

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 1487

AMERICAN TRANSPORTATION
GROUP INSURANCE RISK
RETENTION GROUP,

Plaintiff,

v.

MVT INSURANCE SERVICES,
INC.; AMRIT SINGH; ELEAZAR
ROJAS; and SHAMSHER SINGH,

Defendants,
and

MVT INSURANCE SERVICES,
INC.,

Defendant
and Third-
Party
Plaintiff,

v.

PALMETTO CONSULTING OF
COLUMBIA, LLC AND
MATTHEW A. HOLYCROSS,

Third-Party
Defendants.

FINAL JUDGMENT

THIS MATTER is before the Court on Plaintiff American Transportation Group Insurance Risk Retention Group's ("ATGI") Motion for Entry of a Default Judgment for Damages and Equitable Relief. ("Motion for Damages," ECF No. 140.) ATGI moves pursuant to Rules 54, 55, 57, and 58 of the North Carolina Rules of

Civil Procedure (“Rule(s)”) for an entry of final judgment against MVT Insurance Services, Inc. (“MVT”), Amrit Singh (“A. Singh”), Eleazar Rojas (“Rojas”), and Shamsher Singh (“S. Singh”) (collectively, “Defendants”) awarding ATGI certain monetary and equitable relief. (*Id.* at p. 1.)

THE COURT, having considered the Motion for Default Judgment, the brief and affidavits filed in support of the Motion for Damages, and other appropriate matters of record, CONCLUDES that the Motion for Damages should be GRANTED, for the reasons set forth below.

Butler Snow, LLP by Scott J. Lewis, and K&L Gates by Jason W. Callen and Beau C. Creson, for Plaintiff American Transportation Group Insurance Risk Retention Group.

Pro se Defendants Eleazar Rojas, Amrit Singh, and Shamsher Singh.

Sharpless McClearn Lester Duffy, PA by Frederick K. Sharpless for Third-Party Defendants Matthew A. Holycross and Palmetto Consulting of Columbia, LLC.

McGuire, Judge.

I. FACTS AND PROCEDURAL HISTORY

1. The Court has stated in detail the factual allegations and procedural background of this matter in its Order on Amended Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 40), Order on Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction (“Preliminary Injunction,” ECF No. 44), and Order and Opinion on Motion to Show Cause and for Sanctions, Motions to Dismiss, Motion for Judgment, and Motion for Pre-Filing Injunction (“Order on Motion for Sanctions,” ECF No. 133). Accordingly, the Court

will only recite those background facts necessary for determination of the Motion for Damages.

2. On February 2, 2021, the Court granted ATGI's request for sanctions, ordering, *inter alia*, that: "(a) Defendants' respective Answers to the Complaint (ECF Nos. 13, 14, and 15) are hereby stricken, (b) default judgment is hereby entered against Defendants in favor of ATGI as to the claims in the Complaint, and (c) Defendants' counterclaims against ATGI are hereby DISMISSED, with prejudice." (ECF No. 133.)

3. In the Order on Motion for Sanctions, the Court instructed ATGI to:

file a motion seeking an award of damages, and [ATGI] and Third-Party Defendants may file motions for any other relief, including attorneys' fees and costs, as may have been requested by the Motions and which were not addressed in this Order.

(ECF No. 133, at p. 22, ¶ 3.)

4. On March 12, 2021, ATGI filed the Motion for Damages, along with a supporting memorandum (ATGI's Bf. ISO Mot. for Entry of Def. Judg. for Dmgs. and Equit. Relief., ECF No. 141), and a supporting affidavit and expert report (Aff. Of Jennifer Stalvey ISO ATGI's Mot. for Entry of Def. Judg. for Dmgs. and Equit. Relief, ECF No. 141.1 (hereinafter, "Stalvey Report")).

5. In the Motion for Damages, ATGI seeks a final judgment that: (1) awards ATGI \$5,831,864 in damages against A. Singh, MVT, S. Singh, and Rojas; (2) awards ATGI an additional \$427,962 in damages against A. Singh and MVT; (3) declares that resolutions passed by ATGI's Board of Directors ("Board") on March

13, 2020 and April 3, 2020 (the “March 13th and April 3rd Resolutions”) are valid and binding upon ATGI, Defendants, and Defendants’ agents; and (4) permanently enjoins Defendants from (a) holding themselves out as having authority to act on behalf of ATGI, (b) purporting to act on behalf of ATGI, (c) attempting to induce third-party agents to remit funds belonging to ATGI, (d) using misleading email addresses that incorporate all or some of the acronym “ATGI,” (e) writing, renewing, or extending ATGI policies, and (f) otherwise unlawfully interfering with ATGI’s business. (ECF No. 140, at pp. 1–2.)

6. Defendants did not respond to the Motion for Damages. The Motion for Damages is now ripe for decision.

II. ANALYSIS

7. Default judgment has been entered against Defendants, and all that remains is entry of a Final Judgment awarding ATGI appropriate relief. ATGI bears the burden of proving, to a reasonable degree of certainty, it is entitled to the remedies requested. *See Lacey v. Kirk*, 238 N.C. App. 376, 392 (2014) (“According to well-established North Carolina law, a party seeking to recover damages bears the burden of proving the amount that he or she is entitled to recover in such a manner as to allow the finder of fact to calculate the amount of damages that should be awarded to a reasonable degree of certainty.”) “[P]roof to an absolute mathematical certainty is not required.” *Id.* at 393 (quoting *State Properties, LLC v. Ray*, 155 N.C. App. 65 (2002)). Rather, a plaintiff need only “adduce some relevant datum from which a just and reasonable estimate might be drawn.”

Whiteside Estates, Inc. v. Highlands Cove, L.L.C., 146 N.C. App. 449, 462 (2001) (citation omitted).

A. ATGI's Damages

8. ATGI has presented unchallenged evidence that it has been damaged in the amount of \$6,259,826, which ATGI's forensic accounting expert, Jennifer Stalvey ("Stalvey"),¹ calculated based on ATGI and MVT's bank records. (ECF No. 141.1, at pp. 7–8.) Stalvey categorized these damages as follows: (1) "MVT's Improper Withholding of Funds Due to ATGI – \$4,468,884"; (2) "MVT's Fees and Commissions Under False Surplus Notes – \$1,362,980"; and (3) "A. Singh and MVT's Improper Withdrawals of Funds from ATGI – \$427,962." (*Id.* at pp. 9, 14, 18.) ATGI seeks to hold A. Singh, Rojas, S. Singh, and MVT jointly and severally liable for the first two damage categories totaling \$5,831,864 (ECF No. 141, at pp. 13–14, 18), and A. Singh and MVT jointly and severally liable for the damages in the third damage category totaling \$427,962 (*Id.* at pp. 15–16, 18).

9. The Stalvey Report provides a detailed analysis and mathematical breakdown of Stalvey's calculations for each of her three damage categories. (*See* ECF No. 141.1, at pp. 9–18.) Further, Stalvey represents in her report that (a) bank accounts are "an independent and reliable source of data [that] are commonly relied

¹ Stalvey is a Certified Public Accountant ("CPA") licensed in Tennessee and California. (ECF No. 141.1, at p. 1, ¶ 1.) Stalvey specializes in fraud-related matters and is presently a self-employed forensic accountant. (*Id.*) Stalvey has worked both in private practice and in government, for the State of Tennessee. (*Id.*) She previously served as the Chief Regulator of the Captive Insurance Section of the Tennessee Department of Commerce and Insurance, the regulatory body that licenses and oversees the regulation of risk retention groups ("RRGs"). (*Id.* at p. 2, ¶ 2.)

upon by forensic accountants in making damage calculations”; and (b) due to Defendants’ poor record keeping and the potential of other bank and investment accounts to which Defendants deposited ATGI funds, the calculations are “conservative and likely represent an amount less than the true financial loss to ATGI.” (*Id.* at pp. 8–9.)

10. The Court, having considered the unchallenged evidence presented by ATGI in the Stalvey Report, CONCLUDES that this evidence is competent and demonstrates to a reasonable degree of certainty damages to ATGI caused by the Defendants in the amount of \$6,259,826. Therefore, with respect to the monetary relief sought by ATGI, the Motion for Damages should be GRANTED.

11. Accordingly, Final Judgment should be entered awarding ATGI \$5,831,864 in damages against A. Singh, MVT, S. Singh, and Rojas; and (b) awarding ATGI \$427,962 in damages against A. Singh and MVT.

B. Equitable Relief

12. In addition to monetary relief, ATGI requests, in equity, entry of both a declaratory judgment and permanent injunction. (ECF No. 140, at pp. 1–2; ECF No. 141, at p. 16–18.) Specifically, ATGI seeks a judgment declaring that the March 13th and April 3rd Resolutions are valid and binding upon ATGI, Defendants, and all of Defendants’ agents. (*Id.* at p. 17.) Further, ATGI requests the Court extend, permanently, the previously entered October 16, 2020 Preliminary Injunction against Defendants, with certain modifications. (*Id.* (referring to Ord. on Plfs.’ Mot. for TRO and PI, ECF No. 44).) “[T]rial courts are given great discretion to grant,

deny, and shape equitable relief.” *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2018 NCBC LEXIS 56, at *31 (N.C. Super. Ct. June 5, 2018) (citing *Roberts v. Madison County Realtors Ass’n*, 344 N.C. 394, 399 (1996)).

13. The Court, having considered its previous orders acknowledging the validity of the March 13th and April 3rd Resolutions (*see, e.g.*, ECF No. 40, at ¶¶ 38–44), the October 16, 2020 Preliminary Injunction entered against Defendants (ECF No. 44), and the various equities and hardships of this case, CONCLUDES, in its discretion, that ATGI’s requests for equitable relief in the Motion for Damages should be GRANTED.

14. Accordingly, Final Judgment should be entered against Defendants (1) declaring the March 13th and April 3rd Resolutions are valid and binding; and (2) permanently enjoining Defendants from (a) holding themselves out as having authority to act on behalf of ATGI, (b) purporting to act on behalf of ATGI, (c) attempting to induce third party agents to remit funds belonging to ATGI, (d) using misleading email addresses that incorporate all or some of the acronym “ATGI,” (e) writing, renewing, or extending ATGI policies, and (f) otherwise unlawfully interfering with ATGI’s business.

THEREFORE, IT IS ORDERED that the Motion for Damages is **GRANTED**. Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that:

1. For the reasons set forth in the Court’s February 2, 2021 Order on Motion for Sanctions (ECF No. 133), which is incorporated herein by reference without revision:

- a. **FINAL JUDGMENT** is **GRANTED** in favor of ATGI on each of their claims in the Complaint (ECF No. 2).
 - b. All counterclaims asserted by Defendants against ATGI and all crossclaims asserted by Defendants against Third-Party Defendants (ECF Nos. 13–15) are **DISMISSED**, with prejudice.
2. For the reasons set forth above in this Order regarding the relief requested in the Complaint (ECF No. 2, at pp. 31–32) and the relief requested in the Motion for Damages (ECF No. 140):
- a. A. Singh, MVT, S. Singh, and Rojas are hereby **JOINTLY** and **SEVERALLY LIABLE** to ATGI for damages amounting to \$5,831,864.
 - b. A. Singh and MVT are hereby **JOINTLY** and **SEVERALLY LIABLE** to ATGI for damages amounting to \$427,962.
 - c. The March 13th and April 3rd Resolutions are hereby declared **VALID** and **BINDING** upon ATGI, Defendants, and Defendants’ agents.
 - d. A. Singh, MVT, S. Singh, and Rojas are hereby **PERMANENTLY ENJOINED** and **PROHIBITED**, directly or indirectly, alone or in concert with others, from:
 - i. Holding themselves out as having authority to act on behalf of ATGI;
 - ii. Purporting to act on behalf of ATGI;

- iii. Attempting to induce third party agents to remit funds belonging to ATGI;
- iv. Using misleading email addresses that incorporate all or some of the acronym “ATGI”;
- v. Writing, renewing, or extending ATGI policies; and
- vi. Otherwise unlawfully interfering with ATGI’s business

IT IS FURTHER ORDERED that Rojas’s Motion for TRO and PI (ECF No. 158) and S. Singh’s Motion for TRO and PI (ECF No. 159) are **DENIED**, the Court having previously addressed and rejected the arguments contained therein in its Order on Amended Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 40).

SO ORDERED, this the 22nd day of April, 2021.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases