

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV028702-590

WP CHURCH, LLC, directly on
behalf of itself and derivatively on
behalf of 5CHURCH CHARLESTON,
LLC,

Plaintiff,

v.

PATRICK WHALEN,

Defendant,

and

5CHURCH CHARLESTON, LLC,

Third-Party Plaintiff,

v.

WP CHURCH, LLC, WHITE POINT
PARTNERS, LLC, WPSP
BELVIDERE, LLC, WPSP
MEETING, LLC, ERIK JOHNSON,
JAY LEVELL, RYAN HANKS,

Third-Party Defendants.

**ORDER ON 5CHURCH CHARLESTON
LLC'S MOTION FOR PRELIMINARY
INJUNCTION**

THIS MATTER is before the Court on Third-Party Plaintiff 5Church Charleston, LLC's ("5Church") Motion for Preliminary Injunction ("PI Motion," ECF No. 23.)

THE COURT, having considered the PI Motion; the briefs, affidavits, and other submissions of the parties; the arguments of counsel; and all applicable matters

of record, **CONCLUDES**, in its discretion, that the PI Motion should be **DENIED** for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Court's factual findings are made solely for purposes of deciding the present PI 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)).

2. 5Church is a South Carolina limited liability company, which was formed in 2014 to operate a restaurant called Church and Union in the downtown area of Charleston, South Carolina. (Compl. ¶¶ 8, 13, ECF No. 3.)

3. Third-Party Defendant WP Church, LLC ("WP Church") is a North Carolina limited liability company and was a founding member/investor of 5Church. WP Church currently owns a 35% interest in 5Church. (Compl. ¶¶ 6, 8, 13.)

4. Third-Party Defendants White Point Partners, LLC ("White Point"), WPSP Belvidere, LLC ("WPSP Belvidere"), and WPSP Meeting, LLC ("WPSP Meeting" and, collectively, the "Affiliates") are entities who are affiliated with WP Church. (Johnson Decl. ¶ 2, ECF No. 40.1.)

5. Third-Party Defendant Erik Johnson is a manager of WP Church and of each of the Affiliates. (Johnson Decl. ¶¶ 1–2.)

6. Third-Party Defendants Jay Levell and Ryan Hanks are managers of one or more of the Affiliates. (Am. Third-Party Compl. ¶¶ 7–8, ECF No. 16.)

7. Patrick Whalen was a founder of 5Church and currently serves as its managing member. (Whalen Decl. ¶¶ 3,5, ECF No. 24.36.) Whalen currently has a 40% ownership interest in 5Church. (Compl. ¶ 8.)

8. At its 2014 founding, the original members of 5Church, including Whalen and WP Church, executed an Operating Agreement (the “Operating Agreement,” Am. Third-Party Compl., Ex. A, ECF No. 16.1.).¹

9. Section 3.10 of the Operating Agreement contains a provision, which in relevant part purports to limit the ability of a “holder”² (or its affiliates) to—directly or indirectly—invest in, own, or control another person operating a restaurant within 25 miles of a restaurant operated by 5Church. (Operating Agreement, § 3.10(a).)

10. On 19 June 2019, WPSP Belvidere purchased a four-acre parcel of land located in Charleston’s Upper Peninsula area. Construction of a mixed-use development on that parcel, now known as The Quin, was completed in 2021 and includes a five-story building with office and retail space and a four-story parking deck. (Ex. H, ECF No. 24.8; Johnson Decl. ¶¶ 8–11.)

11. Currently, there are seven tenants at The Quin, including retail and non-retail businesses. No restaurants are currently operating at The Quin, and no

¹ Executed copies of the Operating Agreement and the First Amendment to the Operating Agreement are attached to the Amended Third-Party Complaint and Crossclaims as Exhibits A and B.

² Section 3.1 of the Operating Agreement states that “[t]he Company’s Membership Interests are represented by one class of units” and that “[e]ach Person who duly holds a Unit, whether as a Member or not, shall be referred to as a **Holder**.” (Operating Agreement, § 3.1.)

executed or proposed leases for restaurants presently exist. (Johnson Decl. ¶¶ 12–14.)

12. On 12 March 2020, WPSP Meeting purchased a 5.6-acre parcel of land, which was formerly a Pepsi distribution plant (the “Pepsi Plant”) and is located adjacent to The Quin. (Ex. K, ECF 24.11; Johnson Decl. ¶ 16.)

13. White Point Partners, LLC, intends to develop the Pepsi Plant with multi-family units and retail space. Construction on the Pepsi Plant has not commenced, and the parcel remains undeveloped. The Pepsi Plant has no tenants, and no lease agreements have been executed. (Johnson Dec. ¶¶ 17–19.)

14. On 10 June 2025, WP Church initiated the present lawsuit, asserting several claims against Whalen both in its own name and derivatively on behalf of 5Church. (Compl. ¶¶ 46–143.)³

15. This case was designated as a complex business case and assigned to the undersigned on 11 June 2025. (ECF Nos. 1–2.)

16. On 24 June 2025, 5Church filed an Amended Third-Party Complaint and Cross Claims, naming as Third-Party Defendants WP Church, White Point Partners, WPSP Belvidere, WPSP Meeting, Johnson, Levell, and Hanks. In its Amended Third-Party Complaint, 5Church asserted the following claims: (1) breach of contract against WP Church; (2) dissociation of WP Church; (3) tortious interference with contractual relations against White Point, WPSP Belvidere, WPSP

³ None of those claims, however, are relevant to the present PI Motion.

Meeting, Johnson, Levell, and Hanks; and (4) declaratory judgment against WP Church. (Am. Third-Party Compl. ¶¶ 69–112.)

17. 5Church filed the present PI Motion on 16 July 2025, seeking a preliminary injunction that would bar the Third-Party Defendants from taking actions that violate the above-referenced non-competition provision set out in Section 3.10 of the Operating Agreement.

18. A hearing on the PI Motion was held on 26 August 2025 via Webex at which all parties were represented by counsel. The PI Motion is now ripe for resolution.

LEGAL STANDARD

19. A preliminary injunction “is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation.” *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). The issuance of such injunctive relief “is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357 (1980). The plaintiff bears the burden of establishing the right to a preliminary injunction. *Pruitt v. Williams*, 288 N.C. 368, 372 (1975). The entry of a preliminary injunction is proper only where the plaintiff is (1) able to show a “likelihood of success on the merits of his case,” and (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 [the] plaintiff’s rights during the course of litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983) (quoting *Ridge Cmty. Invs.*, 293 N.C. at 701).

20. The Court must also weigh the potential harm a plaintiff will suffer if no injunction is entered against the potential harm to a defendant if the injunction is issued. *See Williams v. Greene*, 36 N.C. App. 80, 86 (1978).

21. Ultimately, “[t]he issuance of a preliminary injunction is a decision committed to a trial court’s discretion.” *State ex rel. Stein v. MV Realty PBC, LLC*, 2023 NCBC LEXIS 102, at **37-38 (N.C. Super. Ct. Aug. 30, 2023) (citing *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351,357 (1980)).

ANALYSIS

I. Likelihood of Success on the Merits

22. As an initial matter, the Court notes that the parties agree South Carolina law applies to this Motion based on Section 11.3 of the Operating Agreement, which reads as follows:

Governing Law. This Agreement must be governed by and construed in accordance with the laws of the State of South Carolina, without regard to choice of law principles of any jurisdiction.

(Operating Agreement, § 11.3.)

23. Article I of the Operating Agreement sets out the following definitions of terms relevant to the PI Motion:

“Person” means any individual, general partnership, limited partnership, corporation, trust, limited liability company or other association or entity.

(Operating Agreement, Art. I, at 6.)

“Affiliate” of a Person means: (i) any entity or individual that directly or indirectly controls or holds the power to vote 10% or more of the outstanding voting securities of the Person in question; (ii) any Person 10% or more of whose voting securities are directly or indirectly owned,

controlled or held with power to vote, by the Person in question; (iii) any Person directly or indirectly controlling, controlled by, or under common control with such other Person; (iv) any officer, director or partner of such other Person; or (v) if such other Person is an officer, director or partner, any company for which such Person acts in such capacity.

(Operating Agreement, Art. I, at 1.)

24. Section 3.10 of the Operating Agreement reads in pertinent part as follows:

Holder Prohibitions. As an inducement for the Company to admit each Holder as a Holder of the Company, each Holder agrees that during the period of time such Holder is a Holder of the Company and for a period of one year thereafter:

(a) The Holder or any of its Affiliates will not, directly or indirectly invest in, own, control or participate in the ownership, management, operations, or control of, any Person engaged in or planning to become engaged in the Business (as defined below), anywhere within the Territory (as defined below) . . . As used in this Agreement, “**Business**” means the ownership and/or operation of a restaurant. As used in this Agreement, “**Territory**” means 25 mile radius from any store or competitively similar restaurant owned or operated by the Company during the period of time that the Person is a Holder hereof.

(Operating Agreement, § 3.10(a).) (emphasis added)

25. In a nutshell, 5Church contends that by virtue of their involvement with The Quin and the Pepsi Plant developments, Third-Party Defendants are in violation of Section 3.10(a) of the Operating Agreement because of the likelihood that they will lease space to one or more restaurants in either or both developments, which are both located within 25 miles of Church and Union. As a result, 5Church argues, it has established a likelihood that it will ultimately prevail in this action on its claims premised on a violation of Section 3.10(a).

26. However, the Court finds that 5Church has failed to show a likelihood of success on the merits for two reasons.

27. First, no restaurant currently exists in either The Quin or the Pepsi Plant.

28. In his affidavit, Johnson testified that there are no existing tenants operating restaurants at either The Quinn or the Pepsi Plant. He further testified that there are no prospective leases for the operation of restaurants at either development. (Johnson Decl. ¶¶ 13–15, 18–22.) The Court finds this testimony to be credible, and 5Church has offered no actual evidence to the contrary.

29. Although 5Church has submitted various documents related to the two developments that raise the *possibility* of space being leased for restaurants at some point in the future, it has failed to offer any evidence going beyond mere speculation that a restaurant will actually operate in either development.

30. Second, 5Church appears to acknowledge the fact that even if a tenant seeking to operate a restaurant actually did lease space in either The Quin or the Pepsi Plant, that alone would not result in a violation of Section 3.10(a). Instead, 5Church would still be required to establish that the Third-Party Defendants or their affiliates are actually (directly or indirectly) “invest[ing] in, own[ing], control[ing] or participat[ing] in the ownership, management, operation, or control of any Person engaged in or planning to become engaged in the Business[.]” (Operating Agreement, § 3.10(a).)

31. 5Church asserts that the “control” prong of Section 3.10(a) is satisfied based on its contention that as the lessor of a tenant operating such a restaurant, Third-Party Defendants or their affiliates would likely exercise some degree of control over the restaurant’s operations based on any restrictive covenants contained within the lease agreement.

32. Although the parties debate in their respective briefs the question of whether the existence of such covenants in a lease agreement would constitute the type of “control” contemplated by Section 3.10(a), the Court need not resolve that issue at the present time. That issue is not properly before the Court given the absence of any such lease agreement in the existing record.

33. Therefore, the Court finds that 5Church has failed to show a likelihood of success on the merits, and on this ground alone the denial of its PI Motion is appropriate.

II. Irreparable Harm

34. The Court likewise finds that 5Church cannot show irreparable harm absent the entry of a preliminary injunction.

35. Despite its dire predictions of the threat to Church and Union’s continued existence if faced with competition stemming from restaurants opening in The Quin or the Pepsi Plant, such concerns are—once again—purely speculative given that no such restaurants presently exist or are even on the horizon.

36. Although 5Church has submitted an affidavit from an expert witness, Sean Perlman, in conjunction with its PI Motion that discusses how damages could

be calculated if Church and Union was, in fact, subject to competition from restaurants in The Quin or the Pepsi Plant, his affidavit cannot overcome the basic fact that no such competition currently exists.

37. Accordingly, the Court finds that Church has failed to demonstrate the existence of irreparable harm.

CONCLUSION

38. **THEREFORE**, in the exercise of its discretion, the Court concludes that Plaintiff's Motion for Preliminary Injunction should be **DENIED**.

SO ORDERED, this the 5th day of September 2025.

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