

STATE OF NORTH CAROLINA
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 3393

CRAIG R. GORDON,

Plaintiff,

v.

GORDON RECYCLERS, INC. and
GORDON INDUSTRIES, INC.,

Defendants.

**ORDER ON PLAINTIFF'S MOTION
FOR LEAVE TO FILE AMENDED
COMPLAINT**

THIS MATTER is before the Court on Plaintiff Craig R. Gordon's ("Plaintiff") Motion for Leave to File Amended Complaint ("Motion to Amend" or the "Motion," ECF No. 33.)

THE COURT, having considered the Motion, the briefs, and all appropriate matters of record, **CONCLUDES**, in its discretion, that the Motion should be **GRANTED** for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

1. A more detailed summary of the factual and procedural background of this case can be found in the Court's 18 December 2024 Order on Plaintiff's Motion for Preliminary Injunction ("PI Order," ECF No. 26). *See Gordon v. Gordon Recyclers, Inc.*, 2024 NCBC LEXIS 161 (N.C. Super. Ct. Dec. 18, 2024).

2. In a nutshell, this case concerns a dispute as to the rights of Plaintiff, a non-voting shareholder of Defendants Gordon Recyclers, Inc. ("GRI") and Gordon Industries, Inc. ("GII," and together with GRI, the "Companies"), to attend the Companies' annual shareholders' meetings.

3. Plaintiff initiated this action by filing a Complaint for Declaratory Relief (“Complaint,” ECF No. 3) in Iredell County Superior Court on 12 November 2024. Plaintiff’s sole claim for relief requested that the Court enter a judgment “declaring his rights as a shareholder to notice of, and the right to attend, the shareholder meetings” of the Companies.

4. On 11 April 2025, Plaintiff filed the present Motion to Amend and a copy of a proposed Amended Complaint (“Proposed Amended Complaint,” ECF No. 34.1). The Proposed Amended Complaint differs from the original Complaint in that it (1) strikes the factual allegations in paragraph 14 of the Complaint; (2) adds five numbered paragraphs containing new factual allegations; and (3) adds a new prayer for relief that the Court “summarily order shareholder meetings of GRI and GII to be held at their principal offices (each located at 1300 Salisbury Road, Statesville, NC 28625) within 45 days[.]”

5. In seeking this additional relief, Plaintiff contends that the Companies have not held shareholders’ meetings for more than two years and that, as a shareholder, he is entitled to apply for a court-ordered shareholders’ meeting pursuant to N.C.G.S. § 55-7-03. (Proposed Am. Compl. ¶¶ 17–18, 20.)

6. The Motion has been fully briefed and is now ripe for resolution.¹

LEGAL STANDARD

7. Rule 15 of the North Carolina Rules of Civil Procedure states in pertinent part as follows:

¹ Pursuant to North Carolina Business Court Rule 7.4, the Court elects to rule on the Motion without a hearing. *See* BCR 7.4.

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not yet been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

N.C. R. Civ. P. 15(a).

8. Our Supreme Court has held that “[t]here is no more liberal canon in the rules than that leave to amend shall be freely given when justice so requires.” *Vaughan v. Mashburn*, 371 N.C. 428, 434 (2018) (cleaned up). “This liberal amendment process under Rule 15 complements the concept of notice pleading embodied in Rule 8 and reflects the legislature’s intent that decisions be had on the merits and not avoided on the basis of mere technicalities.” *Id.* (cleaned up).

9. Nevertheless, “the [R]ules still provide some protection for parties who may be prejudiced by liberal amendment.” *Henry v. Deen*, 310 N.C. 75, 82 (1984) (cleaned up). “Reasons justifying denial of an amendment include: (1) undue delay, (2) bad faith, (3) undue prejudice, (4) futility of amendment, and (5) repeated failure to cure defects by previous amendments.” *Howard v. IOMAXIS, LLC*, 2021 NCBC LEXIS 116, at *17 (N.C. Super. Ct. Dec. 22, 2021) (cleaned up). “The burden is upon the opposing party to establish that [it] would be prejudiced by the amendment.” *Vitaform, Inc. v. Aeroflow, Inc.*, 2021 NCBC LEXIS 79, at *11 (N.C. Super. Ct. Sept. 16, 2021) (cleaned up).

10. Motions to amend are “addressed to the discretion of the trial court.” *Vaughan*, 371 N.C. at 433 (cleaned up).

ANALYSIS

11. As a preliminary matter, the Court notes that the Motion to Amend has been timely brought.

12. In the Court's Case Management Order (ECF No. 29), which was entered on 12 February 2025, the Court ruled that any motions to amend filed on or before 11 April 2025 could not be opposed on the basis of undue delay.

13. Because Plaintiff filed the Motion within the deadline set forth in the Case Management Order, the Companies are unable to show that the Motion is untimely.

14. Instead, the Companies primarily contend that the Motion should be denied for two reasons—(1) the proposed amendments are futile, and (2) the Companies will suffer undue prejudice if the Motion is granted.

15. The Court will address each of the Companies' arguments in turn.

I. Futility

16. "The futility standard under Rule 15 is essentially the same standard used in reviewing a motion to dismiss under Rule 12(b)(6), but provides the Court liberal discretion to find that an amendment lacks futility." *Simply the Best Movers, LLC v. Marrins' Moving Sys., Ltd.*, 2016 NCBC LEXIS 28, at *5–6 (N.C. Super. Ct. Apr. 6, 2016). "[A] motion to amend is not futile when the allegations of the [amendment], treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not." *Howard v. IOMAXIS, LLC*, 2023 NCBC LEXIS 159, at *15 (N.C. Super. Ct. Nov. 29, 2023)

(cleaned up). On the other hand, “[a] motion for leave to amend is futile and appropriately denied when the proposed amendment could not withstand a motion to dismiss for failure to state a claim.” *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2016 NCBC LEXIS 77, at *6 (N.C. Super. Ct. Oct. 7, 2016) (cleaned up).

17. The Companies’ sole argument concerning the futility of the Proposed Amended Complaint is that an “application” for a court-ordered shareholder meeting under N.C.G.S. § 55-7-03 can only be asserted through a *motion* rather than through a pleading. In support of this argument, the Companies primarily rely on Rule 7 of the North Carolina Rules of Civil Procedure, which states in pertinent part that “[a]n application to the court for an order shall be made by motion[.]” N.C. R. Civ. P. 7(b)(1).

18. N.C.G.S. § 55-7-03 states as follows:

(a) The superior court of the county where a corporation’s principal office (or, if none in this State, its registered office) is located may, after notice is given to the corporation, summarily order a meeting to be held:

(1) On application of any shareholder if an annual meeting of the shareholders was not held within 15 months after the corporation’s last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under N.C.G.S. § 55-7-02, if the corporation does not proceed to hold the meeting as required by that section.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), enter other orders necessary to accomplish the

purpose or purposes of the meeting, and award such reasonable expenses, including attorneys' fees, as it deems appropriate.

N.C.G.S. § 55-7-03.

19. In response to the Companies' argument, Plaintiff cites *In re Special S'holders' Meeting of Phytonix Corp.*, in which this Court considered an application for a court-ordered shareholders' meeting as a stand-alone claim for declaratory relief. 2020 NCBC LEXIS 4 (N.C. Super. Ct. Jan. 11, 2020).

20. In *Phytonix Corp.*, a minority shareholder sought a declaration requiring that a shareholders' meeting of Phytonix Corp. be held. *Id.* at *1–2. This Court ultimately entered the requested declaratory relief pursuant to N.C.G.S. § 55-7-03 and set the time and place for such a meeting to occur. *Id.* Plaintiff notes that the Court's ruling was not predicated on the minority shareholder plaintiff having filed a "motion" for entry of the declaratory relief.

21. Here, the Court similarly concludes that the Companies read Rule 7 too narrowly. Although a motion is the usual procedural vehicle for parties making an application for relief from a court, the Court does not interpret Rule 7 as foreclosing a litigant from seeking a particular form of relief in the manner utilized by Plaintiff in the present case. In short, the Companies' argument would impermissibly elevate form over substance.

II. Undue Prejudice

22. The Companies also contend that the Motion to Amend should be denied because the proposed amendments would improperly disrupt the status quo between

the parties and would result in prejudice to the Companies' rights to defend themselves on the merits in this action. The Court disagrees.

23. “[I]t is not uncommon for a proposed amendment to impact the status quo in a way that the nonmovant oppose[s]. But not every impact constitutes undue prejudice.” *Howard*, 2023 NCBC LEXIS 159, at *14. (cleaned up). A motion for leave to amend “should be freely allowed unless some *material prejudice* to the other party is demonstrated.” *Vaughan*, 371 N.C. at 433 (cleaned up) (emphasis added). “[U]ndue prejudice is not presumed, even when the proposed amendments are extensive.” *Howard*, 2023 NCBC LEXIS 159, at *14.

24. The Companies first assert that the Proposed Amended Complaint requests relief that is inconsistent with this Court's prior rulings in this case. Specifically, the Companies contend that the relief granted in the Court's PI Order is *prohibitory* in nature but that the proposed request for a court-ordered shareholders' meeting requests *mandatory* relief—that is, compelling the Companies to hold shareholders' meetings. These incongruities, the Companies assert, would subject the Companies to inconsistent obligations and impair their ability to defend themselves in this litigation.

25. However, the Court discerns no inconsistency between, on the one hand, its PI Order enjoining GRI from holding any shareholders' meetings *unless* Plaintiff is given at least ten days' notice prior to the scheduled meeting and an opportunity to attend personally or via proxy, and, on the other hand, the request for relief set out in Plaintiff's Proposed Amended Complaint. The Court's PI Order did not preclude

the Companies from holding shareholders' meetings during the duration of this litigation. Rather, it simply ordered that Plaintiff be given notice and an opportunity to attend any such meetings of GRI shareholders.²

26. The Companies further contend that Plaintiff is only seeking a court-ordered shareholders' meeting to "disrupt" and "inconvenience" the Companies. In support of this argument, the Companies point to Plaintiff's recognition in the Complaint that the Companies regularly conduct their annual shareholders' meetings in late December. The Companies contend that Plaintiff is seeking to disrupt the Companies' business operations by forcing them to hold their shareholders' meetings at an atypical time.

27. The Motion currently before the Court, however, is simply a motion for leave to amend the Complaint. Plaintiff has not asked the Court to order that shareholders' meetings take place at a certain time of year.

28. Accordingly, the Companies have failed to demonstrate how they would be unfairly prejudiced if leave to amend is granted.

CONCLUSION

THEREFORE, IT IS ORDERED that Plaintiff's Motion to Amend is **GRANTED**. Plaintiff is **DIRECTED** to file an Amended Complaint in the form found at ECF No. 34.1 within **five (5) days** of the date of this Order.

² Indeed, in the PI Order, the Court expressly stated that GRI is not "categorically bar[red] . . . from holding its annual shareholders' meeting" and that it "is free to conduct its planned shareholders' meetings and comply with the statutory requirements of N.C.G.S. § 55-7-01 *as long as* it provides notice to Plaintiff and allows him the opportunity to attend[.]" *Gordon*, 2024 NCBC LEXIS 161, at *16–17.

SO ORDERED, this the 16th day of June, 2025.

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge for
Complex Business Cases