

Filed in District Court
State of Minnesota
11/5/2021

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF RENVILLE

EIGHTH JUDICIAL DISTRICT
Civil Division

Sandton Credit Solutions Master Fund IV, LP,

Plaintiff,

Court File: 65-CV-21-168

v.

Revier Cattle Farms Partnership, Review Farms LLC, Gerald R. Revier et al,

Defendant

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S MOTION
FOR AN EMERGENCY TEMPORARY INJUNCTION**

The above-entitled matter came before the above-named Court on the motion of Plaintiff Sandton Credit Solutions Master Fund IV, LP ("**Plaintiff**") for a temporary injunction (the "**Motion**"). A hearing on the Motion was conducted via Zoom on October 6, 2021.

Matthew J. Bialick, Esq., of MJB Law Firm PLLC, and Jeremy C. Hollembeak, Esq., of Baird Holm LLP, appeared on behalf of Plaintiff. Erik A. Ahlgren, Esq., of The Ahlgren Law Office, PLLC, appeared on behalf of Defendants Revier Farms Partnership, Revier Farms LLC, Nicholas Revier ("**Nicholas**") and Parker Revier ("**Parker**"). Jon R. Brakke, Esq., of Vogel Law Firm, appeared on behalf of Defendant GRB Financial Corporation. All other appearances, if any, are noted on the minutes of the Hearing.

Having reviewed the record, including the Complaint and exhibits thereto, Motion, Plaintiff's Memorandum of Law, Affidavit of Colby Gibbins and exhibits thereto (collectively the "**Gibbins Affidavit**"), and other filings in support of the Motion, the Defendants' responsive filings and evidentiary submissions in opposition to the Motion, and having heard the presentation of evidence and argument from both Plaintiff and Defendants at the Hearing, the Court herein makes the following Order for Temporary Injunction on the terms set forth herein:

THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff's Motion is **GRANTED** in part and **DENIED** in part;
2. Pursuant to Rule 115.07 of the Minnesota General Rules of Practice Plaintiff's request for an expedited hearing on the Motion is granted;
3. Defendants are hereby enjoined to comply with the terms of this Order unless and until the Court subsequently orders otherwise;
4. Defendants Revier Farms Partnership, Revier Farms LLC, Nicholas and Parker are required to and shall deposit any and all 2021 Crop proceeds, currently in their possession or hereafter obtained, shall be transferred in a manner mutually determined by the parties pending the final order in this matter;
5. Should parties fail to come to an agreement as to placement of the 2021 Crop proceedings pending final order in this matter, a hearing shall be scheduled to review the most appropriate placement of proceeds;
6. Defendants Revier Farms Partnership, Revier Farms LLC, Nicholas and Parker are prohibited from selling, transferring, conveying or distributing any part of the 2021 Crop to or for the benefit of, or otherwise allowing any part of the 2021 Crop to be consumed by, Revier Cattle Company or any other Revier entity or family member;
7. Defendants Revier Farms Partnership, Revier Farms LLC, Nicholas and Parker are required to and shall provide to Plaintiff the 2021 Crop Accounting including the following information, and requiring said parties to provide to Plaintiff updated information – if any – on a weekly basis without any additional request by Plaintiff being required, and also (without limiting the foregoing) promptly upon Plaintiff's requests therefore:
 - a. A copy of any 2021 crop insurance application or policy and the identity of crop insurance agent, if any;
 - b. Certification of 2021 crop acres with the FSA office and crop insurance agent, if any;
 - c. A listing of the locations of all 2021 growing crops, the number of acres of crops at each location, and the type of crop being grown at each location;
 - d. A list of all landlords where 2021 crops are growing and each respective landlord's contact information;
 - e. Copies of all leases for land where 2021 crops are growing and/or where harvested grain is and/or will be stored;

- f. A list of the locations where any of 2021 crops are stored and/or will be stored after harvest, and the amount of bushels at each site;
- g. A list of who owns the grain bins where any of 2021 crops are stored and/or will be stored after harvest; and
- h. Copies of any and all documents related to all sales of Revier Farms LLC's, Parker's and/or Nicholas's grain, including but not limited to purchase and sale agreements, forward contracts, receipts or other documentation from grain purchasers, and contracts with grain brokers for the purchase and sale of grain;

8. Defendants Revier Farms Partnership, Revier Farms LLC, Nicholas and Parker are required to and shall provide to Plaintiff the name, address, phone number and email (if applicable) of all parties to whom they have sold, transferred, conveyed or distributed, or intend to sell, transfer, convey or distribute, any or all of the 2021 Crop;

9. Defendants Revier Farms Partnership, Revier Farms LLC, Nicholas and/or Parker are prohibited from selling any of the 2021 Crop in the name of any other individual or entity, or from selling any of the 2021 Crop to any buyer outside the state of Minnesota; and

10. The Court shall retain jurisdiction to any disputes arising out of the construction or application of this Order.

THERE BEING NO JUST REASON FOR DELAY, AND NOTWITHSTANDING MINN. GEN. R. PRAC., RULE 125, LET JUDGMENT BE ENTERED IMMEDIATELY AND WITHOUT DELAY OR STAY

Dated: November 5, 2021

BY THE COURT:



Stratton, Laurence
(Judge)
2021.11.05 14:33:12
-05'00'

Laurence J. Stratton
Judge of District Court

Thissen,
Nicole
2021.11.08
14:00:40
-06'00'

JUDGMENT

I hereby certify that the foregoing constitutes the Judgment of the Court.

Court Administrator

Memorandum

I. Temporary Injunction

Under Minnesota Rule of Civil Procedure 65.02(b), a temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor. In *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 N.W.2d 314 (Minn. 1965),

The Minnesota Supreme Court identified the five factors to consider when determining whether to grant a temporary injunction. The five “*Dahlberg* factors” are: (1) the nature and relationship of the parties; (2) the balance of relative harm between the parties; (3) the likelihood of success on the merits; (4) public policy considerations; and (5) any administrative burden involving judicial supervision and enforcement. *Dahlberg Bros.*, 272 Minn. 264 at 274–75, 137 N.W.2d at 321–22. Each factor shall be discussed in turn below.

II. Dahlberg Factors¹

a. Nature and Relationship of the Parties

In determining the nature and relationship of the parties, the Court is to consider whether granting an injunction would maintain or destroy the status quo of the controversy before a final hearing on the merits can be had. *Dahlberg*, citing *Chicago, B. & Q. R. Co. v. Chicago Great W. R. Co.*, 190 F.2d 361, 363 (8th Cir. 1951).

The nature and relationship of the parties is lengthy and litigious. Revier Farms Partnership and other related entities collectively owe Plaintiff approximately \$24 million. In addition to the current action, Plaintiff is currently seeking legal remedies to recover its collateral and collect on debts owed to Plaintiff in two other lawsuits pending against Revier Farms Partnership and other related entities and Revier family members: a replevin lawsuit filed July 13, 2021, Court File No. 65-CV-21-132, and a foreclosure lawsuit filed September 20, 2021, Court File No. 65-CV-21-187.

While GRB claims no pre-existing formal relationship exists between Plaintiff and GRB, Nicholas, Parker, or Revier Farms LLC, the evidence presented before the Court suggests otherwise:

In March of 2021, the relationship between Plaintiff and Borrowers deteriorated; Plaintiff explicitly told Borrowers it “expects to be consulted in advance of any proposed use of its collateral

¹ *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 135 N.W.2d 314, 321-22 (1965).

by any Borrower outside the ordinary course of business...and Sandton does not and will not agree to the rental of any equipment or other Collateral assets.”²

In April 2021, Borrowers indicated to Plaintiff their plan to rent out the land to the Revier sons to farm for the year. Revier Farms LLC leased from Revier Farms Partnership Plaintiff’s collateral without Plaintiff’s consent through equipment, farmland, and facilities leases.³

Four general partners of the Revier Farms Partnership compose the majority of the six of member-owners of Revier Farms LLC: Thomas, Libby, Dave, and Christine - each of whom purportedly owns 6.25%, and thus 25% collectively, of the membership interests in Revier Farms LLC.⁴ The remaining two members are Nicholas (Thomas and Libby’s son) and Parker (Dave and Christine’s son), each of whom purportedly owns 37.5%, and thus 75% collectively, of the membership interests. Despite Nicholas and Parker purporting to hold the super-majority ownership interest and control of Revier Farms LLC, Thomas serves as its Chief Executive Officer, while David serves as its President. The combined capital contributions of all six members of Revier Farms LLC was \$100.00.⁵

Because 1) there is evidence to support a finding that Revier Farms LLC is substantially the same as Revier Farms Partnership and 2) the members of Revier Farms Partnership are leasing Plaintiff’s collateral to Revier Farms LLC against Plaintiff’s wishes, this Court believes the injunction an appropriate remedy that shall maintain the status quo until a party ultimately prevails on the merits of the case.

b. Balance of Relative Harm

This Court is to consider the “harm to be suffered by Plaintiff if the temporary restraint is denied as compared to that inflicted on the Defendant if the injunction issues pending trial.” *Dahlberg*, at 274, 275. “Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages.” *Gen. Motors Corp. v. Harry Brown’s, LLC*, 563 F.3d 312, 319 (8th Cir.2009). While there is “no threat of irreparable harm if the potential harm could be corrected by monetary damages,” irreparable harm may occur “where a debtor conceals assets from its creditor, especially in the case of a security interest.” *Jet Midwest Int’l*

² See Ex. H, Email from Mr. Hollembeak.

³ See, Ex. L, ¶ 33.

⁴ See, Ex. J, ¶ 32.

⁵ See, Ex. K, Schedules A & B to Revier Farms LLC’s Operating Agreement entered into as of March 22, 2021.

Co., Ltd v. Jet Midwest Grp., LLC, 953 F.3d 1041, 1046 (8th Cir. 2020)(citing *McGirr v. Rehme*, 891 F.3d 603, 613–14 (6th Cir. 2018)(where the Sixth Circuit explained that a monetary judgment alone was not enough to protect the plaintiffs from irreparable harm because the defendant continued to avoid payment after the judgment against him and concealed assets to evade collection efforts).

The record supports Plaintiff's claim that without the issuance of the requested injunction, Plaintiff's security interest would be rendered ineffective and unrecoverable. The possible harms to the Plaintiff of difficulty or impossibility of Plaintiff's ability to trace its security interests outweigh Borrower's current debt obligations to Plaintiff should the injunction not issue.

c. Likelihood of Success on the Merits

This Court is to consider “[t]he likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.” *Dahlberg*, at 275. Plaintiffs offer numerous exhibits and attachments to support their claim that Revier Farms, LLC, Nicholas, and Parker are nothing more than Revier Farms Partnership's alter ego.

Typically, the debts, obligations, or other liabilities of a limited liability company are solely the debts, obligations, or other liabilities of the company; and do not become the debts, obligations, or other liabilities of a member, manager, or governor solely by reason of the member acting as a member, manager acting as a manager, or governor acting as a governor. Minn. Stat. § 322C.0304 Subd. 1. However, a Court may pierce the corporate veil to hold a party liable for the acts of a corporate entity if the entity is used for a fraudulent purpose or the party is the alter ego of the entity. *Equity Tr. Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339 (Minn. Ct. App. 2009).

Piercing the corporate veil is “generally a creditor's remedy used to reach an individual who has used a corporation as an instrument to defraud creditors.” *Roepke v. W. Nat. Mut. Ins. Co.*, 302 N.W.2d 350, 352 (Minn. 1981). This Court is to consider “reality and not form” with how the LLC operates and the individual defendant's relationship to the operation. *Hoyt Properties, Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 318-19 (Minn.2007). The factors relevant to this decision include “insufficient capitalization for purposes of corporate undertaking, failure to observe corporate formalities, nonpayment of dividends, insolvency of

debtor corporation at time of transaction in question, siphoning of funds by dominant shareholder, nonfunctioning of other officers and directors, absence of corporate records, and existence of corporation as merely facade for individual dealings.” *Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979).

The sum of Plaintiffs arguments are as follows:

(a) Revier Farms LLC and Revier Farms Partnership are controlled by the same principles – Thomas Revier and David Revier,

(b) Revier Farms LLC was created earlier in year 2021 when it knew Plaintiff would not sign any subordination agreement regarding Revier Farms Partnership’s crops,

(c) Revier Farms LLC does not own any assets and has essentially no financial capital,

(d) Revier Farms LLC, Nicholas and Parker are using Revier Farms Partnership’s equipment to farm this year,

(e) Revier Farms LLC, Nicholas and Parker are farming the same land Revier Farms Partnership previously farmed, and

(f) Revier Farms LLC, Nicholas and Parker are using the same buildings and facilities Revier Farms Partnership used in its previous farming operation.

Further, correspondence filed with the Court by Plaintiff on October 28, 2021 claims Borrowers are now offering to sell or have possibly sold farm equipment known by Borrowers to be Plaintiff’s collateral. Plaintiff offers evidence that Nick Revier is listed as the seller on the listings of Plaintiff’s collateral. In response, Defense for Borrowers claims the intended sale of the equipment was in furtherance of an agreement between Borrowers and a third party as surplus equipment, that only one piece of equipment was up for sale, and that the listings have since been removed. A simple internet search can reveal Defense’s claims as untrue. As recently as September 28, 2021, there were two listings for sale by Nick Revier: a 2011 Parker 1048 Grain Cart serial number B28180147 and a liquid manure spreader, serial number CA11-1107804.

Based on all the filings and evidence presented before the Court, Plaintiff has demonstrated a likelihood of success on the merits that Revier Farms LLC is an alter ego of Revier Farms Partnership.

d. Public Policy Considerations

Plaintiff posits the present public policy considerations are “certainty in commercial transactions involving agricultural lending” and to prevent further alleged fraud and manipulation of

the creditor enforcement stay by the Borrowers.⁶ This Court agrees that allowing debtors to continue to incur debt without consequence would give cause to rescue financing providers to stop making rescue financing available for honest-but-unfortunate farmers. This Court further agrees that without rescue financing, Minnesota farmers on the wrong side of a market shift may not be able to work their way out of a difficult but survivable financial situation.

Defendants argue, and this Court agrees, that public policy supports “allowing lenders and other engaged in commercial transactions to rely on the form and function of those entities and the UCC filings related to those entities.”⁷ This Court believes both Defendants’ and Plaintiff’s public policy concerns are favored following the issuance of this injunction. Parties engaged in commercial transactions may rely on the form and function of certain entities and their related UCC filings while also being subject to the consequences of fraud and incurrence of debt.

e. Administrative Burden on the Court

Counsel for GRB argue that granting Sandton’s requested relief would require the 2021 crop to sit until it spoils or would require this Court to monitor the status of the 2021 Crop on a weekly basis. Believing it to be absurd to seek a scenario in which the Crop would sit to spoil, this Court has modified the injunction such that the Defendants are required to deposit or transfer any proceeds from the 2021 Crop to a controlled or escrow account until the respective security interests, liens, claims and interests in the 2021 Crop have been determined by a final, nonappealable court order.

Based on the foregoing, the Court finds issuance of an emergency injunction appropriate.

⁶ See Plaintiff’s Memo in Support of its Motion for an Emergency Temporary Injunction filed September 28, 2021.

⁷ See Revier Defendants’ Response to Plaintiff’s Motion for Temporary Injunction, filed October 4, 2021.