

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

IREDELL COUNTY

25CVS001765-480

HIGHLIGHTS HEALTHCARE, LLC,  
EMPYREAN HOSPICE, LLC, and  
HLRE LLC,

Plaintiffs/Counterclaim  
Defendants

v.

DOUGLAS J. ABELL, JAMES  
MAGEE, SEAN J. O'REILLY,  
MICHAEL STANLEY, and CHER  
ABELL,

Defendants,

DOUGLAS J. ABELL, JR. and  
JAMES MAGEE,

Counterclaim Plaintiffs,

DOUGLAS J. ABELL, JR., JAMES  
MAGEE, HIGHLIGHTS  
HEALTHCARE, LLC, and  
EMPYREAN HOSPICE, LLC,

Third-Party Plaintiffs,

v.

LARRY GRAHAM and KNOX HILL  
INVESTMENTS, LLC,

Third-Party Defendants.

**ORDER ON MOTION FOR  
RECONSIDERATION AND MOTION  
FOR CLAIM AND DELIVERY**

**THIS MATTER** is before the Court on Plaintiff Highlights Healthcare, LLC's Motion for Claim and Delivery (ECF No. 80) and Rule 54 Motion ("Motion for Reconsideration," ECF No. 93) (together, the "Motions").

## FACTUAL AND PROCEDURAL BACKGROUND

1. The Court need not—and does not—make binding findings of fact in connection with the present Motions. Instead, the Court will summarize the parties’ allegations that are relevant to its determination of the Motions.

2. In a nutshell, this case arises following the termination of Defendants Douglas Abell and James Magee from Plaintiff Highlights Healthcare, LLC (“Highlights”)—a company that they founded to provide applied behavior analysis therapy services to children with autism. Highlights and two related entities—Plaintiffs Empyrean Hospice, LLC and HLRE, LLC (together with Highlights, “Plaintiffs”)—contend that Abell and Magee have engaged in an unlawful campaign to misappropriate Plaintiffs’ confidential information and trade secrets in order to establish a competing business.

3. Although Plaintiffs’ claims, Defendants’ counterclaims, and the third-party claims in this case raise a wide array of issues concerning the various parties, the arguments relating to the present Motions are limited to the discrete issue of who owns (or at least who should—while this litigation is pending—be given temporary possession of) a specific laptop computer (the “Laptop”).

4. In Plaintiffs’ First Amended and Verified Complaint (“Amended Complaint,” ECF No. 6) Plaintiffs allege that Highlights provided Abell with the Laptop and “related equipment” in connection with his employment. (Am. Compl. ¶ 177.)

5. On 16 January 2025—following Abell’s termination—Highlights emailed Abell to request that he return all company property in his possession, specifically including the Laptop. (Am. Compl. ¶ 82; *see also* Am. Compl. Ex. AB.)

6. The following day, Highlights mailed Abell a pre-labelled box in which to return the Laptop. (Am. Compl. ¶ 83.) Around that same time, Highlights confirmed that Abell’s remote access to Plaintiffs’ administrative portal was blocked. (Am. Compl. ¶ 83.)

7. Plaintiffs allege that on 20 January 2025, Highlights once again checked its computer system and discovered that Abell was online, remotely connected to the Plaintiffs’ administrative portal, and using the Laptop. (Am. Compl. ¶ 84; *see also* Am. Compl. Ex. AC.)

8. Fearing that Abell was seeking to download Highlights’ proprietary documents onto an external drive, Plaintiffs remotely disabled Abell’s screen visibility, keyboard and mouse control, and removed all user accounts from the Laptop. (Am. Compl. ¶ 84.)

9. Since that time, the Laptop has been “bricked”—meaning that Abell cannot access any programs or files stored on the Laptop’s hard drive.

10. On 16 May 2025, Plaintiffs initiated this lawsuit by filing a Complaint (ECF No. 3) in Iredell County Superior Court. (ECF No. 3.)

11. Plaintiffs subsequently filed the Amended Complaint on 9 June 2025 in which they assert various claims for monetary relief against Abell, Magee, and several other Defendants. Among the causes of action set out in the Amended

Complaint was a claim against Abell for conversion based on his refusal to return the Laptop to Highlights.

12. Defendants subsequently filed an Answer, Affirmative Defenses and Counterclaims, in which they denied the relevant allegations of the Amended Complaint and asserted that Abell personally owns the Laptop at issue. (ECF No. 18.)

13. On 26 June 2025, Plaintiffs filed a Motion for Preliminary Injunction (“PI Motion,” ECF No. 14) in which they primarily sought to prevent Abell and Magee from using Highlights’ confidential information and trade secrets to unlawfully compete against Plaintiffs. (ECF No. 14.)

14. On 21 August 2025, the Court issued an Order (“PI Order,” ECF No. 44) denying Plaintiffs’ PI Motion. *See Highlights Healthcare, LLC v. Abell*, 2025 NCBC LEXIS 108 (N.C. Super. Ct. Aug. 21, 2025).

15. Highlights filed its Motion for Claim and Delivery on 12 November 2025 and its Motion for Reconsideration on 22 December 2025.

16. In both Motions, Highlights asserts that it is the true owner of the Laptop and requests that the Court enter an order compelling Abell to return it to Highlights.

17. In support of the Motions, Highlights has filed various exhibits, including affidavits from (1) Kale Purdom, Highlights’ IT Systems Engineer (ECF Nos. 81.1–81.6); (2) Melissa Coleman, Highlights’ chief financial officer (ECF Nos.

81.7–81.9); and (3) Rashawn Linton, Highlights’ current general counsel (ECF Nos. 81.10–81.12.).

18. In response to the Motions, Abell has submitted affidavits from himself (ECF No. 89.2) and McGee (ECF No. 89.1).

19. The Motions came on for a hearing before the Court via Webex on 13 February 2026 at which both Highlights and Abell were represented by counsel.

20. Having been fully briefed, the Motions are now ripe for resolution.

### ANALYSIS

21. The Court will address each of the Motions in turn.

#### **I. Motion for Reconsideration**

22. In the Motion for Reconsideration, Highlights requests that the Court reconsider its denial of the PI Motion by modifying its PI Order to compel Abell to return the Laptop to Highlights during the pendency of this lawsuit.

23. In short, Highlights contends that it is the owner of the Laptop, while Abell asserts that Highlights gave it to him as a gift.

24. Under Rule 54(b) of the North Carolina Rules of Civil Procedure, any “order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liability of all the parties.” N.C. R. Civ. P. 54(b). As such, “Rule 54(b) is the source of authority for what litigants typically refer to as ‘motions to reconsider.’” *Tetra Tech Tesoro, Inc. v. JAAAT Tech. Servs., LLC*, 250 N.C. App. 791, 798 (2016) (cleaned up).

25. Generally, motions for reconsideration will only be granted based on “(1) the discovery of new evidence, (2) an intervening development or change in the controlling law, or (3) the need to correct a clear error or prevent manifest injustice.” *Loray Mill Devs., LLC v. Camden Loray Mill Phase I, LLC*, 2023 NCBC LEXIS 78, at \*7–8 (N.C. Super. Ct. June 12, 2023) (cleaned up).

26. The decision whether to grant or deny a motion for reconsideration under Rule 54(b) is “within the trial court’s discretion.” *W4 Farms, Inc. v. Tyson Farms, Inc.*, 2017 NCBC LEXIS 99, at \*5 (N.C. Super. Ct. Oct. 19, 2017) (cleaned up).

27. In support of the Motion for Reconsideration, Highlights asserts that it has demonstrated a likelihood of success with respect to its claim for conversion and that the Motion for Reconsideration should be granted to prevent the manifest injustice of Abell continuing to retain possession of the Laptop during the pendency of this case. The Court disagrees for several reasons.

28. First, the Court notes that the Motion for Reconsideration raises arguments that could have been—but were not—raised in connection with Highlights’ PI Motion.

29. This Court has repeatedly cautioned that “[a] motion for reconsideration is not a vehicle to identify facts or legal arguments that could have been, but were not, raised at the time the relevant motion was pending.” *Pender Farm Dev., LLC v. NDCO, LLC*, 2020 NCBC LEXIS 110, at \*5 (N.C. Super. Ct. Sept. 25, 2020) (cleaned up). “The limited use of a motion to reconsider serves to ensure that parties are thorough and accurate in their original pleadings and arguments presented to the

Court. To allow motions to reconsider offhandedly or routinely would result in an unending motions practice.” *Rossabi L. PLLC v. Greater Greensboro Ent. Grp., LLC*, 2021 NCBC LEXIS 64, at \*8 (N.C. Super. Ct. July 20, 2021) (cleaned up).

30. Although the Motion for Reconsideration asserts that Highlights is entitled to a preliminary injunction based on its likelihood of success on the merits of its *conversion* claim, the word “conversion” did not appear anywhere in the PI Motion itself or in either of the briefs Plaintiffs submitted in support of the PI Motion. Instead, in the PI Motion, Plaintiffs contended that they had shown a likelihood of success on the merits of their claims for breach of contract, misappropriation of trade secrets, and unfair and deceptive trade practices.<sup>1</sup>

31. Furthermore, as counsel for Highlights conceded at the 13 February hearing on the Motions, the Purdom, Coleman, and Linton affidavits (which it has filed in support of the present Motions) could have been—but were not—filed in support of the PI Motion. Indeed, at the time the PI Motion was filed, Highlights filed no affidavits attesting to its alleged ownership of the Laptop.

32. Second, even if the Court was to consider Highlights newly raised arguments and evidence, the Court concludes that Highlights has failed to establish a likelihood of success on the merits of its conversion claim.

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<sup>1</sup> It is true that Plaintiffs referenced the Laptop—and their desire for the Laptop to be returned—in Plaintiffs’ brief in support of the PI Motion. However, Plaintiffs did not argue then (as Highlights attempts to argue now) that Highlights was entitled to the return of the Laptop based on its claim for conversion.

33. “There are, in effect, two essential elements of a conversion claim: ownership in the plaintiff and wrongful possession or conversion by the defendant.” *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523 (2012) (cleaned up). “In cases where the defendant comes into possession of the plaintiff’s property lawfully, the plaintiff must show that it made a demand for the return of the property that was refused by the defendant.” *Morris Int’l, Inc. v. Packer*, 2021 NCBC LEXIS 99, at \*27 (N.C. Super. Ct. Nov. 2, 2021) (citing *Hoch v. Young*, 63 N.C. App. 480, 483 (1983)).

34. Highlights’ assertion that it is the actual owner of the Laptop is based on the affidavits and supporting exhibits provided by three of Highlights’ current employees—Purdom, Coleman, and Linton.

35. But a careful reading of their affidavits makes clear that none of these three individuals were either (1) actually involved with the Laptop’s purchase; or (2) even employed by Highlights in any capacity at the time the Laptop was bought. Rather, their testimony is based on their review and interpretation of documents and financial records, which were themselves created after the Laptop was purchased. Even assuming *arguendo* that their testimony is admissible under the provisions of the North Carolina Rules of Evidence concerning the admissibility of business records, the Court finds the testimony of Abell and Magee to be more probative on this issue.

36. In his opposition to the Motions, Abell has submitted both his own affidavit and the affidavit of McGee. These affidavits constitute the only evidence of

record before the Court from anyone either (1) directly involved with the Laptop's purchase; or (2) affiliated with Highlights at the time the Laptop was purchased.

37. In their respective affidavits, Abell and McGee have submitted sworn testimony that the Laptop was purchased by McGee and given to Abell for various uses—not exclusively for work related to Plaintiffs—with the understanding that Abell would be the owner of the Laptop. (See ECF Nos. 89.1–89.2.) At this stage of the litigation, given their direct involvement with the purchase of the Laptop and personal knowledge of the circumstances upon which it was purchased, the Court, in the exercise of its discretion, finds their testimony to be credible for purposes of resolving the present Motion for Reconsideration.

38. Third, Highlights has failed to demonstrate that it will suffer irreparable harm if Abell is not ordered to surrender possession of the Laptop to Highlights prior to any final judgment in this case.

39. With respect to the irreparable harm prong of the test for a preliminary injunction, this Court has previously stated as follows:

North Carolina courts have held that in assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86 (1978).

Irreparable injury under Rule 65 is established upon a showing that “the injury is beyond the possibility of repair or possible compensation in damages” or “that the injury is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393,

407 (1983) (citing *Barrier v. Troutman*, 231 N.C. 47, 50 (1949)) (emphasis omitted).

If there is a “full, complete and adequate remedy at law,” the moving party is not entitled to the equitable remedy of injunction. *Bd. of Light & Water Comm’rs v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 423 (1980).

*Comp. Design & Integration, LLC v. Brown*, 2017 NCBC LEXIS 8, at \*19–20 (N.C. Super. Ct. Jan. 27, 2017).

40. Notably, Highlights is *not* contending that it is likely to suffer irreparable harm because absent the entry of a preliminary injunction Abell will be able to access its confidential information and documents via the Laptop. Nor could it make such an assertion given that the parties agree that the Laptop is currently in the possession of Abell’s attorneys, and since 20 January 2025 the Laptop has been “bricked” such that no one outside of Highlights would be able to access any files or programs stored on the Laptop’s hard drive.

41. Instead, Highlights position appears to be that the temporary deprivation of *any* property automatically constitutes irreparable harm to the owner and cannot be remedied by monetary damages—regardless of the circumstances and regardless of the value of the property. However, Highlights has not cited any North Carolina case law in support of this broad proposition.

42. Indeed, North Carolina law appears to permit an aggrieved party to present evidence of the value of the temporary deprivation of its use of its property. *See, e.g., Marlen C. Robb & Son Boatyard & Marina, Inc. v. Vessel Bristol*, 893 F. Supp. 526, 543–44 (E.D.N.C. 1994) (“The time for calculated compensatory damages for a conversion is the actual time of the conversion[.] . . . Defendants’ compensatory

damages, then, would be only the value of the use of the property from April or May to August, 1994.” (cleaned up)).

43. Furthermore, Highlights has not argued or presented any evidence indicating that the Laptop at issue here is either (1) uniquely valuable to Highlights such that its lost use cannot be adequately remedied by monetary damages; or (2) that Abell is using the Laptop to obtain an unfair disadvantage over Highlights.

44. Finally, it is difficult to escape the conclusion that Highlights has unduly delayed in bringing its Motion for Reconsideration.

45. This Court has repeatedly held that when ruling on a motion for a preliminary injunction, “[a] key factor is the haste with which the moving party seeks injunctive relief.” *Wright v. Lorusso*, 2022 NCBC LEXIS 68, at \*2 (N.C. Super. Ct. Mar. 10, 2022) (cleaned up); *see also Am. Air Filter Co. v. Price*, 2017 NCBC LEXIS 9, at \*13–15 (N.C. Super. Ct. Feb. 3, 2017) (denying a motion for a preliminary injunction after a four-month delay in seeking relief).

46. The Court entered its Order denying the PI Motion on 21 August 2025. Yet, inexplicably, Highlights waited more than four months—until 22 December 2025—before requesting that the Court reconsider its PI Order.

47. For all of these reasons, the Court concludes that Highlights’ Motion for Reconsideration should be **DENIED**.

## **II. Claim and Delivery**

48. An order for a claim and delivery is a statutory pre-judgment remedy governed by N.C.G.S. § 1-472, *et seq.* In order for a party to demonstrate entitlement

to an order for claim and delivery, N.C.G.S. § 1-473 sets out the following requirements:

Where a delivery is claimed, an affidavit must be made before the clerk of the court in which the action is required to be tried or before some person competent to administer oaths, by the plaintiff, or someone in his behalf, showing—

- (1) That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to its possession by virtue of a special property therein, the facts in respect to which must be set forth.
- (2) That the property is wrongfully detained by the defendant.
- (3) The alleged cause of the detention, according to his best knowledge, information and belief.
- (4) That the property has not been taken for tax, assessment or fine, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and,
- (5) The actual value of the property.

N.C.G.S. § 1-473.

49. In support of its Motion for Claim and Delivery, Highlights once again relies upon the affidavits of Purdom, Coleman, and Linton.

50. However, as discussed above, Abell and McGee have also submitted sworn affidavits in which they contend that Abell—not Highlights—is the actual owner of the Laptop.

51. Nothing in the text of N.C.G.S. § 1-473 makes clear if—or how—the Court is permitted to weigh conflicting evidence submitted by the parties relevant to a motion for claim and delivery. However, caselaw from our Supreme Court suggests that a trial court cannot resolve factual disputes regarding ownership of the subject

property in a claim and delivery proceeding. *See Gen. Tire & Rubber Co. v. Distributions, Inc.*, 253 N.C. 459, 466 (1960) (“A defendant’s denial of the allegation that it is in the wrongful possession of the personal property in question raises an issue for the jury.”); *see also In Re Wallace’s Est.*, 267 N.C. 204, 207–08 (1966) (“The petition and answer here present a controversy ‘at law respecting property,’ and raise an issue of fact as to the ownership of the . . . money deposited in the office of the clerk of the Superior Court of Moore County. . . . Therefore, Judge McConnell had no authority to enter an order affirming the order of the assistant clerk of the Superior Court of Moore County, which in effect is a determination by Judge McConnell of the issue of fact raised by the pleadings and a finding by him that the [money] deposited in the office of the clerk . . . were funds belonging to the late Mary Alice Wallace[.]” (cleaned up)).<sup>2</sup>

52. Accordingly, the Court concludes that Highlights’ Motion for Claim and Delivery should also be **DENIED**.

## **CONCLUSION**

**THE COURT**, in the exercise of its discretion, **ORDERS** that Highlights Healthcare, LLC’s Motion for Reconsideration and Motion for Claim and Delivery are each **DENIED**.

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<sup>2</sup> Moreover, even if the Court was, in fact, permitted to make such a credibility determination on the Motion for Claim and Delivery, it would—for the reasons set out above—find the affidavit testimony of Abell and Magee to be more credible at this early stage of the proceeding given their personal knowledge regarding the Laptop’s purchase.

**SO ORDERED**, this the 12th day of March 2026.

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge for  
Complex Business Cases