of the Ormond Companies where funds were received or disbursed by the Ormond Companies from 1 January 2022 to the present. Such documents shall, at a minimum, identify the following: (a) date; (b) amount; (c) person(s) to whom funds are transferred and/or

from whom received; (d) the reason and basis for the transfer or receipt; and (e) whether the identified person is an affiliate of any of the Responsible Parties (and if so, which one(s)). The Responsible Parties shall promptly respond to any follow-up, periodic, or ongoing inquiries from the Receiver regarding the Receiver's investigation.

67. The Responsible Parties are hereby **ORDERED** to promptly make available to the Receiver all financial property of the Ormond Companies within the Responsible Parties' possession, custody, or control, including, without limitation, all books and records, electronic data, access codes, statements of accounts, deeds, titles, or other evidence of ownership, financial statements, financial and lien information, bank account statements, bank accounts, deposits, tax returns, checkbooks, ledgers, accounts payable and accounts receivable records, contracts, agreements, insurance policies and certificates, invoices, and all other papers and documents related to the financial operations of either of the Ormond Companies (collectively, the "Financial Property"). This obligation of the Responsible Parties to turn over Financial Property to the Receiver shall be ongoing and shall apply equally to any financial property of the Ormond Companies which the Responsible Parties receive or obtain after the entry of this Order. The Receiver shall analyze and investigate the Financial Property of the Ormond Companies and assess the present and future financial well-being of the Ormond Companies.

68. All Responsible Parties are further **ORDERED** to promptly turn over or make available to the Receiver all records of receivables, earnings, revenues, rents,

issues, profits, royalties, income, deposits, or other sums payable resulting from the Ormond Companies' assets or operations, and are further ordered and directed to promptly turn over or make available to the Receiver all records of warranties, books, contracts, insurance policies, leases, and other documents and records relating to the Ormond Companies' assets, or the management, operation, protection, maintenance and/or preservation thereof, including, but not limited to, all mail received. The Receiver shall give appropriate receipts for any documents provided to it by a Responsible Party, if requested.

69. The Receiver is authorized to serve this Order on all the financial institutions that maintain any of the Ormond Companies' bank accounts or financial assets (or its agents holding funds) or with whom the Ormond Companies has a lender/borrower relationship, or a lessor/lessee relationship, and any such financial institution and any other persons in active concert or participation with the Ormond Companies shall take such steps as are necessary to promptly provide the Receiver with necessary Financial Property within their possession as requested by the Receiver. Any financial institution maintaining the Ormond Companies' bank or investment accounts shall upon the Receiver's request provide to the Receiver a complete listing of account numbers. For each such account, the financial institution shall upon the Receiver's request promptly provide the Receiver the current balance for each account and weekly bank or account statements, or if weekly statements are not available, the most frequent periodic statements, (and details of any such transactions as requested) for a period of up to four (4) weeks after entry of this Order.

70. All Responsible Parties, persons, firms, and corporations are **RESTRAINED** and **ENJOINED** from interfering with the Receiver in the performance of the Receiver's duties or from soliciting or accepting the Ormond Companies' assets or proceeds from any person or entity except for prompt deposit into the proper accounts of the Ormond Companies.

71. The Receiver shall review any obligations owed by the Ormond Companies to third parties and include the Receiver's findings as to Ormond Companies' obligations in the weekly reports submitted to the Court.

72. The Receiver may employ accountants, attorneys, and other professionals at reasonable rates, as reasonably necessary to assist in carrying out its duties, pursuant to N.C.G.S. § 1-507.31. The Receiver shall do so, as needed, but shall bear in mind in making decisions regarding the employment of other professionals that he should exercise his discretion to spend responsibly and avoid retaining professionals in excess which may result in a wasting of the Ormond Companies' assets.

73. In accordance with N.C.G.S. § 1-507.31, and subject to any procedural safeguards and reporting the Court may subsequently order, the Receiver and any other professionals retained to provide services to the Receivership are to be paid from the Receivership. The Ormond Companies shall fund the Receivership, absent any further orders from this Court to the contrary. The Receiver's fees and expenses shall be paid following notice to all parties to this action, an opportunity to respond, and approval of such fees and expenses by the Court, subject to N.C.G.S. § 1-507.51, pursuant to the following process:

- a. The Receiver shall prepare, file, and serve request for payment, with invoices, for the Receiver's fees and expenses, within seven (7) days following the four-week initial limited receivership period;
- b. The Receiver's fees must be task-billed, with separate entries for each separate and individual task performed by any individual, the date of such task, a description of each task, the amount of time expended performing the task, and a designation of whether the task involves legal or non-legal services;
- c. Any party wishing to object to the amount of the Receiver's invoice, or any entry therein, shall file and serve the written objection within four (4) business days following the service of the Receiver's request for payment; and
- d. The Court will enter an order regarding an award of fees and expenses following the filing of the request for payment and the receipt of any objections.

74. This Order shall be effective immediately upon entry.

75. The Receiver shall post a bond or other proper undertaking in the amount of \$5,000.00 with the Johnston County Clerk of Superior Court to secure his performance in this matter within seven (7) days of the entry of this Order. *See* N.C.G.S. § 1-507.26(b). The Receiver shall promptly file a notice with the Court once the bond is posted and shall file with the Court a receipt showing the undertaking or deposit made with the Clerk of Superior Court.

76. The Receiver shall be deemed discharged only upon an entry of an order discharging the Receiver; provided only that as a condition precedent to discharge, the Receiver must have filed with the Court and served on all parties a final report satisfactory to the Court. *See* N.C.G.S. § 1-507.37(b)–(d).

77. To the fullest extent allowed under applicable law, the Receiver and the employees, agents, accountants, and other professionals hired by the Receiver shall be entitled to all defenses and immunities provided by North Carolina law for all acts and omissions within the scope of the Receiver’s appointment.

78. To the fullest extent allowed under applicable law, neither the Receiver nor the employees, agents, accountants, and other professionals hired by the Receiver may be sued personally for any act or omission in administering receivership property without the approval of this Court, as set forth in N.C.G.S. § 1-507.27.

79. The Court shall retain jurisdiction and supervision of all matters concerning the Receiver and the receivership.

80. Shortly following entry of this Order, the Court will notify the Receiver by email of his appointment, attaching this Order, with copy to all counsel.

81. Except as expressly granted, the Motion is otherwise **DENIED** without prejudice.

SO ORDERED, this the 11th day of July, 2024.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases