

STATE OF NORTH CAROLINA  
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
25CV001756-120

JOSEPH MYERS, Individually and  
Derivatively on Behalf of TIER 1  
HOME SOLUTIONS, LLC,

Plaintiff,

v.

TIER 1 HOME SOLUTIONS, LLC;  
KRISTOPHER GARRETT AUSTIN;  
and TIER 1 BATH SOLUTIONS,  
LLC,

Defendants.

**CONSENT ORDER UPON  
DEFENDANTS' MOTION TO DISMISS**

1. **THIS MATTER** is before the Court following the 5 May 2025 filing of *Defendants' Motion to Dismiss* (the Motion). (ECF No. 11 [Mot].)

2. Defendants, through the Motion, seek the dismissal of Plaintiff's Verified Complaint, (ECF No. 3), pursuant to Rules 12(b)(1) and (6) of the North Carolina Rules of Civil Procedure. (Mot. 1.)

3. Plaintiff Joseph Myers (Plaintiff) filed the Verified Complaint on 4 March 2025, alleging derivative claims on behalf of Tier 1 Home Solutions, LLC (Tier 1) against Defendant Kristopher Garrett Austin (Defendant Austin) as well as direct claims against all Defendants.

4. Plaintiff and Defendant Austin are the sole members of Tier 1 and have equal ownership interests in Tier 1. Tier 1 was dissolved on 4 March 2025.

5. On 21 May 2025, the parties jointly submitted a proposed Consent Order Upon Defendants' Motion to Dismiss (the Proposed Consent Order) which the parties intend to fully resolve the Motion. (ECF No. 14.)

6. Having considered the Motion and the Proposed Consent Order, and with the consent of counsel for all parties, as evidenced below, the Court hereby **GRANTS** in part and **DENIES** in part the Motion as set forth herein.

7. The parties have, through counsel, agreed to the dismissal of the derivative claims filed on behalf of Tier 1, which include: (1) breach of fiduciary duty (Count Three) and (2) conversion (Count Four).

8. Pursuant to N.C.G.S. § 57D-8-04, “[a] derivative proceeding may not be discontinued or settled without the court’s approval.” N.C.G.S. § 57D-8-04(a). “To discontinue a derivative process, [a] Plaintiff must obtain approval from the Court . . . and the Court’s order must dismiss the derivative claims upon such terms and conditions as justice requires.” *Morgan v. Turn-Pro Maint. Servs., LLC*, 2017 NCBC LEXIS 228, at \*3 (N.C. Super. Ct. Aug. 29, 2017) (cleaned up).

9. “Although courts in North Carolina have set forth factors for the courts to consider when a plaintiff seeks to settle a derivative action, these factors are not relevant when the Court is seeking to determine if the interests of the shareholders or members will be substantially affected by the discontinuance of the derivative proceeding[.]” *Id.* at \*4.

10. Upon review of the Verified Complaint, the Motion, the Proposed Consent Order, and other appropriate matters of record, the Court concludes that continuance of the derivative proceeding is not in the best interests of Tier 1 and the discontinuance of the derivative claims will not substantially affect the interests of

the members of Tier 1 as Plaintiff and Defendant Austin, the sole members of Tier 1, have agreed to the dismissal of the derivative claims.

11. Therefore, the Court hereby **GRANTS** in part the Motion with respect to Counts Three and Four and those claims are **DISMISSED** with prejudice.

12. Except as herein granted, and with the consent of the parties, the Motion is otherwise **DENIED**.

13. The parties shall bear their own costs and attorneys' fees in relation to the Motion.

14. No award of expenses shall be granted pursuant to N.C.G.S. § 57D-8-05.

**SO ORDERED**, this the 22nd day of May, 2025.

/s/ Michael L. Robinson

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Michael L. Robinson  
Chief Business Court Judge

WE CONSENT:

**FOR PLAINTIFFS:**

**MORETZ LAW GROUP, P.A.**

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