

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 865

CAMPBELL SALES GROUP,
INC. d/b/a LEATHER ITALIA,
USA,

Plaintiff,

v.

NIROFLEX BY JIUFENG
FURNITURE, LLC; HIGH POINT
MARKETING GROUP, INC.;
GENFINE FURNITURE
INDUSTRY, LTD. a/k/a
HUIZHOU JIUFENG SCIENCE
TECHNOLOGY INDUSTRIAL
CO. LTD.; MICHAEL
ELKHATIB; and JOHN THOMAS
MOODY a/k/a QUING CHUN
MU,

Defendants.

**ORDER ON PLAINTIFF'S MOTION
TO STAY ENFORCEMENT OF
JUDGMENT**

THIS MATTER comes before the Court on Plaintiff's Motion to Stay Enforcement of Judgment ("Motion to Stay" or "Motion," ECF No. 179)

The Court, having considered the Motion, the briefs of the parties, the arguments of counsel, and all appropriate matters of record, **CONCLUDES**, in its discretion, that the Motion to Stay should be **GRANTED** for the reasons set forth below.

INTRODUCTION

1. This Court previously entered partial summary judgment in favor of the defendant on its counterclaims as to both liability and amount of damages. Plaintiff's

claims in this action remain pending. The legal issue underlying the present Motion to Stay is whether the defendant is entitled to immediately enforce the partial summary judgment by means of execution proceedings despite the fact that the Court did not certify its order as a “final judgment” pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure.

FACTUAL AND PROCEDURAL BACKGROUND

2. On 5 December 2022, the Court entered an Order and Opinion providing, in part, that Defendants’ Motion for Summary Judgment was being denied as to Plaintiff’s claims for unfair and deceptive trade practices, conversion, and civil conspiracy. (ECF No. 168.) Those claims will be resolved in a jury trial that is scheduled to begin on 21 August 2023.

3. In its 5 December Order and Opinion, the Court additionally ruled that summary judgment was proper in favor of Defendant Genfine Furniture Industry, Ltd. a/k/a Huizhou Jiufeng Science Technology Industrial Co. Ltd. (“Genfine”) on its counterclaims for breach of contract and wrongful rejection and revocation of acceptance or repudiation. The Court directed the parties to file supplemental briefs on certain issues regarding the proper computation of interest on the damages to which Genfine was entitled with regard to its counterclaims.

4. Following receipt of the parties’ supplemental briefs, on 23 January 2023, the Court entered a judgment (the “Judgment”) in favor of Genfine on its counterclaims against Plaintiff in the amount of \$517,309.26 to bear interest at the legal rate of 8% plus \$147,122.70 in prejudgment interest. (ECF No. 175.)

5. On 3 April 2023, Plaintiff filed the present Motion to Stay. (ECF No. 179.) In the Motion, Plaintiff asserts that Genfine has caused a writ of execution to be issued by the Brunswick County Clerk of Court directing the Brunswick County Sheriff's Office to begin enforcement proceedings with regard to the Judgment. (ECF Nos. 179, 179.1.) In its Motion, Plaintiff requests that the Court enter an order staying all proceedings to enforce the Judgment until there has been a final judgment as to all claims and all parties in this case.

6. The Court held a hearing on the Motion to Stay via Webex on 17 April 2023. The Motion is now ripe for decision.

ANALYSIS

7. Plaintiff makes two arguments in support of its Motion to Stay. First, it contends that immediate enforcement proceedings are not legally proper because the Court did not certify the Judgment as a "final judgment" pursuant to Rule 54(b). Second, in the alternative, Plaintiff submits that the Court should enter a discretionary stay of such proceedings—even if they would otherwise be legally permissible—pending the resolution of Plaintiff's remaining claims at trial and the subsequent entry of a final judgment in this action.

8. Genfine, conversely, opposes Plaintiff's Motion—contending that no provision of North Carolina law prohibits it from taking steps to immediately enforce the Judgment and that Plaintiff has not shown entitlement to a discretionary stay.

9. Plaintiff's Motion implicates two specific Rules of the North Carolina Rules of Civil Procedure—Rule 54 and Rule 62.

10. Rule 54(b) states the following:

(b) Judgment upon multiple claims or involving multiple parties. — When more than one claim for relief is presented in an action, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may enter a final judgment as to one or more but fewer than all of the claims or parties only if there is no just reason for delay and it is so determined in the judgment. Such judgment shall then be subject to review by appeal or as otherwise provided by these rules or other statutes. In the absence of entry of such a final judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and shall not then be subject to review either by appeal or otherwise except as expressly provided by these rules or other statutes. Similarly, in the absence of entry of such a final judgment, 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 liabilities of all the parties.

N.C. R. Civ. P. 54(b). Here, the Court’s Judgment did not include the above-quoted language certifying it as a “final judgment” pursuant to Rule 54(b).

11. Rule 62, which governs the issuance of a stay of proceedings to enforce a judgment, provides in pertinent part as follows:

(a) Except as otherwise stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of the time provided in the controlling statute or rule of appellate procedure for giving notice of appeal from the judgment. . . .

. . .

(g) When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

N.C. R. Civ. P. 62.

12. Because Rules 54(b) and 62 each reference the appealability of the subject judgment, it is appropriate to review the rules governing the appeal of interlocutory orders—that is, orders that do not fully resolve all of the claims in a case. *See generally Veazey v. Durham*, 231 N.C. 357, 362 (1950) (“An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.”) (cleaned up). Under North Carolina law, there are two circumstances under which an appeal of an interlocutory order may be taken.

13. First, as the above-quoted language from Rule 54(b) makes clear, a judgment as to one or more but fewer than all of the claims and parties can be immediately appealed if it contains the language prescribed in that Rule designating it as a final judgment. *See, e.g., Stanford v. Paris*, 364 N.C. 306, 311 (2010) (noting that one of the “avenues [] available to a party to obtain review of an interlocutory order . . . is certification under Rule 54(b)”).

14. Second, an interlocutory order that affects a substantial right of a party can also be the subject of an immediate appeal. *See* N.C.G.S. § 1-277(a) (“An appeal may be taken from every judicial order or determination . . . which affects a substantial right[.]”); *see also Frost v. Mazda Motor of Am.*, 353 N.C. 188, 192 (2000) (“The ‘substantial right’ test for appealability of interlocutory orders is that the right itself must be substantial and the deprivation of that right must potentially work injury if not corrected before appeal from final judgment.”) (cleaned up).

15. Our appellate courts have made clear that one scenario in which the substantial right doctrine applies is when partial summary judgment has been granted awarding a specific monetary sum to one party from another party. *See, e.g., In re Fifth Third Bank, N.A.*, 217 N.C. App. 199, 204–05 (2011) (holding that a substantial right was implicated where judgments in favor of bank ordered plaintiff-appellants to make “immediate payment of a significant amount of money”); *see also Red Valve, Inc. v. Titan Valve, LLC*, 2019 NCBC LEXIS 108, at **14 (N.C. Super. Ct. Dec. 17, 2019) (collecting cases).

16. Here, as noted above, the Court’s Judgment completely resolved Genfine’s counterclaims in Genfine’s favor and set out the precise amount that Plaintiff was required to pay. Therefore, based on the applicable case law from our appellate courts applying the substantial right doctrine, it appears that Plaintiff could have taken an immediate appeal of the Judgment, although it did not actually do so. The question remains, however, as to whether the ability of Plaintiff to take such an interlocutory appeal automatically renders the Judgment immediately enforceable by Genfine.

17. Genfine contends that by having waited until the expiration of Plaintiff’s thirty-day appeal deadline, it is now entitled to begin execution proceedings as to the Judgment. In response, Plaintiff acknowledges that it had the ability to take an immediate appeal of the Judgment, but emphasizes the fact that it was not *required* to do so and could instead elect to await a final judgment in this case on all claims before seeking appellate review. Plaintiff further asserts that its decision whether to

forego an immediate appeal has no bearing on the issue currently before the Court—that is, the ability of Genfine to immediately enforce the Judgment via execution. In other words, Plaintiff argues, the ability of a judgment-debtor to take an immediate appeal of an interlocutory order under the substantial right doctrine has no impact on the judgment-creditor’s inability to enforce the order where, as here, the order has not been certified as a final judgment under Rule 54(b).

18. Plaintiff contends that Genfine’s inability to immediately enforce the Judgment is due to the critical difference between judgments that have been certified as final judgments under Rule 54(b) and those that have not been so certified. Plaintiff argues that with regard to judgments (like the present one) that do not contain the certification language, Rule 54(b)—by its express terms— allows the trial court to modify or revise its order at any time before a final judgment is ultimately rendered as to all claims and all parties. As a result, Plaintiff asserts, it would make little sense to allow Genfine to immediately enforce a judgment that is potentially subject to change in light of the Court’s ability to modify its ruling at any time before a final judgment in the case is entered.

19. Neither the parties’ briefs nor the Court’s own research has disclosed case law from North Carolina’s appellate courts squarely resolving this issue. Instead, the appellate cases cited by the parties focus on the question of whether the interlocutory orders at issue were, in fact, immediately appealable (rather than the issue of whether they were immediately enforceable by means of execution

proceedings), and it is at least questionable whether any language in those cases mentioning execution proceedings are part of the actual holdings.

20. In their respective briefs, both Plaintiff and Genfine discuss *Baer v. Baer*, 2022 N.C. App. LEXIS 793 (Dec. 6, 2022) (unpublished), a recent opinion from the North Carolina Court of Appeals.¹ *Baer* involved an interlocutory appeal from a trial court's award of partial summary judgment in favor of a wife against her husband in an action for breach of an equitable distribution agreement. *Id.* at **1-2. The trial court determined that the wife was entitled to judgment as a matter of law with respect to certain contractual damages amounting to \$475,000. *Id.* at *1. However, the trial court further ordered that “the issue of remaining damages resulting from Plaintiff's breach of contract shall be set for future hearing upon Defendant's request.” *Id.* at *4 The trial court did not certify its award of partial summary judgment as a final judgment pursuant to Rule 54(b). *Id.* at *2.

21. The husband argued on appeal that the trial court's order affected a substantial right because it required him to pay substantial damages. *Id.* at *5. In rejecting that argument, the Court of Appeals reasoned that the trial court's award of partial summary judgment on certain damages relevant to the contract claim was not “a final decision with respect to any claim or party[.]” and therefore held that the order did not affect a substantial right. *Id.* at *6.

¹ The Court notes that because the opinion in *Baer* is unpublished, it is not binding precedent. See N.C. R. App. P. 30(e)(3) (“An unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority.”).

22. Although Plaintiff attempts to rely on *Baer* for the proposition that an order that has not been certified under Rule 54(b) is subject to change at any time and therefore is not immediately enforceable, Genfine contends that *Baer* instead actually supports its contrary argument that the Court's order in the present case is immediately enforceable. In support of this proposition, Genfine relies on the following language in *Baer*:

Plaintiff acknowledges that this appeal is interlocutory but contends that the trial court's partial summary judgment order affects a substantial right because the order entered a money judgment against Plaintiff for \$475,000 in damages. Plaintiff points to case law holding that "the entry of a partial summary judgment for a monetary sum against a party affected the substantial right of that party and therefore was immediately appealable." *Miller v. Henderson*, 71 N.C. App. 366, 368, 322 S.E.2d 594, 596 (1984).

But the line of cases from which this holding stems involved situations in which the court entered a final decision on a money judgment with respect to a claim or party in a case involving multiple claims or parties. *See, e.g., Equitable Leasing Corp. v. Myers*, 46 N.C. App. 162, 168, 265 S.E.2d 240, 245 (1980) (judgment against one party but not the other); *Wachovia Realty Invs. v. Hous., Inc.*, 292 N.C. 93, 99, 232 S.E.2d 667, 672 (1977) (judgment on the contract claim but not on claims for setoff and indemnity). *In these cases, the money judgment was immediately enforceable and subjected the appealing party to the possibility of execution on that judgment. See, e.g., Wachovia Realty*, 292 N.C. at 99, 232 S.E.2d at 671 ("proceedings in execution have been instituted and an order has been entered by the Clerk of the Superior Court declaring the judgment a lien upon funds alleged to be owing").

Here by contrast, the trial court has not entered a final decision with respect to any claim or party.

Id. at **5-6 (emphasis added).² This language (particularly the italicized portion) suggests that a partial summary judgment resolving a single claim in the case by

² In *Wachovia Realty Investments v. Housing, Inc.*, 292 N.C. 93, 113-14 (1977), the case cited by the Court of Appeals in *Baer*, our Supreme Court held that the trial court had erred in

awarding a specified amount of money from one party to another—which is the scenario that exists here—is subject to immediate execution efforts (regardless of whether the judgment was certified under Rule 54(b)).

23. However, other language in *Baer* allows for a contrary inference. The Court of Appeals stated that deeming the trial court’s order in that case to be “enforceable as a stand-alone judgment . . . would run counter to Rule 62 of the Rules of Civil Procedure, and N.C. Gen. Stat. § 1-289 and N.C. Gen. Stat. § 1-302, which anticipate that a money judgment is fixed upon entry and also subject to appeal.” *Id.* at **6-7. The Court of Appeals then added that “[h]ere, by contrast, the trial court’s partial summary judgment order is interlocutory and the court’s ruling *is subject to change at any point* until the [trial] court enters judgment on the remaining portion of the damages on that claim.” *Id.* at *7 (emphasis added).

24. Although this Court’s Judgment here is more “fixed” than the order was in *Baer*, it too is subject to change (based on the express language of Rule 54(b)) up until the time when the Court enters a final judgment in this case as to *all* claims. As Plaintiff asserts, it seems odd to allow immediate enforcement of an order that can be revised at any time by the Court. Moreover, as noted above, Rule 62(g) only addresses a stay of enforcement proceedings as to judgments that have been certified

awarding summary judgment in favor of the plaintiff on a single claim in a multi-claim case because there was a genuine issue of material fact as to whether the plaintiff purchased a piece of real property at a foreclosure sale for less than its fair value. Although the Supreme Court did note that execution proceedings had been initiated on the partial judgment and cited the existence of such proceedings as support for its conclusion that the trial court’s order affected a substantial right and was therefore immediately appealable, the Supreme Court did not engage in an actual analysis of whether the order actually was immediately enforceable through execution proceedings. *Id.* at 99-100.

as final judgments under Rule 54(b) and does not mention a comparable stay as to judgments that lack such certification. The absence of such language is puzzling if partial judgments are, as Genfine argues, immediately enforceable regardless of whether certification under Rule 54(b) has been made.

25. As the discussion above makes clear, the resolution of this issue is not entirely free from uncertainty. However, the Court **CONCLUDES** that even assuming, without deciding, that the Judgment *is* immediately enforceable, any such enforcement proceedings should be subject to a discretionary stay. Having carefully considered all of the relevant circumstances in this case—including the potential prejudice to Genfine from the issuance of a stay and to Plaintiff from the absence of a stay—the Court, in its discretion, **CONCLUDES** that a balancing of the equities supports the entry of a stay pursuant to Rule 62(g).

26. Alternatively, in the event that a reviewing court were to determine that Rule 62(g) is inapplicable here (due to the absence of a Rule 54(b) certification in the Judgment), the stay entered herein is based on the Court's inherent authority to enter orders necessary for the proper administration of justice. As this Court has observed, “[t]rial courts retain the inherent authority to do all things that are reasonably necessary for the proper administration of justice.” *Window World of Baton Rouge v. Window World*, 2022 NCBC LEXIS 58, at *4 (N.C. Super. Ct. June 13, 2022) (cleaned up). *See also Red Valve, Inc.*, 2019 NCBC LEXIS 108, at *18 (“The Court has the inherent authority to enter a discretionary stay of proceedings pending appeal.”).

27. Finally, the Court has carefully considered the equities involved in requiring the posting of a bond by Plaintiff in connection with the issuance of a stay. Based on its thorough consideration of the parties' respective arguments, the Court **CONCLUDES**, in its discretion, that no bond shall be required for purposes of this Order. *See, e.g., Bolier & Co., LLC v. Decca Furniture (USA), Inc.*, 2015 NCBC LEXIS 55, *32 (N.C. Super. Ct. May 26, 2015) (explaining that trial courts have the power to dispense with any security requirement in appropriate cases).

CONCLUSION

THEREFORE, Plaintiff's Motion is hereby **GRANTED** and all proceedings to enforce the Court's 23 January 2023 Judgment are hereby **STAYED** pending the entry of a final judgment in this case or further order from this Court.

SO ORDERED, this the 20th day of April, 2023.

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