

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 25CV016837-590

RPAC RACING, LLC, d/b/a/ LEGACY)
MOTOR CLUB,)
)
Plaintiff and Counterclaim Defendant,)
)
v.)
)
RICK WARE RACING, LLC,)
)
Defendant and Counterclaim Plaintiff.)
)
)

**MOTIONS FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I. INTRODUCTION

Defendant Rick Ware Racing, LLC’s (“RWR”) representations to this Court cannot be trusted. Having once opposed a preliminary injunction by representing that it would not divest the NASCAR Charters at issue in this case, RWR turned around and immediately signed a purported deal to do just that. Just weeks after the hearing on Legacy Motor Club’s (“Legacy”) request for an injunction, a news article announced RWR had agreed to potentially sell both of the at-issue Charters to T.J. Puchyr (the “Puchyr Deal”)—the same individual who brokered RWR’s agreement to sell one of its Charters to Legacy. Although the announced deal has not yet closed, this Court should not give RWR a second chance. It should issue a temporary restraining order and preliminary injunction preventing the closing of the Puchyr Deal, and preventing RWR from entering any similar transaction that would result in the transfer, sale, or other encumbrance of either of RWR’s Charters, until an impartial fact-finder gets to hear the evidence and decide the case.

In March 2025, RWR and Legacy signed a Charter Purchase Agreement for the sale of one of RWR's NASCAR Cup Series Charters. Shortly after the deal was signed, a dispute arose over which of RWR's two Charters was the subject of the sale: Charter #27 or Charter #36. When Legacy later heard that RWR was actively considering offers to sell its Charters to other parties, Legacy filed this suit and moved for a preliminary injunction to prevent RWR from selling or encumbering the Charters until the case was resolved. *See* Index No. 6.

Although the parties disagreed on which of RWR's Charters was sold, both agreed that RWR agreed to sell and Legacy agreed to purchase *a* Charter. [REDACTED]

[REDACTED]

[REDACTED] In opposing Legacy's motion, RWR represented that an injunction was unnecessary [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At the April 30 preliminary injunction hearing, then-counsel for RWR, Bradley Arant Boulton Cummings LLP,¹ again insisted that RWR would never sell Charter #27 lest Rick Ware be

¹ Bradley Arant was substituted from its representation of RWR on July 18, immediately after the court-ordered deposition last week. Notice of Appearance and Substitution of Counsel for Defendant Rick Ware Racing, LLC, Index No. 93.

put “out of business.” See Ex. A at 2.² RWR’s counsel further represented to this Court that “Mr. Ware is standing by his *consistent* statement, all along, to sell Charter Number 36”; that if Legacy “want[s] Charter 36 in 2027, that’s available”; and *that Legacy “will get their Charter”*—“all they have to do is wait until 2027.” *Id.* at 3, 6 (emphasis added). Both Mr. Ware and RWR’s President, Robby Benton, were present at the hearing and did not correct these statements. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] After these statements by and through representations from RWR, the Court denied the motion for preliminary injunction. Order Denying Plaintiff’s Motion for Preliminary Injunction and Dissolving Temporary Restraining Order, Index No. 55.

But as Legacy and the Court later learned, RWR apparently intends to renege on its promises to Legacy and to the Court. On June 26, 2025, the Associated Press published an article announcing that RWR had made a separate deal to sell both of its Charters.³ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Excerpts of an unofficial transcript of the preliminary injunction hearing recording are attached as Exhibit A for the Court’s convenience.

³ Jenna Fryer, *T.J. Puchyr agrees to buy Rick Ware Racing with plans to build a 3-car NASCAR team*, ASSOCIATED PRESS (June 26, 2025), <https://apnews.com/article/nascar-rick-ware-racing-puchyr-ccd9b642548cfa30192befea81b15ad3>.

[REDACTED]

[REDACTED]

To gather information and assess the need for injunctive relief, Legacy noticed a Rule 30(b)(6) deposition limited to topics concerning the announced deal. [REDACTED]

[REDACTED]

[REDACTED] At the subsequent hearing on RWR’s motion for a protective order, RWR’s counsel refused to represent to the Court that “neither of these charters will be transferred ... to some third party” prior to a deposition, Ex. C, Transcript of July 14, 2025 Hearing on Motion for Protective Order (“Protective Order Tr.”) at 34:6–15, and admitted that counsel had not “discussed [the deal] with [its] client” and only knew what was in the Associated Press article, *id.* at 28:2–17, 34:12–19.

Given counsel’s representations at the prior hearing that RWR would at minimum follow through on its promise to sell Charter #36 to Legacy, Judge Kuehnert expressed concern: “if the client tells the [l]awyer something, and then it turns out the client wasn’t being truthful with their [l]awyer,” that “is something that the [l]awyer and the client need to get straightened around pretty quicky because it can have, again, serious ramifications,” which “wouldn’t necessarily be good for the party who’s saying on the one hand, ‘I’m going to do this’ to the Court, and then on the other they do something else.” *Id.* at 31:2–14. [REDACTED]

The Court accordingly granted Legacy’s request for a limited 30(b)(6) deposition, stating that, “if Mr. [Puchyr] is saying in public that Charter 27 and 36 have been sold . . . , that’s a big deal, especially when there’s been representations made to the Court that there’s no way this stuff is going to be sold.” Protective Order Tr. at 24:16–24. As Judge Kuehnert stated, “why would a broker put that out there” while “knowing . . . that representations have been made that [a sale] wasn’t going to take place.” *Id.* at 25:4–10. Judge Kuehnert continued that if RWR and Mr. Puchyr “end up closing the transaction and they made representations to the Court to the contrary, . . . there could be really serious ramifications to that. . . . Somebody might get held in [c]ontempt of [c]ourt.” *Id.* at 30:10–15. Judge Kuehnert accordingly ordered a deposition on “the potential sale or alleged public sale of Charter 27 and Charter 36,” and “any documents that might deal with that sale or e-mails or anything like that that deals with that particular sale.” *Id.* at 29:1–11; *see also* Order Denying Defendant’s Motion for Protective Order and Ordering Rule 30(b)(6) Deposition, Index No. 92. Judge Kuehnert also ordered RWR to “do everything [it] can to get as many documents as you can put together at that time.” Protective Order Tr. at 35:22–36:1.

[REDACTED]

[REDACTED]

Accordingly, it appears that RWR’s owner and its President either misled its counsel of record about RWR’s intentions, or conspired with its counsel to mislead Legacy and this Court.

Indeed, based on the evidence thus far, it appears RWR is playing a shell game. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On the other, RWR engaged Bradley Arant to serve as counsel of record, apparently instructing Bradley Arant to represent that Charter #36 would be available for Legacy, [REDACTED]

[REDACTED]

[REDACTED] As Judge Kuehnert warned, Bradley Arant and RWR needed to get things “straightened around pretty quickly because it can have, again, serious ramifications.” Protective Order Tr. at 30:25–31:14. On July 23, 2025—after the ordered deposition—Bradley Arant abruptly moved to withdraw as RWR’s counsel. Motion to Withdraw as Counsel, Index No. 99.

As if these events aren’t troubling enough, the events following the deposition are even more troubling. [REDACTED]

[REDACTED]

These recent events are alarming and require court intervention. Just weeks after representing a Charter would be available for Legacy, [REDACTED] To preserve its rights during the pendency of this case, Legacy must therefore move for a temporary restraining order and a preliminary injunction to restrain and enjoin the close of RWR’s reported deal with Mr. Puchyr, no matter what RWR or its representatives say.

II. BACKGROUND

A. The Charter Purchase Agreement

On March 3, 2025, RWR and Legacy executed an agreement to sell one of RWR’s Charters (the “Sale Charter”) to Legacy for the NASCAR Cup Series. See Wells Aff., Exhibit 5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Legacy subsequently received word that RWR was considering offers to buy both of its Charters from other prospective buyers. Legacy thus requested a preliminary injunction to prevent the sale or encumbrance of Charter #27.

B. RWR Tells This Court It Will Not Sell Its Charters

In its briefing and at the preliminary injunction hearing, RWR argued that selling Charter #27 would put RWR out of business, and that Mr. Ware had no intention of giving up that business. RWR doubled down on this representation at the April 30, 2025 hearing. RWR’s counsel assured the Court that no injunction was necessary because RWR would and could not sell Charter #27. It claimed that such a sale would “put[] Rick Ware out of business,” Ex. A at 2, and it further represented that Legacy faced no irreparable harm if Charter #27 were sold because Charter #36 would be available. RWR’s counsel assured the Court that Legacy “will get their Charter”—“all they have to do is wait until 2027,” because “*Mr. Ware is standing by his consistent statement, all along, to sell Charter number 36.*” *Id.* at 3 (emphasis added). According to RWR, Legacy’s

pleas of irreparable harm were misplaced because “*if they want a Charter, if they want Charter 36 in 2027, that’s available.*” *Id.* at 6 (emphasis added).

Although Mr. Ware was at this hearing, he did not object to his counsel’s representations.

[REDACTED] RWR confirmed that the parties intended to transact, and Legacy would receive at least *one* Charter under their signed contract. Others have since confirmed that there was a contract. [REDACTED]

[REDACTED] In response to RWR’s statements at the preliminary injunction hearing, this Court remarked that an injunction was unnecessary because “the contract ... cloud[s] the title of Charters 27 and 36 sufficiently that would ... prohibit[] RWR” from encumbering the Charters. Ex. A at 4. Based on this analysis and reasoning, the Court thus denied Legacy’s requested injunction. Index No. 55.

C. Mr. Puchyr Announces A Purported Deal To Purchase RWR’s Charters

[REDACTED]

That, as Legacy learned, was untrue. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Legacy heard nothing further about this sale until the Associated Press published an article about it on June 26, 2025.⁴ Mr. Puchyr claimed in his statements to the Associated Press that “there is no charter available from Ware for Legacy for either lease or purchase in 2026.” The press report further noted that “Puchyr and Ware are confident the second charter currently leased to RFK will be returned to their team in 2027, allowing Puchyr to expand the organization” and race three Charters. In other words, Charter #36—which RWR promised in court would be “available” to Legacy in 2027—would belong to Mr. Puchyr instead. Mr. Puchyr further declared that Legacy’s owner, NASCAR legend Jimmie Johnson, “doesn’t understand the deal we had” and does not have “all the facts.” As Mr. Puchyr put it: if Mr. Johnson “wants to sit down and talk about it like men, I’d entertain the conversation.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Legacy then submitted a limited Rule 30(b)(6) notice to depose RWR’s corporate representative on the announced sale of its Charters to Mr. Puchyr. After RWR filed for a protective order and lost, this Court allowed the deposition to proceed, noting the “serious

⁴ See Fryer, *supra* n. 3.

[REDACTED]

[REDACTED]

RWR's production was no better. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

At the parties' hearing on July 14, Judge Kuehnert ordered that the deposition be taken on "the potential sale or alleged public sale of Charter 27 and Charter 26," and required production of "any documents that might deal with that sale or emails or anything like that." Protective Order Tr. at 29:4–11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These questions all fall within the scope of a deposition "on the subject of Rick Ware Racing, LLC's 'sale or alleged public sale of Charter 27 and Charter 36,' as mentioned in [Plaintiff's] brief." Index No. 92, ¶ 1. Since the deposition, RWR subsequently substituted its litigation counsel, *see* Index No. 93; Index No. 99.

III. LEGAL STANDARD

Legacy moves the Court for a prohibitory injunction, which "seeks to preserve the status quo, until the rights of the parties can be determined, by restraining the party enjoined from doing particular acts." *Auto. Dealer Res., Inc. v. Occidental Life Ins. Co. of N.C.*, 15 N.C.App. 634, 639, 190 S.E.2d 729, 732 (N.C. Ct. App. 1972) (citations omitted). A temporary restraining order and preliminary injunction will issue "(1) if a plaintiff is able to show likelihood of success on the merits of his case and (2) if a plaintiff 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 plaintiff's

rights during the course of litigation.” *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759–60 (N.C. 1983) (citations omitted). Trial courts “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted.” *Williams v. Greene*, 36 N.C.App. 80, 86, 243 S.E.2d 156, 160 (N.C. Ct. App. 1978). Legacy seeks to preserve the status quo by restraining and enjoining the close of the Puchyr Deal pending resolution of this case.

IV. ARGUMENT

A. Legacy Is Likely To Succeed On The Merits

Legacy is likely to succeed on the merits of its claims. Among other things, Legacy brings claims for specific performance to transfer either Charter #27 (under the reformed Agreement) or Charter #36 (under the Agreement as written and/or orally memorialized on April 30). But whether the deal was for Charter #27 or Charter #36, it is indisputable and admitted by RWR on the record that RWR contracted with Legacy to sell *one* of its Charters. Legacy is therefore likely (if not guaranteed) to succeed on at least one of its claims.

RWR’s argument that there was no meeting of the minds and that no contract ever existed, *see* Index No. 60 ¶ 14, is false. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] RWR’s counsel similarly represented to this Court at the preliminary injunction hearing that “Mr. Ware is standing by his consistent statement, all along, to sell Charter Number 36” and that if Legacy “want[s] Charter 36 in 2027, that’s available.” Ex. A at 3, 5. RWR is now judicially estopped from arguing otherwise. *Bioletti v. Bioletti*, 204 N.C. App. 270, 277, 693 S.E.2d 691, 696 (2010) (“Plaintiff was judicially

estopped” from taking alternate position based on “undisputed evidentiary materials in the record clearly reflect[ing]” contrary representations to the court).

In sum, Legacy and RWR entered a valid agreement for the sale of one Charter. Regardless of whether the deal was for Charter #27 or Charter #36, the Court need only find that Legacy is likely to succeed under one of these paths to justify entering a preliminary injunction.

1. **Legacy Is Entitled To Reformation And Specific Performance On Charter #27**

Courts may “grant reformation of a contract . . . to express the ‘real agreement’ of the parties involved.” *Cerberus Intern., Ltd. v. Apollo Mgt., L.P.*, 794 A.2d 1141, 1151 (Del. 2002) (citations omitted). Here, the contract indicates the “real agreement” was for the sale of Charter #27. [REDACTED]

[REDACTED]

This fact pattern is a classic case for contract reformation. [REDACTED] is akin to a “scrivener’s error” that courts regularly correct when granting claims for reformation. *See, e.g., Richard B. Gamberg 2007 Family Tr. v. United Restaurant Grp., L.P.*, 2018 WL 566417, at *5 & n.49 (Del. Ch. Jan. 26, 2018); *Amstel Assocs., L.L.C. v. Brinsfield-Cavall Associates*, 2002 WL 1009457, at *8 (Del. Ch. May 9, 2002). [REDACTED]

[REDACTED]

Under the reformed contract, Legacy is entitled to specific performance. To obtain specific performance, “[a] party must prove by clear and convincing evidence that he or she is entitled to specific performance and that he or she has no adequate legal remedy.” *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010) (citations omitted). This requires a showing “that (1) a valid contract exists, (2) he is ready, willing, and able to perform, and (3) that the balance of equities tips in favor of the party seeking performance.” *Id.* (citations omitted). Under these standards, Legacy is likely to succeed in its claim for specific performance. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The equities strongly favor Legacy as well. Legacy has engaged at all times in good faith. RWR, by contrast, introduced a mistake in the Agreement through its misrepresentations and its representatives have demonstrated a willingness to flout the express terms of the Agreement the parties signed. [REDACTED]

[REDACTED] The “unique” nature of Charter #27 also justifies specific performance. *See, e.g., Shambala v. Tsipouras*, 2007 WL 4179315, at *7 (Del. Ch. Nov. 19, 2007). Courts routinely hold that business interests and sports franchises rank among those “unique” kinds of goods warranting specific performance. *See, e.g., Triple-A Baseball Club Assocs. v. N.E. Baseball, Inc.*, 832 F.2d 214, 224 (1st Cir. 1987). No legal remedy can adequately compensate for the loss of Charter #27.

2. **Legacy Is Likely To Succeed On Its Alternate Claims For Breach Of Contract To Transfer Charter #36**

In the alternative, Legacy is likely to succeed on its alternate breach of contract claims regarding Charter #36. [REDACTED]

[REDACTED] During the April 30 hearing, RWR *again* covenanted to sell Charter #36 to Legacy. Ex. A at 3 (“Mr. Ware is standing by his consistent statement all along to sell Charter Number 36.”). Legacy’s counsel acknowledged RWR’s “position . . . [that RWR is] going to sell 36”, a “representation that no matter what, [RWR will] give [Legacy] 36 in two years,” such that “[RWR is] not going to do anything with 36 beyond leasing it to RFK, and then [Legacy] can have it at the end.” *Id.* at 5. Legacy’s acknowledgement constituted acceptance of RWR’s offer to sell Charter #36 to Legacy—a clear obligation RWR entered into before the Court and on the record.

RWR, however, is in clear breach of its obligations to transfer Charter #36. The publicized deal with Mr. Puchyr constitutes a repudiation of RWR’s agreements with Legacy. These repudiatory statements and actions constitute a breach of the written Agreement under Delaware law, *see, e.g., W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2009 WL 458779, at *5 (Del. Ch. Feb. 23, 2009), and of the oral agreement memorialized before the Court under North Carolina law, *see, e.g., Gupton v. Son-Lan Dev. Co.*, 205 N.C. App. 133, 141, 695 S.E.2d 763, 769 (2010).

Legacy is entitled to seek specific performance to enforce the transfer of Charter #36. Charter #36, like Charter #27, has unique qualities that cannot be replicated, and monetary damages will not compensate Legacy for its loss. Legacy is prepared to perform its obligations

and requests this Court grant it the opportunity to do so by enjoining RWR’s transaction with Mr. Puchyr.

B. A Preliminary Injunction Is Necessary To Protect Legacy’s Rights During The Course Of This Litigation

If the Court does not issue a preliminary injunction preventing [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] RWR has shown that, absent a binding court order, it has no qualms about representing to this Court and to Legacy that it will not encumber its Charters, and then turning right around and selling them off to the highest, non-Legacy bidder. [REDACTED]

[REDACTED]

[REDACTED] If this Court does not enter a preliminary injunction, RWR and Mr. Puchyr will finalize the Puchyr Deal and prevent Legacy from receiving any Charter in 2027 even while this litigation progresses.⁵

RWR has shown a willingness to lie to Legacy and to the Court about the status of the deal. At the parties’ first preliminary injunction hearing, RWR’s counsel represented to this Court that “Mr. Ware is standing by his consistent statement, all along, to sell Charter Number 36”; that if

⁵ Beyond the impairment of its rights during this litigation, Legacy will be irreparably harmed absent injunctive relief. First and foremost, RWR has signed a contract for the Puchyr Deal—one that RWR’s corporate representative understands to be “binding.” *See supra*. This sale means Legacy may be forced to wait until 2027 or beyond to run a competitive third car. Given the Charters’ unique nature, Legacy cannot easily purchase a substitute. It would also harm Legacy’s reputation and decrease its credibility in any prospective deal for a third Charter with another NASCAR team—if such opportunities arise at any time soon, at all. These impending threats warrant a preliminary injunction preventing RWR from closing the Puchyr Deal until a full adjudication of the merits of this case.

Legacy “want[s] Charter 36 in 2027, that’s available”; and that Legacy “will get their Charter”— “all they have to do is wait until 2027.” Ex. A at 3, 6. When this Court declined to impose injunctive relief preventing RWR from encumbering its Charters on the backs of these statements,

When Legacy and this Court relied on RWR’s sworn statements that it would not encumber the Charters, RWR took advantage of that trust. RWR should not be given the benefit of the doubt again. It has shown that its statements to its counterparties and to the Court cannot be trusted, and that, absent a preliminary injunction, it is likely to charge ahead with the Puchyr Deal regardless of what it says to or is told by this Court.

Under such circumstances, an injunction is justified when “necessary for the protection of [a] plaintiff’s rights during the course of litigation.” *A.E.P. Indus.*, 308 N.C. at 406, 302 S.E.2d at 762. On these grounds, courts in this state have prevented sales or other transfers of assets where “prohibiting [d]efendants from moving th[o]se assets for the pendency of litigation maintains the status quo and protects the . . . injunctive relief Plaintiff seeks.” *SED Hldg., LLC v. 3 Star Props., LLC*, 246 N.C.App. 632, 639, 784 S.E.2d 627, 632 (N.C. Ct. App. 2016); *see also Superscope, Inc. v. Kincaid*, 56 N.C.App. 673, 676, 678, 289 S.E.2d 595, 597–98 (N.C. Ct. App. 1982) (finding “injunctive relief . . . necessary to protect plaintiffs’ rights” before defendants’ “foreclosure sale of the corporate property which was the subject of the transaction”). An injunction in this case would “maintain[] the status quo and protect[] . . . the injunctive relief” sought by Legacy, under its bargained for right to specific performance under the Agreement. *SEC Hldg.*, 246 N.C. App. at 639.

C. A Bond Is Unnecessary And Punitive

judicial estoppel arising from “sworn statements” in prior proceedings). Thus, even if RWR is eventually found to have been wrongfully enjoined, it will be unable to recover “for the payment of such costs and damages may be incurred or suffered” as a result of its wrongful enjoinder, *see* N.C. R. Civ. P. 65(c), as the doctrines of unclean hands and judicial estoppel will prevent any such recovery. No bond is therefore necessary to secure RWR from such a loss.

V. CONCLUSION

For the foregoing reasons, the Court should issue a temporary restraining order and preliminary injunction enjoining RWR from closing the Puchyr Deal, or entering any similar transaction that would result in the transfer, sale, or other encumbrance of either of RWR’s Charters until this dispute is resolved.

This 25th day of July, 2025.

Respectfully submitted,

/s/ Lee M. Whitman

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing pleading was served this day via electronic mail to opposing counsel.

This the 25th day of July, 2025.

/s/ Lee M. Whitman
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