

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV062751-590

NATHAN KENNEDY and
OPTIMIZED ASSETS, INC.,

Plaintiffs,

v.

AARON RINGEL and 42 BUILDING
CONSULTANT GROUP, LLC,

Defendants.

**ORDER ON MOTION FOR
PRELIMINARY INJUNCTION**

1. This case arises from a dispute among the members and managers of Refuge Builders, LLC. Plaintiffs Nathan Kennedy and Optimized Assets, Inc. have moved for a preliminary injunction against Defendants Aaron Ringel and 42 Building Consultant Group, LLC. (ECF No. 6.) After full briefing and a hearing on 20 January 2026, the Court **DENIES** the motion.

2. As alleged, Refuge Builders has just two members: Optimized Assets and 42 Building Consultant Group. The members' interests are equal. Kennedy (who controls Optimized Assets) and Ringel (who controls 42 Building Consultant Group) are Refuge Builders' comanagers. In this action, Plaintiffs allege that Defendants refused to pay their fair share of Refuge Builders' expenses, usurped control of the company and its bank accounts, and made false and defamatory statements to clients. These allegations underlie claims for breach of fiduciary duty, breach of contract, conversion, unjust enrichment, defamation, constructive fraud, judicial dissolution, and unfair or deceptive trade practices under N.C.G.S. § 75-1.1. (*See, e.g.*, Compl. ¶¶ 8–13, 25–33, ECF No. 3.)

3. In their motion for preliminary injunction, Plaintiffs urge the Court to enjoin Defendants from making false public statements about them to third parties. Plaintiffs also urge the Court to bar Defendants from denying access to Refuge Builders' accounts, holding Refuge Builders' funds in accounts that are not accessible to both managers, transferring Refuge Builders' funds without Court approval, and excluding Plaintiffs from Refuge Builders' management.

4. A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cnty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). To prevail, the moving party must show not only a likelihood of success on the merits but also a likelihood of irreparable loss in the absence of an injunction. *See A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983).

5. Plaintiffs have not come close to carrying their burden.

6. First, the request to enjoin Defendants from making false public statements is a "presumptively unconstitutional" prior restraint, impermissible in all but the most extraordinary circumstances. *Sherrill v. Amerada Hess Corp.*, 130 N.C. App. 711, 719 (1998). Plaintiffs have not even attempted "to show why this is the unusual and extraordinary case that might support a preliminary restraint on speech." *Ford v. Jurgens*, 2020 NCBC LEXIS 60, at *4 (N.C. Super. Ct. May 6, 2020) (denying motion to enjoin allegedly defamatory statements).

7. Second, the Court lacks authority to grant the other relief that Plaintiffs seek. Plaintiffs did not name Refuge Builders as a party in this case, yet they seek an injunction that would affect the company's management structure and effectively

restrain its actions by determining what its members and managers can and cannot do. Our Court of Appeals has stressed that a trial court does “not have jurisdiction to exercise control over [the] assets, operations, and management structure” of an entity that is not before it. *Campbell v. Campbell*, 241 N.C. App. 227, 228 (2015) (vacating preliminary injunction on that basis); *see also Geoghagan v. Geoghagan*, 254 N.C. App. 247, 250–51 (2017) (following *Campbell*).

8. Third, each of Plaintiffs’ claims has a fatal defect or lacks the evidentiary support needed to establish a likelihood of success.

9. Consider the claims for breach of fiduciary duty and constructive fraud. Generally, neither the members of an LLC (such as 42 Building Consultant Group) nor the managers (such as Ringel) owe fiduciary duties to the company’s other members and managers. *See, e.g., Kaplan v. O.K. Techs., L.L.C.*, 196 N.C. App. 469, 473 (2009). Plaintiffs have not pointed to any applicable exception to this general rule. Thus, there is no basis to conclude that Defendants owe fiduciary duties to Plaintiffs. *See Cosma v. Fit Kitchen, LLC*, 2022 NCBC LEXIS 77, at *3–4 (N.C. Super. Ct. July 18, 2022) (dismissing claims for breach of fiduciary duty and constructive fraud).

10. The claim for judicial dissolution of Refuge Builders is also defective on its face. By statute, “[a] proceeding . . . to dissolve an LLC is to be brought against the LLC.” N.C.G.S. § 57D-6-03(a). As noted, Plaintiffs did not name Refuge Builders as a party, much less bring their dissolution claim against it.

11. As for the claim for breach of contract, Plaintiffs have identified the contract at issue—Refuge Builders’ operating agreement—but not the terms that Defendants supposedly breached. The Court will not wade through the 26-page agreement to make out an argument that Plaintiffs have not made for themselves. *See, e.g., Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380 (1994) (refusing “to construct arguments for or find support for” a party); *Brewster v. Powell Bail Bonding, Inc.*, 2020 NCBC LEXIS 27, at *9 (N.C. Super. Ct. Mar. 11, 2020) (“It is not the Court’s job to sift through the record and make Brewster’s case for him.” (cleaned up)).

12. Plaintiffs’ claims for conversion and unjust enrichment hinge on allegations that Defendants took funds belonging to Refuge Builders, not Plaintiffs. Plaintiffs offer no plausible basis to believe they have a right to recover funds that do not belong to them. *See Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523 (2012) (citing “ownership in the plaintiff” as an essential element of conversion); *Barrett v. Coston*, 261 N.C. App. 311, 315 (2018) (affirming dismissal of unjust enrichment claim when “the benefit was allegedly conferred upon Defendant by” someone other than the plaintiff). And they have not asserted any derivative claims to obtain a recovery on Refuge Builders’ behalf.

13. To prevail on a claim for defamation, “a plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person” *Tyson v. L’eggs Prods., Inc.*, 84 N.C. App. 1, 10–11 (1987). Here, the individuals to whom the defamatory statements were

allegedly made have offered affidavits supporting Defendants and rebutting Plaintiffs' allegations. Plaintiffs have not shown a likelihood of success.

14. Finally, Plaintiffs allege that Defendants committed unfair or deceptive trade practices under N.C.G.S. § 75-1.1 by usurping control of Refuge Builders. Even if true, the alleged actions were internal to Refuge Builders and, as a result, were not "in or affecting commerce" as required by section 75-1.1. *See, e.g., Nobel v. Foxmoor Grp., LLC*, 380 N.C. 116, 121–22 (2022); *White v. Thompson*, 364 N.C. 47, 51–52 (2010); *Brewster v. Powell Bail Bonding, Inc.*, 2018 NCBC LEXIS 76, at *16–17 (N.C. Super. Ct. July 26, 2018).

15. For these reasons, Plaintiffs are not entitled to the extraordinary relief of a preliminary injunction. The Court **DENIES** their motion without prejudice to their right to seek temporary injunctive relief in the future if and when the complaint is amended.

16. In its discretion, and following a discussion with counsel at the hearing, the Court believes that an early mediation is in the best interests of all parties. Therefore, the Court **STAYS** all proceedings in this case, including Defendants' deadline to respond to the complaint, pending the completion of mediation and **ORDERS** as follows:

- a. The parties shall have through and including 28 January 2026 to select a mediator and file an AOC-CV-812 Designation of Mediator in Superior Court Civil Action form.

- b. The parties shall have through and including 23 March 2026 to complete an initial mediation.
- c. Following the completion of mediation, the parties shall promptly report the result by email to the Court's law clerks.
- d. Consistent with BCR 11.3, a Report of Mediator shall be filed with the Mecklenburg County Clerk of Superior Court and with the Business Court no later than 10 days after mediation is complete.

17. The Court will offer further case-management guidance, if needed, following the completion of mediation.

SO ORDERED, this the 21st day of January, 2026.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases