

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24CV031560-910

LAFAYETTE VILLAGE PUB, LLC,  
EXECUTIVE SUITES AT  
LAFAYETTE VILLAGE, LLC, JOHN  
S. BRONSON, and PAUL G.  
BRONSON,

Plaintiffs,

v.

KENNETH C. BURNHAM,

Defendant.

**ORDER ON PLAINTIFFS' MOTION  
FOR ORDER TO SHOW CAUSE**

**THIS MATTER** is before the Court on Plaintiffs' Motion for Order to Show Cause ("Motion," ECF No. 36).

**FINDINGS OF FACT**

1. A more thorough recitation of the factual and legal issues previously addressed by the Court in this case can be found in its Order and Opinion on Defendant Kenneth C. Burnham's Motion to Dismiss or in the Alternative Motion for More Definite Statement (ECF No. 26). *See Lafayette Vill. Pub, LLC v. Burnham*, 2025 NCBC LEXIS 23 (N.C. Super. Ct. Mar. 4, 2025).

2. This case concerns a long-running dispute over the management and control over Lafayette Village Pub, LLC (the "Pub") between—on the one hand—Plaintiffs John S. Bronson and Paul G. Bronson (together, "the Bronsons"), and—on the other hand—Defendant Kenneth C. Burnham.

3. The Bronsons and Burnham are the members of the Pub. Each of the members have equal rights to participate in the Pub's management, and decisions

approved by a majority of them are binding. *See* N.C.G.S. § 57D-3-20(b) (“Each manager has equal rights to participate in the management of the LLC and its business. Management decisions approved by a majority of the managers are controlling.”).

4. The Bronsons initiated the present lawsuit by filing a Complaint in Wake County Superior Court on 2 October 2024. (ECF No. 3.) In their Complaint, the Bronsons asserted various claims against Burnham for monetary relief—in both their individual capacities and derivatively on behalf of the Pub—along with claims for declaratory relief, an accounting, and judicial dissolution.<sup>1</sup>

5. On 25 October 2024, Holly Van Apeldoorn, a regional director for Lafayette SC, LLC (the lessor of the property on which the Pub was located), emailed the Bronsons and Burnham to notify them that the Pub was in arrears on its rental payments by \$73,325.03. (Affidavit of Kenneth Burnham, ECF No. 38.3, at 3–4.)

6. After no payment was received, Apeldoorn emailed the Bronsons and Burnham once again on 25 November 2024 to inform them that the Pub’s lease would not be renewed and to request that the Pub vacate the premises by no later than 31 December 2024. (Affidavit of Diane Volkmar, ECF No. 38.4, at 3–4; *see also* Burnham Aff. ¶ 2.)

7. After receiving this notice, Burnham informed Diane Volkmar, his office administrator who handled various administrative tasks for Burnham’s companies,

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<sup>1</sup> The Complaint also asserted derivative claims on behalf of a separate company in which the Bronsons and Burnham possessed ownership interests—Executive Suites at Lafayette Village, LLC—but that company is not relevant to the present Motion.

that the Pub's lease "would not be renewed and would no longer be in business."  
(Volkmar Aff. ¶¶ 2–4.)

8. Thereafter, "in an effort to clean up the [Pub's] affairs," Volkmar used her access to Burnham's electronic signature to execute Articles of Dissolution for the Pub on 31 March 2025, which she then filed with the North Carolina Secretary of State on 4 May 2025. (Volkmar Aff. ¶¶ 5–7; Burnham Aff. ¶ 6; *see also* ECF No. 37.1.)

9. Volkmar undertook this course of action entirely on her own initiative, without receiving instructions from—or informing—Burnham. (Volkmar Aff. ¶¶ 7–8; Burnham Aff. ¶¶ 7–8.)

10. Volkmar's actions went undiscovered until—purely by happenstance—Plaintiffs' counsel learned in or around May 2025 that the Pub had been administratively dissolved by the North Carolina Secretary of State. (Affidavit of Thomas S. Babel, ECF No. 38.2, ¶ 2.)

11. On 22 May 2025, Plaintiffs' counsel contacted Burnham's counsel by telephone and informed him that the Pub had been administratively dissolved. (Babel Aff. ¶¶ 2–3.) Prior to this telephone conversation, neither Burnham's counsel nor Burnham was aware of the administrative dissolution. (Babel Aff. ¶¶ 2–3; Burnham Aff. ¶ 8.)

12. Indeed, Burnham first learned of the Pub's administrative dissolution from his own attorney. (Burnham Aff. ¶ 8.)

13. During the 22 May telephone conversation between the attorneys, Burnham's counsel informed Plaintiffs' counsel that he would ask Burnham about

the events leading to the Pub's dissolution. (Babel Aff. ¶ 4.) However, when asked by Burnham's counsel how Plaintiffs wanted to proceed, Plaintiffs' counsel advised that he would have to speak with the Bronsons and "get back" to Burnham's counsel. (Babel Aff. ¶ 4.)

14. Since that time, neither the Bronsons nor Burnham have undertaken any efforts to have the Pub's status reinstated.

15. On 30 May 2025, Plaintiffs filed their Amended Complaint, which is currently their operative pleading. (ECF No. 31.) In the Amended Complaint, Plaintiffs asserted derivative claims on behalf of the Pub for breach of fiduciary duty, constructive fraud, and declaratory relief against Burnham.<sup>2</sup>

16. Approximately six months later, on 7 November 2025, Plaintiffs' counsel sent a letter to Burnham's counsel via email requesting that Burnham supplement his responses to certain written discovery requests. (ECF No. 38.6.) Specifically, Plaintiffs' counsel requested that Burnham "supplement [his] response[s] to provide complete information regarding the Articles of Dissolution[,] . . . any meetings called to dissolve the LLC, and the authority of [ ] Burnham to dissolve the LLC." (ECF No. 38.6, at 2.)

17. This was the first time Plaintiffs' counsel had raised the dissolution issue with Burnham's counsel since the 22 May telephone conversation. (Babel Aff. ¶ 6.)

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<sup>2</sup> Curiously, despite the Bronsons having been aware that the Pub had been administratively dissolved before filing the Amended Complaint, that pleading makes no mention of this fact and instead simply reasserts Plaintiffs' claim for judicial dissolution of the Pub.

18. In response to the email from Plaintiffs' counsel, on 10 November 2025, Burnham's counsel sent a reply email stating that Burnham would "be filing Affidavits in of [sic] Support of the Motion for Summary Judgment that will explain what happened" with respect to the Pub's dissolution and that Burnham's counsel anticipated being able to provide those affidavits to Plaintiffs' counsel sometime "prior to the filing of the [motion for summary judgment]." (ECF No. 37.2.)

19. Subsequently, on 4 December 2025, Plaintiffs filed the present Motion in which they contend that the Pub's dissolution was unauthorized pursuant to North Carolina's Limited Liability Companies Act, N.C.G.S. § 57D-1-01, *et seq.* and request that the Court enter an order for Burnham to show cause as to why he should not be held in contempt.

20. Burnham filed a brief in response to the Motion on 23 December 2025, along with various exhibits—including affidavits from himself, Volkmar, and Babel. (*See* ECF Nos. 38, 38.1–38.6.)

21. On 5 January 2026, Plaintiffs filed a reply brief and two supplemental exhibits in further support of the Motion. (ECF Nos. 45, 45.1–45.3.) However, on 6 January 2026, the Court entered an Order striking Plaintiffs' reply brief and supplemental exhibits as untimely under the Business Court Rules. (ECF No. 46.) Accordingly, the Court has not considered the reply brief and accompanying exhibits with regard to the present Motion.

22. The Court held a hearing on the Motion via Webex on 13 January 2026 at which all parties were represented by counsel.

23. The Motion is now ripe for resolution.

### **CONCLUSIONS OF LAW**

**BASED UPON** the foregoing **FINDINGS OF FACT**, the Court hereby makes the following **CONCLUSIONS OF LAW**:

24. Any Finding of Fact that is more appropriately deemed a Conclusion of Law, and any Conclusion of Law that is more appropriately deemed a Finding of Fact, shall be so deemed and incorporated by reference as a Finding of Fact or Conclusion of Law, as appropriate.

25. Our Court of Appeals has stated the following in distinguishing between civil and criminal contempt in North Carolina:

There are two “kinds” of contempt: civil and criminal. *O’Briant v. O’Briant*, 313 N.C. 432, 434 (1985). Although “the demarcation between the two may be hazy at best,” *id.* at 434, the distinction becomes apparent when considering the “purpose for which the power is exercised” and the potential range of consequences, *id.* at 434. If the goal is to punish for a past-act that “interfere[d] with the administration of justice,” the contempt is criminal in nature. *Id.* at 434. On the other hand, if the intention is to “preserve the rights of private parties and to compel obedience,” the contempt is civil in nature. *Id.* at 434. To distinguish between the two, the question is whether the contemnor is subject to punishment for previously disobeying an order of the court or is forewarned to comply in the future with an order of the court.

*State Bd. of Exam’rs of Plumbing Heating & Fire Sprinklers Contractors v. Hudson*, 299 N.C. App. 71, 77 (2025).

26. Here, the Motion specifically requests that the Court enter an order for Burnham to show cause as to why he should not be held in *criminal* contempt. (*See* Mot., at 1 (requesting that Burnham be directed “to appear and show cause why he should not be held in contempt for violating [N.C.G.S.] § 5A-11(a)(3)”).).

27. Criminal contempt proceedings “are those brought to preserve the power and to vindicate the dignity of the court and to punish for disobedience of its processes or orders.” *State v. Reaves*, 142 N.C. App. 629, 633 (2001) (cleaned up).

28. “Complicating matters, there are two divisions of [criminal] contempt: direct and indirect.” *State Bd. of Exam’rs of Plumbing Heating & Fire Sprinklers Contractors*, 299 N.C. App. at 77 (cleaned up).

Contempts of court are classified in two main divisions, namely: direct and indirect, the test being whether the contempt is perpetrated within or beyond the presence of the court. A direct contempt consists of words spoken or acts committed in the actual or constructive presence of the court while it is in session or during recess which tend to subvert or prevent justice. An indirect contempt is one committed outside the presence of the court, usually at a distance from it, which tends to degrade the court or interrupt, prevent, or impede the administration of justice.

*State v. Wendorf*, 274 N.C. App. 480, 483 (2020) (cleaned up).

29. Because it is undisputed that the acts forming the basis for the Motion did not occur within the Court’s presence, any criminal contempt would be “indirect” and the proceedings in this matter are therefore governed by N.C.G.S. § 5A-15. *See Atassi v. Atassi*, 122 N.C. App. 356, 361 (1996) (concluding that conduct “not occurring in or near the presence of the court, but which tend[s] to obstruct or defeat the administration of justice” constitutes indirect criminal contempt).

30. In determining whether a show cause order is appropriate in this case, the Court is guided by the fact that “[a] show cause order is analogous to a criminal indictment and is the means by which the defendant is afforded the constitutional safeguard of notice.” *State v. Coleman*, 188 N.C. App. 144, 149 (2008) (cleaned up).

31. In North Carolina, the grounds for criminal contempt are statutorily enumerated in N.C.G.S. § 5A-11(a), which states in relevant part as follows:

Except as provided in subsection (b), each of the following is criminal contempt:

. . .

- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.

N.C.G.S. § 5A-11(a).

32. In the present Motion, Plaintiffs contend that Burnham's act of unilaterally taking action to administratively dissolve the Pub falls within the category of conduct quoted above in N.C.G.S. § 5A-11(a)(3).

33. As an initial matter, the Court notes the irony of the fact that (1) one of Plaintiffs' requests for relief in this case is that the Pub be judicially dissolved; and (2) Plaintiffs now seek to have Burnham held in contempt for having the Pub administratively dissolved.

34. Further contributing to the oddity of the present circumstances is the fact that while Plaintiffs have been aware of the Pub's administrative dissolution for over seven months, they have not taken any steps to cause the North Carolina Secretary of State to restore the Pub's corporate status. *See* N.C.G.S. § 57D-6-06(c) ("An LLC administratively dissolved . . . may apply to the Secretary of State for reinstatement."). Furthermore, based on the responses to the Court's questions offered by Plaintiffs' counsel at the 13 January hearing, it appears that Plaintiffs have no immediate plans to do so.



35. In any event, the Court finds that the evidence of record is insufficient to warrant the issuance of a show cause order.

36. The only admissible evidence presently before the Court is that Volkmar—not Burnham—filed the Pub’s Articles of Dissolution with the North Carolina Secretary of State based on her mistaken belief that such conduct was necessary to “clean up” the Pub’s affairs. Both Burnham and Volkmar have submitted uncontradicted sworn testimony that Volkmar acted without Burnham’s knowledge or permission when she electronically signed Burnham’s name on the Articles of Dissolution.

37. There is no evidence before the Court that rebuts the affidavit testimony offered on behalf of Burnham as to how the preparation and filing of the Articles of Dissolution occurred, and the Court finds Volkmar’s and Burnham’s affidavit testimony to be credible.

38. No evidence has been submitted that allows the Court to conclude that the dissolution of the Pub was the direct result of the willful acts of Burnham.

39. Therefore, the Court concludes that no basis exists for the issuance of a show cause order based on the evidence presently before it.<sup>3</sup>

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<sup>3</sup> Although the Pub’s administrative dissolution may have other ramifications in this lawsuit, the Court notes that the dissolution does not appear to affect its status as a party to this action or otherwise prohibit the Bronsons from bringing claims directly or derivatively on its behalf. See N.C.G.S. § 57D-6-07(f) (“The dissolution of the LLC does not prevent commencement of a proceeding by or against the LLC in its own name, abate or suspend a proceeding by or against the LLC, or terminate the authority of the registered agent of the LLC.”). Furthermore, N.C.G.S. § 57D-6-07(c) suggests that the Pub’s administrative dissolution does not prevent the Bronsons from petitioning the Court to supervise the winding up of the Pub’s affairs. See N.C.G.S. § 57D-6-07(c) (“On application of the person, including a former member, owning or otherwise controlling the ownership interest of the

## CONCLUSION

Accordingly, the Court, in the exercise of its discretion, **DENIES** Plaintiffs' Motion for Order to Show Cause.

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

/s/ Mark A. Davis

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

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last member, the superior court may wind up the LLC or appoint a receiver under G.S. 57D-6-04 to wind up the LLC.”).