

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV004552-910

BIOGAS CORP.; NC BIOGAS, LLC;
and LAKESIDE BIOGAS, LLC,

Plaintiffs and
Counterclaim Defendants,

v.

NC BIOGAS DEVELOPMENT,
LLC; ERIK M. LENSCH; LEYLINE
RENEWABLE CAPITAL, LLC;
WINDSTAR BIOGAS I MASTER,
LLC; SAN DIEGO AD PLANT
LLC; SAN DIEGO AD PLANT II
LLC; VICOMTE SOLAR, LLC, and
NEW YORK AD, LLC,

Defendants and
Counterclaim Plaintiffs,

v.

S. ANWAR SHAREEF,

Counterclaim Defendant.

**ORDER FOLLOWING SHOW
CAUSE HEARING**

1. **THIS MATTER** is before the Court following the Court's 22 January 2025 *Order to Show Cause* (Show Cause Order), (ECF No. 83 [Order]), and the related 13 May 2025 hearing, (the Show Cause Hearing), (*see* ECF No. 90). The Show Cause Order required Plaintiffs to show cause why the Court "should not hold them in civil contempt for their alleged violation of the" 12 June 2024 Consent Order on Counterclaim Plaintiff NC Biogas Development LLC's Motion for Temporary Restraining Order and Preliminary Injunction (the Consent Order), (ECF No. 44 [Consent Order]). (Order ¶ 18.a.)

2. The Court, having considered the evidence presented at the Show Cause Hearing, the arguments of counsel at the Show Cause Hearing and through written briefing, and other relevant matters of record, **FINDS** and **CONCLUDES** as follows:

A. Findings of Fact¹

3. Defendants and Counterclaim Plaintiffs made two loans to Plaintiff BioGas Corp. in connection with a renewable energy project in Monroe, North Carolina (the Monroe Project). Specifically, Defendant NC Biogas Development, LLC (NCBD) loaned \$150,000 (the NCBD Note) and Defendant Erik Lensch loaned \$55,000 (the Lensch Note). (Defs.' Ans. & Countercl. ¶ 5, ECF No. 5 [Ans. & Countercl.]; Ans. & Countercl. Exs. A–C, E–H; Reply ¶¶ 5–6, 8, 11–12, 14, ECF No. 25 [Reply].) However, neither the NCBD Note nor the Lensch Note were paid when due. (Ans. & Countercl. ¶¶ 9–10, 15–16; Reply ¶¶ 9–10, 15–16.)

4. Under the terms of the NCBD Note, NCBD was granted “step-in rights,” which under certain circumstances allowed NCBD to take over BioGas Corp.’s development activities related to the Monroe Project. (Compl. ¶ 43, ECF No. 3; Ans. & Countercl. ¶ 38; Ans. & Countercl. Ex. C at ¶ 9; Reply ¶ 38.)

5. In February 2023, NCBD gave BioGas Corp. notice that it was invoking its step-in rights. (Compl. ¶ 54; Ans. & Countercl. ¶ 40; Ans. & Countercl. Ex. X.)

¹ To the extent the Court’s findings of fact are more properly considered conclusions of law or vice versa, the finding or conclusion may be properly reclassified. *N.C. State Bar v. Key*, 189 N.C. App. 80, 88 (2008) (“[C]lassification of an item within [an] order is not determinative, and, when necessary, the appellate court can reclassify an item before applying the appropriate standard of review.”).

6. In March 2023, Plaintiffs and Counterclaim Defendants filed this lawsuit. (*See* Compl.) Certain of Plaintiffs and Counterclaim Defendants' claims relate to NCBD's exercise of step-in rights for the Monroe Project, including Count One of Plaintiffs and Counterclaim Defendants' Complaint, which is a claim for a declaratory judgment regarding whether Defendants have a legal interest in the Monroe Project. (Compl. ¶¶ 128–29.) Additionally, Count Two of Plaintiffs and Counterclaim Defendants' Complaint seeks injunctive relief “[p]rohibiting Defendants from exercising [their] step-in rights with the Monroe Project” and “[p]rohibiting Defendants from contacting any third parties regarding the Monroe Project which could reduce the value of the Project.” (Compl. ¶ 131.)

7. In response to the Complaint, Defendants filed an Answer and Counterclaims, (*see* Ans. & Countercl.). Count One of Defendants and Counterclaim Plaintiffs' Counterclaims included a claim for breach of contract based on nonpayment of the NCBD Note and the Lensch Note. (Ans. & Countercl. ¶¶ 5–16.) Count Two of Defendants and Counterclaim Plaintiffs' Counterclaims was for breach of contract by BioGas Corp. for refusing to honor NCBD's exercise of its step-in rights. (Ans. & Countercl. ¶¶ 37–42.)

8. On 4 June 2024, NCBD filed its Motion for Temporary Restraining Order and Preliminary Injunction. (ECF No. 38.) Thereafter, on 12 June 2024, the Court entered the Consent Order, which specifically enjoined Plaintiffs and Counterclaim Defendants, during the pendency of this action, as well as their officers, agents, servants, employees, and attorneys and anyone acting in active concert or

participation with them “from entering into any contract, agreement, or other binding obligation or commitment concerning the Monroe Project without consulting with Counterclaim Plaintiff [NCBD] and obtaining its prior informed written consent to the proposed contract, agreement, or other binding obligation or commitment.” (Consent Order ¶ 1.)

9. On 19 November 2024, Defendants and Counterclaim Plaintiffs brought their Motion for Sanctions, or in the Alternative to Enforce a Settlement Agreement (the Sanctions Motion), which sought an order sanctioning BioGas and Defendant S. Anwar Shareef (Mr. Shareef) for violating the Consent Order by entering into a financing agreement related to the Monroe Project (the Resolution), without obtaining proper consent. (ECF No. 71.)

10. Thereafter, the Court entered its Show Cause Order, which denied the Sanctions Motion; however, the Court ordered that Plaintiffs and Counterclaim Defendants shall show cause “why the Court should not hold them in civil contempt for their alleged violation of the Consent Order.” (Order ¶ 18.a.) Specifically, the Court asked Plaintiffs and Counterclaim Defendants to address “whether (1) their failure to pay Defendants before entering the financing contracts is a violation of the Consent Order, and (2) whether their conduct was willful, such that civil contempt may be a proper remedy under these circumstances.” (Order ¶ 18.a.)

11. After full briefing in accordance with the Show Cause Order, the Court held a hearing on 13 May 2025 (the Hearing), (*see* ECF No. 90), where all parties were represented by counsel.

B. Conclusions of Law

12. Civil contempt proceedings may be initiated by motion of an aggrieved party, N.C.G.S. § 5A-23(a1), or by order of a judicial official upon a finding of probable cause, N.C.G.S. § 5A-23(a). In a civil contempt proceeding, the judicial official is the trier of fact. N.C.G.S. § 5A-23(d). When civil contempt is found, the judicial official must enter an order finding the facts supporting each element of civil contempt and specifying the action by which the contemnor can purge himself or herself of contempt. N.C.G.S. § 5A-23(e).

13. By statute, “[f]ailure to comply with an order of a court is a continuing civil contempt as long as:

- (1) The order remains in force;
- (2) The purpose of the order may still be served by compliance with the order;
- (2a) The noncompliance by the person to whom the order is directed is willful; and
- (3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable the person to comply with the order.

N.C.G.S. § 5A-21(a).

14. “Civil contempt is a term applied where the proceeding is had to preserve the rights of private parties and to compel obedience to orders and decrees made for the benefit of such parties.” *Plasman v. Decca Furniture (USA), Inc.*, 2016 NCBC LEXIS 20, at **7 (N.C. Super. Ct. Feb. 26, 2016) (quoting *O’Briant v. O’Briant*, 313 N.C. 432, 434 (1985)). Upon a finding of civil contempt, the Court’s only remedy is to order imprisonment for “as long as the civil contempt continues, subject to

certain time limitations.” *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at **79 (N.C. Super. Ct. Sept. 3, 2019); *see also* N.C.G.S. § 5A-21(b).

15. Given that “[t]he purpose of civil contempt is not to punish, but to coerce the defendant to comply with the order[.]” *Bethea v. McDonald*, 70 N.C. App. 566, 570 (1984), an order holding a party in civil contempt must specify how the contemnor may purge the contempt. N.C.G.S. § 5A-23(e); *see also Cox v. Cox*, 133 N.C. App. 221, 226 (1999). Once the purge conditions are met, a person imprisoned for civil contempt must be released. N.C.G.S. § 5A-22(a).

16. When, as here, the court has found probable cause and issued a show cause order, the alleged contemnor has the burden of proof to show cause why he or she should not be held in civil contempt. *Cumberland Cnty. ex rel. Ala. O. B. O. v. Lee*, 265 N.C. App. 149, 153 (2019).

1. The Consent Order Remains in Force and the Purpose of the Consent Order Will Be Served by Compliance

17. First, it is undisputed that the first two elements of civil contempt are met in this case; that is, the Consent Order remains in force and the purpose of the Consent Order may still be served by compliance with the Consent Order. (Pls. & Countercl. Defs.’ Memo. Resp. Show Cause Order 2, ECF No. 84 [Pls.’ Resp.])

2. Willful Noncompliance & Ability to Comply with the Consent Order

18. Noncompliance with a court order is only subject to civil contempt if it is willful. N.C.G.S. § 5A-21(a)(2a). Noncompliance with a court order is willful when it involves “either a positive action (a ‘purposeful and deliberate act’) in violation of a court order or a stubborn refusal to obey a court order (acting with ‘knowledge and

stubborn resistance’).” *Hancock v. Hancock*, 122 N.C. App. 518, 525 (1996) (quoting *In re Dinsmore*, 36 N.C. App. 720, 726 (1978)). Willfulness “involves more than deliberation or conscious choice; it also imports a bad faith disregard for authority and the law.” *Id.* at 523 (quotation omitted).

19. It is Plaintiffs and Counterclaim Defendants’ contention that they cannot be held in civil contempt because their noncompliance is “not presently willful” as they have “no ability to void the contracts” and “[w]hile they contend that the two contracts are no longer enforceable based on the failure of the lender to fund the project, they cannot force the lender or the EPC company to agree.” (Pls.’ Resp. 4.) Also, Plaintiffs and Counterclaim Defendants argue they are unable to comply with the Consent Order, as Mr. Shareef “lacks the ability to pay the amounts back[,]” representing that he has “been told on several occasions that the funding will be wired immediately, and Plaintiffs are unable to make the Resolution payment absent the funding.” (Pls.’ Resp. 5.)

20. Defendants and Counterclaim Plaintiffs disagree, arguing that Mr. Shareef’s failure to secure the funds before executing the contracts was willful, and Plaintiffs and Counterclaim Defendants’ ongoing failure to make the required payment is willful. (Defs.’ Resp. Show Cause Order 12, ECF No. 86 [Defs.’ Resp.].) Defendants and Counterclaim Plaintiffs contend Plaintiffs and Counterclaim Defendants’ actions are willful because they “could readily obtain the funds, but have simply chosen not to.” (Defs.’ Resp. 11.) In fact, Defendants and Counterclaim Plaintiffs offer several avenues they believe Mr. Shareef could have taken, but has

chosen not to, to obtain the funds at issue, (*see* Defs.' Resp. 1), and argue that "[a] purported lack of financial resources is not a defense to civil contempt where the party in contempt could get the needed funds but refuses to do so." (Defs.' Resp. 15, 17.)

21. The Court finds that Plaintiffs and Counterclaim Defendants do not have the ability to comply with the Consent Order, as the contracts subject to the Consent Order have already been signed and there is no way to comply with the Consent Order's requirement to obtain Defendants and Counterclaim Plaintiffs' approval as it stands today.

22. However, the Court concludes, in its inherent discretion, and with the consent of BioGas Corp., NC BioGas, LLC, and Mr. Shareef that entry of judgment jointly and severally against BioGas Corp., NC BioGas, LLC, and Mr. Shareef in the amount of \$734,342.47 is an appropriate sanction for the breach of their agreement to pay Defendants and Counterclaim Plaintiffs in connection with obtaining Defendants and Counterclaim Plaintiffs' consent as required under the Consent Order.

23. Therefore, the Court hereby **ENTERS JUDGMENT** against BioGas Corp., NC BioGas, LLC, and Mr. Shareef, jointly and severally, for \$734,342.47 plus interest accrued after 30 May 2025 at the legal rate. This figure represents the amount due on 30 May 2025 by agreement of the parties on the NCBD Note and the Lensch Note, plus a \$410,000 incentive payment that the parties acknowledge was triggered by one of the contracts, all of which Plaintiffs and Counterclaim Defendants agreed to pay

as the condition for NCBD's consent to Plaintiffs and Counterclaim Defendants executing the contracts.

24. Because entry of judgment for the amount due on the NCBD Note and the Lensch Note effectively grants Defendants and Counterclaim Plaintiffs the relief sought in Count One of their Counterclaims as to those notes, Defendants and Counterclaim Plaintiffs are hereby directed to file a voluntarily dismissal of Counterclaim One within twenty (20) days of entry of this Order, insofar as Counterclaim One seeks to recover amounts due under the NCBD Note and the Lensch Note.

25. Defendants and Counterclaim Plaintiffs may still seek attorneys' fees based on the NCBD Note and the Lensch Note to the extent they may be entitled to such relief pursuant to N.C.G.S. § 6-21.2.

26. Upon satisfaction of the judgment entered by the Court, NCBD will no longer have an interest in enforcing its step-in rights for the Monroe Project.

27. Accordingly, if and when Plaintiffs and Counterclaim Defendants satisfy the judgment, the parties are hereby directed to (1) file a notice of satisfaction of judgment on the record in this case, and (2) file voluntarily dismissals of the Monroe-related claims—Counts One and Counts Two of Plaintiffs and Counterclaim Defendants' Complaint and Count Two of Defendants and Counterclaim Plaintiffs' Counterclaims.

28. The judgment entered herein as set forth in paragraph 23 herein, is an interim award and not immediately enforceable by execution or appealable as a final judgment.

29. Except as set forth in this Order—and prior orders of the Court—the parties reserve all claims and defenses.

SO ORDERED, this the 2nd day of June, 2025.

/s/ Michael L. Robinson

Michael L. Robinson
Chief Business Court Judge