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 MOTION FOR STAY**

1. **THIS MATTER** is before the Court on the Joint Motion for Order Recognizing Automatic Stay Under N.C. Gen Stat. § 1-294 or for Discretionary Stay Pending Appeal ("Motion for Stay," ECF No. 58) filed by Defendant Patrick Whalen and Third-Party Plaintiff 5Church Charleston, LLC ("5Church") In a nutshell, 5Church and Whalen seek a stay of all proceedings in this action based on the pendency of their appeals (ECF Nos. 56, 57) to the Supreme Court of North Carolina

of two preliminary injunction orders that this Court has issued in this case. For the reasons set out below, the Motion for Stay is **DENIED**.

BACKGROUND[1]

2. 5Church Charleston, LLC is a South Carolina limited liability company, which was formed in 2014 to operate a restaurant called Church and Union ("C&U Charleston"). C&U Charleston opened in the downtown area of Charleston, South Carolina, in 2015. (Compl. ¶¶ 8, 13, 15, ECF No. 3.)

3. Whalen was a founding member of 5Church and currently serves as its manager. (Third-Party Def.'s Br. Supp. Mot. Prelim. Inj., Ex. JJ, "1st Whalen Decl." ¶¶ 3, 5, ECF No. 24.36.) Whalen presently has a 40% ownership interest in 5Church. (Compl. ¶ 8.) Whalen is also the chief executive officer of an entity called Fifth Street Group, LLC ("Fifth Street"), a North Carolina limited liability company that owns and operates other restaurants around the country. Those restaurants include Church and Union Charlotte, Church and Union Nashville, Ophelia's, Tempest (Pink Moon), Church and Union Denver, and Church and Union Miami. (Def. Whalen's Br. Opp. Mot. Prelim. Inj., Ex. H, "2nd Whalen Decl." ¶¶ 28–30; ECF No. 44.8; Pl.'s Br. Supp. Mot. Summ. J., Ex. C, "Merger Proposal" at 2, ECF No. 35.4; Pl.'s Br. Supp. Mot. Summ. J., Ex. A, "1st Johnson Decl." ¶ 13, ECF No. 35.2.)[2]

---

[1] The factual recitations contained herein are derived from the allegations in the parties' pleadings and from various affidavits and declarations that each side has submitted. The Court is including these findings solely for the purpose of explaining the background relevant to the present Motion for Stay, and they shall not be used for any other purpose in this lawsuit.

[2] Throughout this Order, these other restaurants are referred to collectively as the "Affiliate Restaurants."

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

5. Third-Party Defendants White Point Partners, LLC ("White Point"), WPSP Belvidere, LLC ("WPSP Belvidere"), and WPSP Meeting, LLC ("WPSP Meeting" and, collectively, the "WP Church Affiliates") are entities that are affiliated with WP Church. (Third-Party Def.'s Br. Opp. Mot. Prelim. Inj., Ex. 1, "2nd Johnson Decl." ¶ 2: ECF 40.1.)

6. Third-Party Defendant Erik Johnson is a manager of WP Church and of each of the WP Church Affiliates. (2nd Johnson Decl. ¶¶ 1–2.) Third-Party Defendants Jay Levell and Ryan Hanks are managers of one or more of the WP Church Affiliates. (Am. Third-Party Compl. ¶¶ 7–8, ECF No. 16.)

7. WP Church initiated this lawsuit on 10 June 2025 by filing a Verified Complaint in Mecklenburg County Superior Court against Whalen, alleging derivative claims on behalf of 5Church for breach of fiduciary duty, conversion, breach of contract, unjust enrichment, and wrongful conduct warranting disassociation under S.C. Code Ann. § 33-44-601, along with a derivative and direct claim for "Oppression of Minority Interest-Holder Warranting Forced Purchased [sic] of WP Church's Membership Units." (Compl., ECF No. 3.)

8. WP Church's claims were all predicated on its allegations that Whalen had engaged in self-dealing and misappropriation of 5Church's assets by transferring funds from 5Church to some or all of the Affiliate Restaurants. WP Church further

asserted that Whalen had improperly used 5Church funds to pay for his own personal expenses relating to rental cars and leases.

9. On 24 June 2025, 5Church filed an Amended Third-Party Complaint and Cross Claims in which it 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 Meeting, Johnson, Levell, and Hanks; and (4) declaratory judgment against WP Church. (ECF No. 16).

10. 5Church's claims against WP Church were based on its allegations that WP Church had breached a non-competition provision contained in 5Church's operating agreement (the "Operating Agreement," ECF No. 16.1.) that the original members of 5Church—including both Whalen and WP Church—had executed when the company was formed in 2014.

11. Section 3.10 of the Operating Agreement contains a provision that limits the ability of WP Church's members (and their affiliates) from investing in, owning, or controlling another person operating a restaurant located within 25 miles of a restaurant operated by 5Church. (Operating Agreement, § 3.10(a).)

12. In its claims, 5Church asserted that two of WP Church's affiliates were involved in the development of two parcels of land in Charleston's Upper Peninsula area and that it was likely that one or more restaurants would rent space in either or both developments, thereby creating a violation of Section 3.10 of the Operating Agreement. (Am. Third-Party Compl. ¶¶ 69–112.)

13. The first preliminary injunction motion in this case ("First PI Motion") was filed on 16 July 2025 by 5Church and sought an order enjoining WP Church or its affiliates from taking any actions that would violate Section 3.10. (ECF No. 23)

14. On 5 September 2025, this Court entered an Order (the "First PI Order," ECF No. 47) in which it denied the First PI Motion based on its conclusion that 5Church had failed to show a likelihood of success on its claim that a breach of Section 3.10 either had already occurred or was imminent. The Court similarly found that 5Church had not shown a likelihood of irreparable harm. (First PI Order ¶¶ 22–37.)

15. The second preliminary injunction motion in this case ("Second PI Motion") was filed on 29 July 2025 by WP Church and sought an injunction barring Whalen from making any additional transfers of 5Church's assets other than in the ordinary course of business. (ECF No. 34)

16. In an Order entered 26 September 2025 (the "Second PI Order," ECF No. 53), this Court granted the Second PI Motion and issued an Order barring Whalen from (1) transferring, selling, or disposing of 5Church's funds or assets outside the ordinary course of business; or (2) transferring 5Church's funds or assets to any business or organization Whalen owns or controls. (Second PI Order, at 28–29.)

17. On 1 October 2025, Whalen and 5Church each filed a notice of appeal as to the First and Second PI Orders, respectively. (ECF No. 54, 55.)

18. The Motion for Stay was filed on 8 October 2025. In that Motion, 5Church and Whalen ask this Court to recognize an automatic stay of all proceedings in this case pursuant to N.C. Gen. Stat. § 1-294 pending the resolution of the appeals

of the PI Orders. Alternatively, 5Church and Whalen request that this Court grant a discretionary stay until such time as the appeals are resolved.

19. The Motion for Stay has been fully briefed and is ripe for resolution.

20. The Court, in the exercise of its discretion under BCR 7.4, elects to enter this Order without a hearing.

ANALYSIS

21. As noted above, 5Church and Whalen seek an automatic stay pursuant to N.C.G.S. § 1–294, or in the alternative, a discretionary stay until the Supreme Court has ruled on its appeals of the two PI Orders. The Court will address each request in turn.

I. AUTOMATIC STAY UNDER § 1–294

22. This Court has previously noted that the automatic stay provision of Section 1–294

> stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein. However, this rule is not without exceptions. When a party appeals from a non-appealable interlocutory order, the appeal does not deprive the trial court of jurisdiction and thus the court may properly proceed with the case.

Howard v. IOMAXIS, LLC, 2024 NCBC LEXIS 46, *5–6 (N.C. Super. Ct. Mar. 12, 2024) (cleaned up).

23. An interlocutory order is an order that "is made during the pendency of an action, which does not dispose of the case, but leaves matters for further action by the trial court to settle and determine the entire controversy." *Veazey v. Durham*, 231 N.C. 357, 362 (1950). Because interlocutory orders do not represent a final

judgment, they are generally not appealable. *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725 (1990).

24. An exception to this general rule exists where an interlocutory order impacts a substantial right. *See* N.C. Gen. Stat. § 1–277(a) ("An appeal may be taken from every judicial order or determination. . . that affects a substantial right claimed in any action or proceeding[.]"; N.C. Gen. Stat. §7A–27(a)(3) ("[An] [a]ppeal lies of right directly to the Supreme Court . . . [f]rom any interlocutory order of a Business Court Judge that. . . [a]ffects a substantial right."); *see also Stanback v. Stanback*, 287 N.C. 448, 453 (1975) ("Ordinarily, an appeal from an interlocutory order will be dismissed as fragmentary and premature unless the order affects some substantial right and will work injury to appellant if not corrected before appeal from final judgment.").

25. Our Supreme Court has made clear that an attempted appeal from an interlocutory order that is not subject to appeal is a "nullity," and that under such circumstances the trial court need not stay proceedings in the case. *Cox v. Cox*, 246 N.C. 528, 532 (1957); *Veazey*, 231 N.C. at 364.

26. The appellant bears the burden to establish that its substantial rights will be "irremediably adversely affected" if the interlocutory order is not reviewed before final judgment. *Howard*, 2024 NCBC LEXIS 46, at *16.

27. Our Court of Appeals has provided some degree of guidance on the subject of how to determine whether an interlocutory order affects a substantial right in this context. *See Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App. 484, 493

(2006) (cleaned up) ("[T]he right itself must be substantial, and the deprivation of that substantial right must potentially work injury to the appellant if not corrected before appeal from final judgment."); *Barnes v. Kochhar*, 178 N.C. App. 489, 497 (2006) (cleaned up) ("A right is substantial when it affects or involves a matter of substance as distinguished from matters of form; a right materially affecting those interests which [a party] is entitled to have preserved and protected by law: a material right.").

28. The Court acknowledges, however, that the test is sometimes easier stated than applied. "No hard and fast rules exist for determining which appeals affect a substantial right." *Cagle v. Teachy*, 111 N.C. App. 244, 246 (1993). Accordingly, courts must "resolve the question in each case by considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered." *Hanesbrands Inc. v. Fowler,* 369 N.C. 216, 219 (2016); *see also Red Valve, Inc. v. Titan Valve, LLC*, 2019 NCBC LEXIS 108, at *7–8 (N.C. Super. Ct. Dec. 17, 2019) (holding that a case-by-case inquiry is required to determine if an interlocutory order affects a substantial right).

29. With regard to interlocutory appeals of preliminary injunction orders, our Court of Appeals has stated the following:

> It is clear that injunctive orders entered only to maintain the status quo pending appeal are not immediately appealable. . . Then again, reasonable minds may disagree as to whether a particular injunction simply maintains the status quo. Beyond that, our courts have taken a flexible approach with respect to the appealability of orders granting injunctive relief. Most relevant to this case, orders affecting a party's ability to conduct business or control its assets may or may not implicate a substantial right.

SED Holdings, LLC v. 3 Star Properties, 250 N.C. App. 215, 223 (2016) (cleaned up).

30. The Court finds that 5Church and Whalen have failed to show that either of the two PI Orders affect a substantial right.

31. With regard to the First PI Order, 5Church appears to be arguing that *any* order either granting or denying a preliminary injunction that involves in any way a non-competition agreement automatically affects a substantial right, which is not a correct statement of North Carolina law.

32. Indeed, our Court of Appeals has expressly rejected this argument:

> Here in its statement of the grounds for appellate review, MRI fails to offer the requisite explanation. Instead of explaining why the facts of this case demonstrate that the trial court's order affects a substantial right, MRI simply parrots the oft-repeated proposition that 'in cases involving an alleged breach of a non-competition agreement and an agreement prohibiting disclosure of confidential information, North Carolina appellate courts have routinely reviewed interlocutory orders both granting and denying preliminary injunctions, holding that substantial rights have been affected.' However, MRI's simple reliance on such bare statements of law—absent a clear and articulable demonstration of the factual basis underlying MRI's asserted substantial right—is insufficient.

Mecklenburg Roofing, Inc., v. Antall, 291 N.C. App. 351, 354–55 (2023) (cleaned up).

33. Here, the First PI Motion did not involve allegations of misappropriation of trade secrets or other confidential or proprietary information. Rather, it simply addressed the question of whether a possible *future* rental of space in the two developments at issue would violate a non-competition provision in the 5Church Operating Agreement. Because, as the Court found, no actual or imminent violation of the non-competition provision existed, the possibility of such future harm was

merely speculative. Thus, it is clear that no substantial right of 5Church was affected.

34. Nor can Whalen meet his burden of satisfying this test with regard to the Second PI Order, which simply enjoined him from transferring 5Church funds (or assets) outside the normal course of business or to any business that Whalen owns or controls.

35. Not only is it incorrect to assert that the Second PI Order prevents 5Church from operating its business, but—to the contrary—the Second PI Order ensures that 5Church *will continue to be able to do so* by enjoining Whalen from depleting 5Church's funds during the pendency of this litigation.

36. The Court finds our Court of Appeals' decision in *Barnes v. St. Rose Church of Christ*, 160 N.C. App. 590 (2003), to be instructive on this issue. In *Barnes*, a trial court entered a preliminary injunction freezing the assets of a church and appointing a receiver to manage its financial affairs based on evidence that the defendant pastor had made unauthorized transfers of the church's assets. *Id.* at 591. The trial court also entered an order granting the receiver certain powers over the church's financial management, including the ability to pay ordinary operating expenses, such as salaries. *Id.* at 592.

37. In their appeal of the trial court's preliminary injunction order, the defendants argued that the appointment of the receiver (coupled with the receiver's powers over the church's finances) precluded the church from operating its own

business, such that the trial court's orders affected a substantial right. *Id.* at 591–92.

38. The Court of Appeals dismissed the appeal, concluding that:

> [D]efendants have failed to show that the preliminary injunction and appointment of a receiver will potentially result in any harm. In fact, the orders themselves are designed to maintain the *status quo* of the church's finances during this litigation by placing the assets of the church and control of the day-to-day finances in the hands of a neutral party until this litigation involving the control of those assets and finances is completed.
> . . .
>
> [T]he day to day operation of the church is not halted by the trial court's orders, and the effect of the orders is to prevent removal of the church's assets prior to a determination of which entity and set of bylaws properly controls the affairs of the church in order to prevent any potential harm to the assets of the church. Therefore, no substantial right of defendants will be lost or irremediably and adversely affected prior to a determination on the merits.

Id. at 592 (cleaned up).

39. Whalen instead argues that the Court of Appeals' decision in *Tetra Tech Tesoro, Inc. v. JAAAT Technical Servs., LLC*, 250 N.C. App. 791 (2016) should guide the Court in the present case. In *Tetra Tech*, the trial court granted a preliminary injunction requiring the defendant to segregate funds from an ongoing construction project and imposing strict restrictions on the defendant's ability to use those funds for its business operations. *Id.* at 795. The Court of Appeals held that the injunction affected a substantial right because the

> preliminary injunction did not merely maintain the status quo during the litigation; instead it forced JAAAT to place funds it received from an ongoing construction project in a separate account and severely restricted JAAT's ability to use those funds to continue its operations. . . . This Court has held that a preliminary injunction affects a substantial

> right where the injunction would prevent the defendant from continuing to conduct its business during the pendency of the action.

Id. at 799.

40. Here, once again, the terms of the Second PI Order do not prevent 5Church from continuing to operate its business, and the injunction is narrowly tailored to permit 5Church to use its revenue for ordinary business operations.

41. For these reasons, the Second PI Order likewise fails to affect a substantial right.

II. Discretionary Stay

42. In the alternative, Whalen and 5Church request that the Court enter a discretionary stay. The Court declines to do so.

43. This Court recently articulated two factors that a trial court should consider when faced with a request for a discretionary stay pending appeal: "(1) the potential prejudice to the parties of a stay or of continued proceedings and (2) whether the appellant can show a substantial likelihood of success on the merits." *State ex. rel. Jackson v. E.I. Du Pont de Nemours & Co*., 2025 NCBC Lexis 144, at *2 (N.C. Super. Ct. Oct. 10, 2025).

44. On the prejudice prong, the Court has carefully considered the arguments of 5Church and Whalen and concludes that they have failed to persuasively show that they are likely to suffer prejudice absent a stay.

45. The First PI Order does not foreclose a subsequent request for injunctive relief in the event of materially changed circumstances that would actually trigger a violation of Section 3.10 of the Operating Agreement.

46. Moreover, as explained above, rather than *prejudicing* 5Church, the Second PI Order instead *benefits* the company by ensuring that its assets will not be taken away and used to instead benefit Whalen's other business ventures or to pay for his personal expenditures.

47. As for the second prong, 5Church and Whalen's arguments fare no better as they have not succeeded in showing a likelihood of success.

48. Accordingly, the Court finds that there is no basis for a discretionary stay.

CONCLUSION

THEREFORE, for the reasons set out above and in the exercise of the Court's discretion, the Motion for Stay is **DENIED**.

SO ORDERED, this the 15th day of January, 2026.

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