

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20-CVS-001487

AMERICAN TRANSPORTATION
GROUP INSURANCE RISK
RETENTION GROUP,

Plaintiff,

v.

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

Defendants and
Third-Party Plaintiffs,

v.

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

Third-Party Defendants.

**ORDER ON PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

THIS MATTER comes before the Court upon the Motion for Temporary Restraining Order and Preliminary Injunction of Plaintiff American Transportation Group Insurance Risk Retention Group ("ATGI"). ("Motion for PI," ECF No. 34). ATGI seeks a temporary restraining order and preliminary injunction against Defendants MVT Insurance Services, Inc. ("MVT"), Amrit Singh ("A. Singh"), Eleazar Rojas ("Rojas") and Shamsher Singh ("S. Singh") (collectively, "Defendants") prohibiting: (a) A. Singh and MVT from purporting to act on behalf of ATGI or

American Transportation Group Association (“ATGA”) or otherwise hold themselves out as officers or authorized representatives of ATGI or ATGA; (b) prohibiting S. Singh and Rojas from speaking on ATGI’s or ATGA’s behalf or holding themselves out as officers of ATGI or ATGA or otherwise empowered to bind ATGI or ATGA to any third party beyond the specific rights granted to them as Directors by ATGI’s Bylaws so long as they serve in that capacity; (c) prohibiting Defendants from seeking to make any material change in ATGI’s management or terminating any of ATGI’s service providers absent approval by the North Carolina Department of Insurance (the “Department”), as required by the Department’s April 3, 2020 summary order (the “Order of Supervision”); and (d) prohibiting Defendants from taking any action causing ATGI to violate the Order of Supervision. (*Id.* at pp. 1-2).

THE COURT, having considered the Motion for PI, the brief filed in support of the Motion for PI, the exhibits filed in support of the Motion for PI, the Defendant’s representation to the Court that they do not oppose the Motion for PI, and other appropriate matters of record, CONCLUDES, in its discretion, that the Motion for PI should be GRANTED, for the reasons set forth below.

I. FINDINGS OF FACT AND PROCEDURAL HISTORY.¹

1. The Court makes the following findings of fact for the limited purpose of resolving the Motion for PI; the Court is not bound by these findings in subsequent orders. *See Lohrmann v. Iredell Mem’l Hosp., Inc.*, 174 N.C. App. 63, 75, 620 S.E.2d 258, 265 (2005).

¹ The facts have been drawn from the brief (ECF No. 35) and corresponding exhibits (ECF Nos. 35.1–35.6) filed in support of the Motion for PI, and the Affidavit of Michael Hunter in support of the PI Motion (ECF No. 35.5).

2. ATGI's Board of Directors passed multiple resolutions on March 13, 2020 (the "March 13th Resolutions"), by unanimous action on written consent signed by S. Singh and Rojas. (ECF No. 35.1). Among other things, the resolutions made effective the appointment of three new Board members. (*Id.* p. 1).

3. ATGI's Board of Directors passed additional resolutions on April 3, 2020, to address numerous other pressing issues ("April 3rd Resolutions"). (ECF No. 35.2). Among other things, the resolutions replaced S. Singh as ATGI's President and Treasurer and Rojas as ATGI's Secretary, but left both S. Singh and Rojas remaining as members of ATGI's Board. (*Id.* p. 6). The April 3rd Resolutions also terminated MVT's contract to serve as ATGI's managing general agent. (*Id.*).

4. Also, on April 3, 2020, the Department issued its Order of Supervision. (ECF No. 35.3). The Order of Supervision restricts ATGI from taking certain actions (absent the express written prior approval of the Department), including "[m]ak[ing] any material change in management" and "terminat[ion] [of] any service provider." (*Id.* pp. 7-8).

5. The Department sent a letter to ATGI on May 14, 2020 (the "May 14th Letter"), stating that "it is [ATGI's] responsibility to take action against MVT, its former service provider, to recover assets that are due to [ATGI] and to prohibit MVT and Amrit Singh from purporting to act on behalf of [ATGI]." (ECF No. 35.4, p. 3).

With respect to A. Singh and MVT, the Department further stated:

On April 3, 2020, ATGI voted to terminate its contract with MVT. The Department authorized the board's action to terminate its contract with MVT. Since that time, representatives of ATGI have reported to the Department

instances of MVT representatives seeking to withdraw money from ATGI bank accounts, attempting to obtain reinsurance on behalf of ATGI, sending emails using ATGI email addresses to solicit the writing of ATGI policies, pressing ATGI to write business, and offering incentives to policyholders to give shareholder proxies to MVT. By letter dated April 28, 2020, counsel for the Department advised counsel for MVT that MVT and ATGI are legally independent and separate entities. MVT's counsel was advised that MVT is not licensed as an insurance company, does not have authority to represent itself as an insurance company, and is to refrain from doing so. The letter further stated that MVT representatives are not representatives of ATGI and are not to present themselves as representatives of ATGI.

(Id.).

6. With respect to S. Singh and Rojas, the Department stated in the May 14th Letter that:

[O]n April 3, 2020, the Department approved the ATGI board action of terminating the appointments of Mr. Shamsher Singh, Mr. Eleazer Rojas, Mr. Pamveer Singh, and Ms. Loan Pham as officers of ATGI. As such, these individuals do not have the authority to speak on ATGI's behalf or bind ATGI as officers of the ATGI. However, Mr. Shamsher Singh and Mr. Eleazar Rojas remain directors of ATGI and possess the same authority as any other director of ATGI as provided under the corporate documents of ATGI.

(Id. p. 2).

7. ATGI filed its Complaint against Defendants on May 6, 2020. (ECF No. 2). In Count I of the Complaint, ATGI seeks a declaration that the March 13th Resolutions and April 3rd Resolutions are valid and binding on Defendants, including ATGI's termination of MVT as managing general agent and the removal of S. Singh's and Rojas's as officers of ATGI. (*Id.*, ¶¶86-93).

8. On October 1, 2020, A. Singh emailed ATGI's premium finance company, investment adviser, and agents. (ECF No. 35.5, ¶2). In one email, A. Singh stated "please dont hold all the funding matters of atgi until further notice." (*Id.*, Exhibit A). In a second email, he stated the following:

Hello all,

The great partners of atgi and mvt thanks for all your support please put all documents on hold and we like to request all information from april 1st.
and mr will taylor mvt lawyer will be in touch with you soon.

(*Id.*).

9. The first of these emails also attached the following: (a) an unsigned resolution by unanimous consent that purports to replace the independent members of ATGI's Board of Directors with Defendants' counsel, ATGI investor Chan Tran, and Mr. Tran's spouse, Loan Pham; (b) an unsigned letter from S. Singh claiming to be ATGI's President and instructing recipients to have no further dealings with ATGI's current management; and (c) an electronic copy of S. Singh's and Rojas' motion for temporary restraining order and preliminary injunctive relief that has been titled as "atgi restraining orders." (ECF No. 35.5, ¶3).

10. In support of the Motion for PI, ATGI has submitted an email from Chan Tran's attorney stating that "neither [Tran] nor his wife, Loan Pham, were aware that Andy Singh or anyone else was trying to put them on the board of directors of ATGI, and they did not know Andy was contacting the NCDOI about doing so" and

that “Chan Tran also confirmed that neither he nor his wife have agreed to serve on the board.” (*Id.* ¶5, Exhibit B).

11. On October 2, 2020, A. Singh emailed Gene Brodsky and Philip Winter. (*Id.* ¶7). Brodsky and Winter are ATGI’s principal insurance agents and Brodsky is also the Company’s claims adjuster. (*Id.*). In his October 2nd email, A. Singh wrote “lack of cooperation from your firm i dont think we can be a good partner and mvt and atgi will start termination procedure once completed we will notify you completed.” (*Id.*, Exhibit C).

12. ATGI filed the Motion for PI on October 2, 2020. ATGI contends that the emails from A. Singh and attachments contain false statements and violate orders contained in the Department’s Order of Supervision and May 14th Letter. (ECF No. 35, pp. 6-7). ATGI further contends that any further such emails risk irreparable harm to it in that ATGI’s accounts may be frozen and ATGI’s key vendors may refuse to do business with it. (ECF No. 35.5, ¶¶ 8-10).

13. The Court set a hearing on the Motion for PI for October 15, 2020 (ECF No. 42).

14. On October 15, 2020, prior to the scheduled hearing, Defendants notified the Court that they did not oppose the Motion for PI.

II. ANALYSIS

A. Standard of Review

15. A preliminary injunction may be issued during litigation when “it appears by affidavit that a party thereto is doing or threatens or is about to do . . .

some act . . . in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual.” N.C.G.S. § 1-485(2). “A preliminary injunction is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759 (1983) (citation omitted). A preliminary injunction is proper only:

(1) if a [party] is able to show likelihood of success on the merits of his case and (2) if a [party] 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 a [party’s] rights during the course of litigation.

Id. at 401, 302 S.E.2d at 759–60 (quoting *Ridge Cmty. Investors, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977)). Likelihood of success means “a reasonable likelihood.” *Id.* at 404, 302 S.E.2d at 761. The movant bears the burden of establishing its right to a preliminary injunction, which “should not lightly be granted.” *Comput. Designs & Integration, LLC v. Brown*, 2017 NCBC LEXIS 8, at *19 (N.C. Super. Ct. Jan. 27, 2017) (citation omitted); *Pruitt v. Williams*, 288 N.C. 368, 372, 218 S.E.2d 348, 351 (1975).

16. The issuance of an injunction is “a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville St. Christian Sch.*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction “should not be granted where there is a serious question as to the right of the defendant to engage in the activity and to forbid the defendant to do so, pending the final determination of the matter, would cause the defendant greater

damage than the plaintiff would sustain from the continuance of the activity while the litigation is pending.” *Bd. of Provincial Elders v. Jones*, 273 N.C. 174, 182, 159 S.E.2d 545, 551–52 (1968); *accord Cty. of Johnston v. City of Wilson*, 136 N.C. App 775, 780, 525 S.E.2d 826, 829 (2000) (noting that a court should weigh “the advantages and disadvantages to the parties” in deciding whether to issue a preliminary injunction).

B. Likelihood of Success

17. For the reasons set forth in the Order on Amended Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 40), the Court finds ATGI is likely to prevail on its claim (found in Count I of the Complaint) that the March 13th Resolutions and April 3rd Resolutions are valid and binding on Defendants, which would validate ATGI’s termination of MVT as managing general agent and the removal of S. Singh’s and Rojas’s as officers of ATGI.

C. Irreparable Harm

18. The Order of Supervision restricts ATGI (absent the express written prior approval of the Department) from making any material change in management and termination of any service provider.

19. In its May 14th Letter, the Department stated that MVT representatives (which would include A. Singh) are not representatives of ATGI and are not to present themselves as representatives of ATGI. The Department also stated that while S. Singh and E. Rojas remain directors of ATGI, they do not have the authority to speak on ATGI’s behalf or bind ATGI as officers of the ATGI.

20. The emails sent by A. Singh on October 1st and 2nd violate orders contained in the Department's Order of Supervision and May 14th Letter and risk irreparable harm to ATIG in that ATGI's accounts may be frozen and ATGI's key vendors may refuse to do business with it.

21. Therefore, for the reasons stated above, ATGI has established a likelihood of success on its Count I claim seeking a declaratory judgment and has demonstrated a risk of irreparable harm, and the Motion for PI should be GRANTED.

THEREFORE, IT IS ORDERED, that the Motion for PI is GRANTED, as follows:

1. A. Singh and MVT are **IMMEDIATELY ENJOINED** and **PROHIBITED**, directly or indirectly, alone or in concert with others, during the pendency of this lawsuit or until further order of this Court from purporting to act on behalf of ATGI or ATGA or otherwise holding themselves out as officers or authorized representatives of ATGI or ATGA;
2. S. Singh and Rojas are **IMMEDIATELY ENJOINED** and **PROHIBITED**, directly or indirectly, alone or in concert with others, during the pendency of this lawsuit or until further order of this Court, from speaking on ATGI's or ATGA's behalf or holding themselves out as officers of ATGI or ATGA or otherwise empowered to bind ATGI or ATGA to any third party beyond the specific rights

granted to them as Directors by ATGI's Bylaws and North Carolina Law so long as they serve, if they serve, in that capacity;

3. All Defendants are **IMMEDIATELY ENJOINED** and **PROHIBITED**, directly or indirectly, alone or in concert with others, during the pendency of this lawsuit or until further order of this Court, from:

- i. Seeking to make any material change in ATGI's management or terminating any of ATGI's service providers absent approval by the Department; and
- ii. Taking any action causing ATGI to violate the Order of Supervision.

IT IS FURTHER ORDERED that on or before **5:00 p.m. on Wednesday, October 21, 2020**, Plaintiff shall file with the Clerk of Superior Court for New Hanover County in a form satisfactory to the Clerk a bond in the amount of **one-hundred dollars and no cents (\$100)** as a security against damages that may be incurred by Defendants as a result of the imposition of this Order. If Plaintiff fails to post the required bond by 5:00 p.m. on October 21, 2020, the injunction shall dissolve immediately.

SO ORDERED, this the 16th day of October, 2020.

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

Respectfully submitted,

/s/ Scott Lewis

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