

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 12833

JARED RAYMOND LONDRY,

Plaintiff,

v.

STREAM REALTY PARTNERS, L.P.,
STREAM REALTY PARTNERS-
CHARLOTTE, L.P., and DANIEL
FARRAR,

Defendants.

and

STREAM REALTY PARTNERS –
CHARLOTTE, L.P.,

Counterclaimant.

**ORDER ON MOTION FOR
INJUNCTIVE RELIEF**

1. **THIS MATTER** is before the Court on Plaintiff’s Motion for Injunctive Relief (the “Motion”), (ECF No. 9).

2. Plaintiff moves for (1) a mandatory injunction requiring Defendants to sign a release allowing escrowed funds to be disbursed, and (2) a prohibitory injunction requiring Defendants to cease all contact with Plaintiff’s clientele.¹

3. Having considered the Motion, the affidavits submitted in support of and in opposition to the Motion, the related briefing, other relevant matters of record, and the arguments of counsel at a hearing on the Motion held 21 December 2023, the

¹ Plaintiff does not characterize his request as a motion for *preliminary* injunctive relief and, indeed, the relief he requests is not preliminary in nature.

Court FINDS and CONCLUDES, solely for the narrow purposes of the Motion,² as follows:

FINDINGS OF FACT

I. Procedural History

4. Plaintiff/Counterclaim Defendant Jared Raymond Londry (“Londry”) filed his Complaint on 25 July 2023. (Compl., ECF No. 3.) The Complaint purports to allege claims for breach of contract against both Stream Realty Partners, L.P. (“Stream”) and Stream Realty Partners–Charlotte, L.P. (“Stream Charlotte”); breach of partnership agreement, breach of fiduciary duty, and fraud against Daniel Farrar (“Farrar”); and “unfair trade practice” against all Defendants. Londry demands damages, punitive damages, interest and costs. (*See generally*, Compl.)

5. The case was designated as a complex business case on 31 August 2023 and assigned to the undersigned the same day. (ECF Nos. 1, 2.)

6. On 29 September 2023, Defendants answered the Complaint, and Stream Charlotte asserted counterclaims against Plaintiff for breach of fiduciary duty and tortious interference with prospective business relations. (Answ. & Countercl., ECF No. 8.)

7. On 25 October 2023, Londry filed the Motion. A hearing on the Motion, at which all parties were present, was held on 21 December 2023, (ECF No. 20). The Motion is now ripe for disposition.

² It is well-settled that neither findings of fact nor conclusions of law made during a preliminary injunction proceeding are binding upon the Court at a trial on the merits. *Lohrmann v. Iredell Mem’l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) (citing *Huggins v. Wake Cnty. Bd. of Educ.*, 272 N.C. 33, 40-41 (1967)).

II. Relevant Facts

8. Stream Charlotte is a commercial real estate services firm that engages in leasing, property management, construction management, marketing, and sales of commercial properties. (Affidavit of Daniel Farrar in Supp. of Defs.' Opp. to Pl.'s Mot. for Inj. Relief ["Farrar Aff."] ¶ 6, ECF No. 22.1.)

9. Londry was an Executive Managing Director for Stream Charlotte until his departure on 10 March 2023. (Farrar Aff. ¶ 10; Affidavit of Jared Raymond Londry in Supp. of Pl.'s Mot. for Inj. Relief ["Londry Aff."] ¶ 6, ECF No. 11.) As an Executive Managing Director, Londry's duties included: "(1) building Stream's presence in the Carolinas; (2) sourcing, winning, and executing Stream's service line of business; (3) uncovering and executing acquisitions and development opportunities; (4) identifying, recruiting, and retaining talented team members; and (5) teaming with other Stream offices for the general success of all Stream business lines and offices." (Farrar Aff. ¶ 10.)

10. For more than two years prior to his departure from Stream Charlotte, Londry worked with RCC Investors 1091 Morrison, LLC ("RCC"), the seller of seventeen (17) parcels of real property in Charleston, South Carolina (the "PBC Property"), to find a buyer and broker a deal. (Londry Aff. ¶¶ 7-8; Farrar Aff. ¶¶ 13-15; Affidavit of Alexander Olofson in Supp. of Defs.' Opp. to Pl.'s Mot. for Inj. Relief ["Olofson Aff."] ¶ 7, ECF No. 22.2.) A Senior Associate at Stream Charlotte, Alexander Olofson ("Olofson"), assisted Londry with the PBC Property deal (the "PBC Deal") beginning in April 2021. (Olofson Aff. ¶ 7.)

11. In the real estate industry, it is standard practice for brokers to obtain a listing agreement shortly after a prospective client is identified. (Farrar Aff. ¶ 16.) The listing agreement is necessary to ensure that the broker receives a commission for identifying a buyer and facilitating a deal. (Farrar Aff. ¶ 16; Olofson Aff. ¶ 15.) However, despite working on the PBC Deal for more than two years, Londry did not secure a listing agreement with RCC prior to his departure from Stream Charlotte. (Londry Aff. ¶ 8.) When asked about the status of the listing agreement, Londry would respond that he wanted to get the prospective buyer, Asana Partners, LP (“Asana”), closer to an agreed upon purchase price before asking the RCC to enter into a listing.” (Olofson Aff. ¶¶ 10, 14.)

12. Stream Charlotte received and relayed offers to buy the PBC Property from Asana in April 2021 and October 2021. The offers were not successful. (Olofson Aff. ¶ 10.) From April 2021 through March 2023, Olofson and Londry were in “near–constant communication” with RCC and Asana. (Olofson Aff. ¶ 10.)

13. After a meeting with senior management in December 2022 did not go well, Londry’s employment with Stream Charlotte ended on 10 March 2023. (Londry Aff. ¶ 6.) Since leaving Stream Charlotte, Londry has begun work with his own real estate services firm, PointBlank Ventures, LLC, (formerly Alpha Advisors, LLC) (“Alpha”). He is the sole member of Alpha. (Londry Aff. ¶ 5.)

14. On 23 March 2023, following his departure from Stream Charlotte, Londry emailed Farrar about the deals Londry had worked on prior to his departure. (Farrar Aff. ¶ 19; Londry Aff. ¶ 10.) The next day, Farrar responded asking whether

a listing agreement was in place for the PBC Deal. (Londry Aff. ¶ 11.) Londry responded that the PBC Deal was not under contract and that Stream Charlotte was free to pursue the PBC Deal independently. (Londry Aff. ¶¶ 12-13.)

15. On 11 May 2023, two months after his departure from Stream Charlotte, Londry executed a listing agreement with RCC. (Londry Aff. ¶ 15.) The Listing Agreement named Londry and his company, Alpha, as RCC's sole agent and broker. There was no mention of Stream Charlotte. (Londry Aff. ¶¶ 15, 21.)

16. On 18 May 2023, RCC and Asana executed an "Agreement of Purchase and Sale" (the "Purchase Agreement"), which included a provision stating that Londry was the sole broker for the PBC Deal. (Londry Aff. ¶¶ 18-19.) The closing was scheduled for 31 August 2023. (Londry Aff. ¶ 22.)

17. In May 2023, Olofson, who continued to work for Stream Charlotte after Londry's departure, was inadvertently copied on an internal Asana email that contained the Purchase Agreement for the PBC Deal. (Olofson Aff. ¶ 19.) He informed Farrar, who contacted RCC to discuss a commission agreement with Stream. (Farrar Aff. ¶ 21.) Farrar was informed that RCC had entered into a listing agreement with Londry's company alone. (Farrar Aff. ¶ 22.)

18. When no commission agreement that included Stream was in place by August, Farrar contacted RCC, Asana, and Londry to request that they escrow the amount Stream Charlotte would have received in commission had Londry entered into a listing agreement while still employed by Stream Charlotte. (Farrar Aff. ¶ 23.)

19. In response, RCC demanded that Londry sign an agreement to hold \$375,765.00 of the commission in escrow. (Londry Aff. ¶¶ 27-28.) This is the amount Stream Charlotte contends it would have received had Londry obtained a listing agreement and closed the PBC Deal while still employed at Stream Charlotte. (Farrar Aff. ¶ 24.) The money remains in escrow and is not in the possession of the parties. (Farrar Aff. ¶ 25.)

20. Londry's claims do not involved the PBC Deal. In the Motion, however, Londry argues that Stream Charlotte and Farrar's interference with the PBC Deal has damaged him, both financially and personally. He worries that "Farrar's communication with RCC damaged [his] reputation with RCC to such an extent that they may refuse to hire [him] again[,]” and that Asana, his “most active buyer,” “might decline to work with Alpha or [him] until the claim is resolved.” (Londry Aff. ¶¶ 29, 34-35.)

21. Additionally, Londry contends in the Motion that his inability to access the funds in escrow has placed a financial strain on Alpha. Londry posted two job openings for Alpha on 24 July 2023, but has had to pause hiring efforts to preserve capital. (Londry Aff. ¶¶ 37-38.) He complains in the Motion that he is having to raise capital from outside investors and must give up a percentage of his ownership in Alpha in order to keep the company afloat. (Londry Aff. ¶ 44.) If Alpha becomes insolvent, Londry fears he will have to cover some of Alpha's obligations himself, placing his personal residence and assets at risk. (Londry Aff. ¶ 45.)

CONCLUSIONS OF LAW

22. The Court has jurisdiction over the parties and the subject matter of this action.

23. A preliminary injunction “is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation.” *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). The movant bears the burden to show: (1) a likelihood of success on the merits, and (2) that it is likely to sustain irreparable loss unless the injunction is issued or, “if, in the opinion of the Court, issuance is necessary for the protection of plaintiff’s rights during the course of litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983); *see also* N.C.G.S. § 1-485.

24. Likelihood of success means a “reasonable likelihood[.]” *A.E.P. Indus., Inc.*, 308 N.C. at 404. Irreparable injury is not necessarily injury that is “beyond the possibility of repair or possible compensation in damages.” *Id.* at 407. It could also be an injury “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.” *Id.* (emphasis omitted).

25. Irreparable injury must be “real and immediate.” *Daimlerchrysler Corp. v. Kirkhart*, 148 N.C. App. 572, 586 (2002). Moreover, merely alleging that irreparable injury is occurring is not enough. *See United Tel. Co. of Carolinas v. Universal Plastics, Inc.*, 287 N.C. 232, 236 (1975). Plaintiff must “set out with particularity facts supporting such statements so the court can decide for itself if irreparable injury will occur.” *Id.*

26. Additionally, when deciding whether to afford preliminary injunctive relief, the Court must balance the potential harm the plaintiff will suffer if no injunction is entered against the potential harm to the defendants if an injunction is entered. *See Travenol Labs., Inc. v. Turner*, 30 N.C. App. 686, 694 (1976) (“A court of equity must weigh all relevant facts before resorting to the extraordinary remedy of an injunction.”); *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 23, at **12-13 (N.C. Super. Ct. Mar. 15, 2017) (“[T]he trial court must weigh the potential harm a plaintiff will suffer if no injunction is entered against the potential harm to a defendant if the injunction is entered.” (citing *Williams v. Greene*, 36 N.C. App. 80, 86 (1978))).

27. “A preliminary injunction is an ancillary remedy, not an independent cause of action.” *Revelle v. Chamblee*, 168 N.C. App. 227, 230 (2005). For a temporary injunction to be entered, “there has to be an action pending to which the temporary injunction can be ancillary.” *Hutchins v. Stanton*, 23 N.C. App. 467, 470 (1974); *Ford & Kisgen v. Jurgens*, 2020 NCBC LEXIS 157, *1 (N.C. Super. Ct. April 24, 2020) (“Absent a primary claim for relief, there is no basis to impose a temporary restraining order or preliminary injunction as an ancillary remedy.”); *see also* G. Gray Wilson, North Carolina Civil Procedure, Ch. 65, § 65-2 (Matthew Bender) (“[T]here must be a primary action seeking some sort of permanent relief to which a preliminary injunction may attach.”).

28. Furthermore, the law recognizes a distinction between prohibitory and mandatory injunctions. While a prohibitory injunction seeks to preserve the status

quo, “[a] mandatory injunction is intended to restore a status quo and to that end requires a party to perform a positive act.” *Auto. Dealer Res., Inc. v. Occidental Life Ins., Co.*, 15 N.C. App. 634, 639 (1972); *see also Holleman v. Aiken*, 193 N.C. App. 484, 503 (2008) (“Mandatory injunctions are affirmative in character, and require positive action involving a change of existing conditions—the doing or undoing of an act.”).

29. A mandatory injunction ordinarily will be granted only when an injury is “immediate, pressing, irreparable, and clearly established.” *Auto. Dealer Res., Inc.*, 15 N.C. App. at 639; *see also* G. Gray Wilson, *North Carolina Civil Procedure*, at § 65-1 (“A mandatory injunction . . . requires a greater showing of urgency[.]”). However, “if necessary to meet the exigencies of a particular situation, the injunctive decree may be both preventive and mandatory.” *Auto. Dealer Res., Inc.*, 15 N.C. App. at 639; *See also Seaboard A.L.R. Co. v. Atlantic C.L.R. Co.*, 237 N.C. 88, 94 (1953) (“It (a court of equity) may, by its mandate, compel the undoing of those acts that have been illegally done, as well as it may, by its prohibitive powers, restrain the doing of illegal acts.”).

30. Ultimately, the decision to grant or deny a preliminary injunction rests in the discretion of the court. *Lambe v. Smith*, 11 N.C. App. 580, 583 (1971).

31. Here, Londry asserts five causes of action in the Complaint, none of which serves as the basis for the relief sought in the Motion. Londry’s counsel argued at the hearing that Londry’s claim for unfair and deceptive trade practice gives rise to the relief he seeks in the Motion. However, nowhere in Londry’s Complaint does he allege that any Defendant engaged in unfair or deceptive trade practices relating

to the PBC Deal. Consequently, even employing the most liberal reading of the Complaint, Londry has not satisfied the notice pleading requirements of Rule 8(a) for the relief he now requests.

32. In addition, tellingly, the prayer for relief seeks only damages, not injunctive relief. When 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 and Water Comm'rs v. Parkwood Sanitary Dist.*, 49 N.C. App. 421, 423 (1980).

33. Because Londry has failed to assert a claim to which the requested injunctive relief could be ancillary, and because his demand is for damages alone, Londry’s Motion shall be denied.³

CONCLUSION

34. WHEREFORE, based on the foregoing FINDINGS and CONCLUSIONS, the Motion is **DENIED**.

IT IS SO ORDERED, this 28th day of December, 2023.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases

³ Londry also contends that he is likely to succeed on the merits—not of his own claims— but on Stream Charlotte’s counterclaims and, therefore, he should be awarded his requested injunctive relief. The Court reserves judgment on Londry’s argument, except to say that it is more appropriately made in support of a Rule 12(b)(6) motion, where the relief to a successful movant is dismissal of an attempted claim, not a preliminary injunction.