

**COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE**

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VICE CHANCELLOR

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Date Submitted: June 4, 2010

Date Decided: June 7, 2010

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Mr. Christopher J. Tigani  
1111 Berkeley Road  
Wilmington, DE 19807

Re: *N.K.S. Distributors, Inc. v. Christopher J. Tigani, et al.*,  
Civil Action No. 4640-VCP

Dear Counsel and Mr. Tigani:

I write in relation to a motion for a preliminary injunction made by Christopher Tigani (“Chris”) seeking to prevent third-party defendant Wilmington Trust Company (“WTC”) from taking further action to foreclose on two pieces of residential property, his personal residence and his mother’s home. These properties serve as collateral on certain multimillion dollar loans made by WTC to Chris that he defaulted on in the summer of

2009.<sup>1</sup> WTC has made a related application for the Court to lift the existing TRO, which enjoins foreclosure on Chris's personal residence until June 18, 2010, when the TRO expires by its own terms.

After concluding a full trial on the merits of Chris's claim for civil conspiracy against WTC, I find that Chris has not shown a reasonable likelihood of success on the merits of that claim.<sup>2</sup> Additionally, there is no imminent threat of irreparable injury because Chris has not shown that his personal residence or his mother's house are uniquely valuable to him and that he cannot obtain an adequate remedy if he ultimately succeeds in proving his claim. That is, even if Chris prevails against WTC, he can be compensated for any injury arising from failure to grant the injunction through an award of money damages or some other form of final relief. Finally, no equitable consideration weighs in favor of granting the extraordinary relief Chris seeks.

Therefore, through this letter opinion, I both lift the temporary restraining order ("TRO") entered against WTC on March 8, 2010 (and extended on May 20) with regard

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<sup>1</sup> This motion arises as part of a consolidated action involving numerous claims and counterclaims asserted by Chris and Robert Tigani ("Bob") against each other and certain related entities as part of a battle for control of N.K.S. Distributors, Inc. ("NKS"), a family-owned alcoholic beverage distributorship. The related entities include My Pal, LLC ("My Pal"), My Pal #2, LLC, and World Class Wholesale, Inc., which are all owned by Chris. Additionally, Chris asserts several claims against Steven Director, A. Paul Ruggiero, Anthony Horvat, Bayard, PA, Wheeler, Wolfenden & Dwares, CPA, and WSFS Bank.

<sup>2</sup> By a memorandum opinion dated May 28, 2010, I granted a motion by WTC to dismiss all of the other claims Chris and My Pal asserted against it. *N.K.S. Distribs., Inc. v. Tigani*, 2010 WL 2178520 (Del. Ch. May 28, 2010).

to Chris's personal residence and deny Chris's motion for a preliminary injunction to enjoin the anticipated foreclosure of both properties.

## **I. BACKGROUND**

On June 1, 2009, NKS filed a complaint against Chris and entities owned by him, seeking, among other things, to establish control of NKS and ownership of the property currently serving as NKS headquarters (the "NKS Action"). On June 17, 2009, My Pal filed counterclaims in that action and Chris brought a separate action asserting broad-ranging claims against Bob and NKS (the "Plenary Action"). The NKS and Plenary Actions were consolidated on August 18, 2009. Additionally, on February 5, 2010, after obtaining leave of Court, Chris filed an amended complaint, adding several new claims and defendants, including WTC.

### **A. Entry of the March 8 TRO**

On February 15, 2010, Chris moved for a temporary restraining order to restrain WTC from taking any further action to foreclose on three pieces of property: (1) Chris's personal residence, located at 1111 Berkeley Road, Wilmington, Delaware (the "Berkeley Road Property"), (2) Chris's mother's residence, located at 607 Entwisle Court, Wilmington, Delaware (the "Entwisle Property"), and (3) the property serving as headquarters for NKS, located at 399 Churchman's Road, New Castle, Delaware (the "NKS Property").<sup>3</sup>

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<sup>3</sup> I refer to this property as the NKS Property for convenience only and make no findings or conclusions regarding the validity of any claim to ownership of it.

After hearing arguments related to this motion on February 26, 2010,<sup>4</sup> I granted Chris's motion in regard to the Berkeley Road Property on March 2 and entered a temporary restraining order against WTC to that effect on March 8 (the "March 8 TRO").<sup>5</sup> Though Chris has been a party to this action since June 2009, WTC only recently had been added to the case when Chris moved for a TRO. Consequently, I examined that motion under the more lenient TRO standard.<sup>6</sup>

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<sup>4</sup> Docket Item ("D.I.") 300.

<sup>5</sup> D.I. 243 ("Tr."), 245 ("TRO"). Granting the TRO on the Berkeley Road Property was expressly conditioned on Chris obtaining a \$500,000 surety bond or executing a Stock Pledge and Security Agreement on the twenty-six shares of NKS stock held by Chris in an irrevocable trust. Additionally, Chris was required to permit WTC to inspect and document the Berkeley Road Property and to maintain the condition of the property by paying all utilities, taxes, insurance premiums, and fees associated with owning that property.

<sup>6</sup> A TRO is a special remedy of short duration. To obtain such an order, a party must demonstrate "(i) the existence of a colorable claim, (ii) [that] irreparable harm . . . will be suffered if relief is not granted, and (iii) [that] a balancing of hardships favor[s] the moving party." *CBOT Hldgs., Inc. v. Chi. Bd. Options Exch., Inc.*, 2007 WL 2296356, at \*3 (Del. Ch. Aug. 3, 2007) (citing *Stirling Inv. Hldgs., Inc. v. Glenoit Universal, Ltd.*, 1997 WL 74659, at \*2 (Del. Ch. Feb. 12, 1997)).

Though similar to actions involving preliminary injunctive relief, "motions for [a TRO] may be subject to less exacting merits-based scrutiny." *CBOT Hldgs.*, 2007 WL 2296356, at \*3 (citing *UIS, Inc. v. Walbro*, 1987 WL 18108 (Del. Ch. Oct. 8, 1987)). The Court's sometimes less-exacting review of the merits in the TRO context arises partly because of the duration and limited development of the factual background of a TRO. *See Cottle v. Carr*, 1988 WL 10415 (Del. Ch. Feb. 9, 1988)). In truth, the "chief focus when reviewing an application for a [TRO is] 'the nature and imminence of the allegedly impending injury.'" *Id.* at \*3 n.11.

While Chris satisfied each of the elements of the TRO standard, I granted the TRO largely for two reasons: First, because of the difficulty of granting Chris full relief if his personal residence, which I then considered to be a unique piece of real property valuable to Chris as such, was sold and he ultimately prevailed in the litigation; and second, because it appeared that allowing WTC to proceed with foreclosure would create a situation that would “hamstring[] Chris to the point that he really [would not be able to] proceed [in the upcoming trial] in a way that . . . seem[ed] closer to a level playing field.”<sup>7</sup> The latter point was important because the issues to be addressed at the trial were crucial to Chris’s future and his economic situation.

I granted Chris’s motion for a TRO to prevent WTC from causing a sheriff’s sale of the Berkeley Road Property. I denied that motion, however, as to the Entwisle Property “on the basis that the Application [was] not yet ripe” and the NKS Property, because WTC agreed to stay any sheriff’s sale on that Property until thirty days after the Court issues a post-trial decision on the initial trial issues.<sup>8</sup> By its terms, the March 8

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<sup>7</sup> Tr. 16-18.

<sup>8</sup> D.I. 239, 245; Tr. 14-15. Chris’s motion for a TRO with regard to the Entwisle Property was not ripe at that time because, although a Superior Court judgment allowing WTC to foreclose on that Property was obtained on February 18, 2010, the time for appeal of that judgment had not yet run as of March 2 and no sheriff’s sale appeared imminent.

Now, however, the time for appeal has passed and I consider the issue ripe. As such, I will examine Chris’s motion for a preliminary injunction in regard to both the Entwisle Property and the Berkeley Road Property.

TRO was to remain in place until fourteen days after the initial trial in the underlying action.

**B. Extension of the March 8 TRO**

Though Chris brought claims against several individuals and entities, the parties agreed to bifurcate those claims into two trials, the first of which would address all issues involving My Pal, Chris, NKS, Bob, and WTC.<sup>9</sup> Based on the potential merit of WTC's motion to dismiss and the large number of witnesses and issues that needed to be addressed among My Pal, Chris, NKS, and Bob, however, I split the first trial into two phases: the first phase commenced on April 27, 2010 and lasted two weeks; the second phase, which included only Chris and My Pal's claims for civil conspiracy against WTC, took place on June 3-4, 2010. Because the March 8 TRO was entered on the premise that the first trial also would include litigation of the claims brought by Chris against WTC, on May 20, 2010 I granted Chris's motion to extend that TRO until fourteen days after June 4 or further order of the Court (the "May 20 TRO").<sup>10</sup>

Additionally, on May 28 I granted in part WTC's February 26 motion to dismiss all claims raised against it by Chris and My Pal.<sup>11</sup> Specifically, I dismissed My Pal's claims of breach of the implied covenant of good faith and fair dealing and tortious

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<sup>9</sup> All claims against other third-party defendants have been stayed pending resolution of the first trial.

<sup>10</sup> D.I. 317.

<sup>11</sup> *N.K.S. Distribs., Inc. v. Tigani*, 2010 WL 2178520 (Del. Ch. May 28, 2010).

interference with prospective contractual relations.<sup>12</sup> I denied WTC's motion, however, as to Chris and My Pal's claims for civil conspiracy. Therefore, I tried the issues regarding those claims on June 3 and 4 in what amounted to the second phase of the first trial.<sup>13</sup>

Finally, at the conclusion of the second phase of the trial, I heard argument on Chris's motion to extend the May 20 TRO and further enjoin WTC from pursuing foreclosure proceedings on either the Berkeley Road or Entwisle Properties until the Court issues a post-trial decision on Chris's civil conspiracy claim against WTC. While Chris, who is self-represented, technically requested only an extension of the May 20 TRO, I find that the highly developed factual record requires that I treat that request as an application for a preliminary injunction. Indeed, after concluding a full trial on Chris and My Pal's claims of civil conspiracy against WTC, the record is far more developed than it would be in a typical preliminary injunction setting. Thus, the preliminary injunction standard, and not the more lenient TRO standard, now applies.

WTC has represented that the Berkeley Road and Entwisle Properties both are scheduled to be sold at a sheriff's sale tomorrow, June 8, 2010. Accordingly, WTC seeks both a denial of Chris's motion for a preliminary injunction and the immediate lifting of

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<sup>12</sup> *Id.* at \*6-9.

<sup>13</sup> *Id.* at \*5-6.

the May 20 TRO. Otherwise, WTC alleges that it would have to wait until August or September, at the earliest, to foreclose on these properties.

## II. ANALYSIS

### A. Preliminary Injunction Standard

The Court of Chancery has broad discretion in granting or denying a preliminary injunction.<sup>14</sup> A preliminary injunction may be granted where the movant demonstrates: (1) a reasonable probability of success on the merits at a final hearing; (2) an imminent threat of irreparable injury; and (3) a balance of the equities that tips in favor of issuance of the requested relief, *i.e.*, that the injury to the plaintiff if the injunction does not issue will exceed the harm to the defendant or others if the injunction does issue.<sup>15</sup> Because injunctive relief will never be granted unless earned, the moving party bears a

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<sup>14</sup> *Data Gen. Corp. v. Digital Computer Controls, Inc.*, 297 A.2d 437, 439 (Del. 1972) (citing *Richard Paul, Inc. v. Union Improvement Co.*, 91 A.2d 49 (Del. 1952)).

<sup>15</sup> *Concord Steel, Inc. v. Wilm. Steel Processing Co.*, 2008 WL 902406, at \* 3 (Del. Ch. Apr. 3, 2008) (citing *Nutzz.com v. Vertrue, Inc.*, 2005 WL 1653974, at \*6 (Del. Ch. July 6, 2005)); *Hough Assocs., Inc. v. Hill*, 2007 WL 148751, at \*13 (Del. Ch. Jan. 17, 2007); *Kingsbridge Capital Gp. v. Dunkin' Donuts Inc.*, 1989 WL 89449, at \*3 (Del. Ch. Aug. 7, 1989) (“As with most equitable remedies, the remedy of an injunction is subject to a formidable set of limitations. These limitations find expression in part in the exacting standards that an applicant for a preliminary injunction must meet before equity will act. The standards are designed to ensure that such an injunction issues only when necessary to protect or enforce a legally cognizable right or duty, since imposing upon the defendant the burden of conforming to an order granted after a summary proceeding is justified only by the urgent need to preserve a state of affairs.”).



considerable burden of clearly establishing each of these necessary elements.<sup>16</sup> Additionally, while there is no steadfast formula for the relative weight each element deserves, “preliminary injunctive relief should not be granted if the injury may be adequately compensated for after a full trial on the merits, either by an award of damages or by some form of final equitable relief.”<sup>17</sup>

**B. Has Chris Shown a Reasonable Probability of Success on the Merits?**

Chris contends that WTC entered into a civil conspiracy with Bob and NKS.<sup>18</sup> Nevertheless, after hearing a day and a half of evidence on that claim, I find that Chris has not shown a reasonable likelihood of success on the merits because, even if Bob and NKS acted wrongfully, it seems unlikely that Chris’s evidence will be sufficient to show

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<sup>16</sup> *La. Mun. Police Emps.’ Ret. Sys. v. Crawford*, 918 A.2d 1172, 1185 (Del. Ch. 2007).

<sup>17</sup> *Alpha Builders, Inc. v. Sullivan*, 2004 WL 2694917, at \*3 (Del. Ch. Nov. 5, 2004) (citing *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 579 (Del. Ch. 1998)) (“[A] strong demonstration as to one element may serve to overcome a marginal demonstration of another.”).

<sup>18</sup> Specifically, Chris claims that “[i]n the fall of 2008 . . . WTC . . . met with Bob, without Chris present[,] to discuss Bob’s intentions to oust Chris” and decided to foreclose on the Berkeley Road and Entwisle Properties as soon as legally allowed under the controlling loan agreements “for no other reason than to allow Bob to gain leverage in this civil action.” Compl. ¶¶ 62-63. WTC allegedly agreed to help NKS because it feared that Chris “could potentially devastate” NKS’s business if he were allowed to get a competing beverage wholesale business “off the ground.” *Id.* at ¶ 63.

that WTC knowingly entered into a confederation with Bob and NKS to unlawfully oust Chris from his position at NKS.<sup>19</sup>

To make out a case for civil conspiracy, a plaintiff must show “(1) a confederation or combination of two or more persons; (2) an unlawful act done in furtherance of the conspiracy; and (3) actual damage.”<sup>20</sup> To prove the first element, a plaintiff “must establish facts suggesting ‘knowing participation’ among the conspiring partners.”<sup>21</sup> Even if this first element is established, however, because “[c]ivil conspiracy is not an

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<sup>19</sup> Because the parties have not yet had the opportunity to present post-trial briefing and argument on these issues, my ruling is only preliminary and does not definitively decide the validity of Chris’s civil conspiracy claim against WTC.

<sup>20</sup> *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 n.8 (Del. 2005); *see also Nicolet, Inc. v. Nutt*, 525 A.2d 146, 149-50 (Del. 1987); *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1238 (Del. Ch. 2001) (“[Civil conspiracy] requires the combination of two or more persons for an unlawful purpose or for the accomplishment of a lawful purpose by unlawful means, and resulting damages.”), *rev’d on other grounds*, 817 A.2d 149 (Del. 2002); *Atlantis Plastics Corp. v. Sammons*, 558 A.2d 1062, 1066 (Del. Ch. 1989); *Anderson v. Airco, Inc.*, 2004 WL 2827887, at \*3 (Del. Super. Nov. 30, 2004).

<sup>21</sup> *Binks v. DSL.net, Inc.*, 2010 WL 1713629, at \*11 (Del. Ch. Apr. 29, 2010) (“Scienter can be established by showing: (1) the participation of two or more persons; (2) some object to be accomplished; (3) a meeting of the minds on the object or course of action; [4] one or more overt acts; and [5] damages as a proximate result thereof.”) (citing *Carlton Inv. v. TLC Beatrice Int’l Hlds., Inc.*, 1995 WL 694397, at \*15 n.11 (Del. Ch. Nov. 21, 1995)).

independent cause of action,”<sup>22</sup> “it is essential that there be an underlying wrongful act, such as a tort or a statutory violation.”<sup>23</sup>

As I indicated in my May 28 Memorandum Opinion on WTC’s motion to dismiss, Chris has failed to allege facts sufficient to support a reasonable inference “that WTC acted unlawfully when it sought to vindicate its contract rights by pursuing foreclosure as a remedy for Chris’s defaults. . . . [To the contrary,] it is readily apparent that WTC was legally entitled under the terms of the [relevant loan documents] to foreclose on the Berkeley Road and Entwisle Properties following an event of default, which included Chris’s failure to make required payments.”<sup>24</sup> As such, to succeed on his claim of civil conspiracy, Chris must show that WTC improperly colluded with Bob and NKS to remove Chris from his position at NKS and one of those parties attempted to carry out that objective through unlawful means.

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<sup>22</sup> *Parfi Hldg.*, 794 A.2d at 1237-38.

<sup>23</sup> *NACCO Indus., Inc. v. Applicia Inc.*, 2009 WL 4981577, at \*31 (Del. Ch. Dec. 22, 2009) (noting that “[a] breach of contract is not an underlying wrong that can give rise to a civil conspiracy claim”) (citing *Empire Fin. Servs. v. Bank of N.Y. (Del.)*, 900 A.2d 92, 97 (Del. 2006)).

Civil conspiracy provides a means to hold liable those not a direct party to the underlying wrong. As such, where a conspiracy is found, each conspirator “is jointly and severally liable for the acts of co-conspirators committed in furtherance of the conspiracy.” *Nicolet*, 525 A.2d at 150.

<sup>24</sup> *N.K.S. Distribs., Inc. v. Tigani*, 2010 WL 2178520, at \*5 (Del. Ch. May 28, 2010).

In this regard, Chris has failed to show a reasonable likelihood of success on his civil conspiracy claim because nothing presented at trial indicates that WTC conspired or joined into a confederacy with Bob and NKS or acted in any way other than in its own economic self-interest. Indeed, the testimony of the several witnesses called by Chris indicates that WTC found itself caught in the middle of Chris and Bob's battle for control of NKS. In this difficult situation, WTC took several actions, including entering into a forbearance agreement with NKS that required, among other things, that NKS obtain the services of a Chief Restructuring Officer. From all available evidence, however, it appears that WTC took this and other actions simply to safeguard its interests and to navigate as well as it could the difficulties created by the intense father-son rivalry in such a way as to best ensure that it was able to protect its collateral and regain the money it previously loaned to NKS, Chris, and My Pal. My preliminary view is that WTC did not agree to take any actions for the purpose of harming Chris or favoring Bob or NKS to the detriment of Chris, nor did WTC knowingly enter into a confederacy with Bob and NKS. As such, Chris has not shown a reasonable likelihood of success in his civil conspiracy claim.

**C. Is There an Imminent Threat of Irreparable Injury?**

Additionally, I find no threat of imminent, irreparable injury to Chris that would justify the extraordinary relief of a preliminary injunction. I granted the March 8 TRO in

part because residential real estate is generally unique in character.<sup>25</sup> Thus, I was concerned that it would be difficult to give Chris full relief at the end of the case if his personal residence, the Berkeley Road Property, was sold and he later prevailed in this litigation.<sup>26</sup> At the June 4 hearing on his motion for a preliminary injunction, however, Chris candidly acknowledged that the Berkeley Road Property does not hold any special or unique value to him. Indeed, Chris admitted that it was a mistake to purchase the Berkeley Road Property and he wishes he had not bought it. Furthermore, he already offered, unsuccessfully, to give WTC title to the Property in lieu of foreclosure. As a result, I find that any injury that may result to Chris from the preliminary injunction being improperly denied can be fully compensated through either an award of damages against WTC and the alleged co-conspirators or some form of final equitable relief.

Irreparable injury is an indispensable and essential factor in determining whether to grant injunctive relief.<sup>27</sup> Thus,

even where a plaintiff has made a sufficient showing on the merits, the extraordinary remedy of preliminary injunction will issue only where the court is persuaded that the plaintiff is threatened with irreparable harm that will occur before the matter can be determined at trial, and that the harm that

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<sup>25</sup> *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1162 (Del. Mar. 25, 2010).

<sup>26</sup> Tr. 17.

<sup>27</sup> *Kingsbridge Capital Gp. v. Dunkin' Donuts Inc.*, 1989 WL 89449, at \*4 (Del. Ch. Aug. 7, 1989) (denying a motion for a preliminary injunction where plaintiffs did not demonstrate “the *sine qua non* of preliminary injunctive relief: the threat that irreparable harm will befall them . . . unless an injunction issues.”).

plaintiff seeks to avoid outweighs the risk of injury that may befall the defendant in the event the injunction is entered.<sup>28</sup>

While not concretely defined, such injury generally consists of harm for which there can be no adequate recompense at law. Courts often find a threat of irreparable injury in cases where an after-the-fact attempt to quantify damages would “involve [a] costly exercise[] in imprecision” and would not provide full, fair, and complete relief for the alleged wrong.<sup>29</sup>

Here, Chris claims only that a threat of irreparable harm exists because, if the house is sold at a sheriff’s sale for a price below what could be obtained for it on the open market, Chris will lose any equity he gained in the property and still be required to repay the balance of the money he received through mortgages to purchase the Berkeley Road Property and furniture for that property.<sup>30</sup> As Chris does not attach any value to that Property or the Entwisle Property by virtue of their unique status as residential real property, any potential harm that may exist is of a kind that can be fully compensated by an award of damages.

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<sup>28</sup> *Id.*

<sup>29</sup> *Weichert Co. of Pa. v. Young*, 2007 WL 4372823, at \*6 (Del. Ch. Dec. 7, 2007) (citing *Hough Assocs., Inc. v. Hill*, 2007 WL 148751, at \*3 (Del. Ch. Jan. 17, 2007)); *State v. Del. State Educ. Ass’n*, 326 A.2d 868, 875 (Del. Ch. 1974).

<sup>30</sup> *N.K.S. Distributions*, 2010 WL 2178520, at \*2.

**D. Does the Balance of the Equities Weigh in Chris's Favor?**

In addition to failing to meet the first two elements of a preliminary injunction, Chris also has not demonstrated any other equitable basis for granting such relief. Because Chris has presented no basis for preventing WTC from pursuing its rights, the preliminary injunction must be denied.

The relief afforded by a preliminary injunction is both powerful and extraordinary. As such, it is not granted lightly. Thus, even if a party has shown a reasonable likelihood of success on the merits and an imminent threat of irreparable injury, a preliminary injunction may issue only if that party proves that “this Court’s failure to grant the injunction will cause [that party] greater harm than granting the injunction will cause [the other party].”<sup>31</sup> This pragmatic balancing of the equities analysis helps ensure that the Courts do not, by means of one of the strongest arrows in the Court of Chancery’s quiver, impose an extreme remedy that may cause irreparable injury if improvidently granted.

In June 2009, Chris defaulted on a \$4.1 million loan he obtained from WTC to purchase his personal residence, the Berkeley Road Property, and a \$1 million loan made by WTC to purchase furniture for that residence.<sup>32</sup> WTC began foreclosure proceedings

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<sup>31</sup> *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 587 (Del. Ch. 1998).

<sup>32</sup> The Entwisle Property served as collateral for the \$4.1 million purchase loan and the Berkeley Road Property served as collateral for both loans. *N.K.S. Distribs.*, 2010 WL 2178520, at \*2-3.

on July 21, 2009.<sup>33</sup> WTC sought and obtained judgments in Superior Court in regard to foreclosure on both the Berkeley Road and Entwisle Properties. Chris did not appeal either decision and the time for doing so has passed. WTC has placed both properties on the list of properties scheduled for a sheriff's sale on June 8, 2010 (the "June 8 Sheriff's Sale"). If WTC is unable to include those properties in the June 8 Sheriff's Sale, it will have to wait at least two months for another such opportunity to sell them and will forfeit all fees already paid in anticipation of the June 8 sale.

In this situation, the entry of a preliminary injunction is not likely to result in irreparable injury to WTC;<sup>34</sup> nevertheless, I also find that Chris has not shown any persuasive reason to grant such an injunction. Thus, after considering Chris's arguments in this regard, I find no basis on which to preclude WTC from pursuing its rights at the June 8 Sheriff's Sale with regard to the Berkeley Road Property.

Chris argues that his pledge of the Berkeley Road Property as collateral for a \$2 million loan from WTC entered into on December 18, 2008 for the benefit of NKS (the "December 2008 Loan") has prevented him from refinancing that Property with another bank and repaying the loan that gave rise to the foreclosure proceeding.<sup>35</sup> Essentially,

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<sup>33</sup> *Id.*

<sup>34</sup> I do not mean to imply that improvident entry of a preliminary injunction will not harm WTC. Rather, I find that any harm that would result from such an injunction could be compensated through an award of damages.

<sup>35</sup> D.I. 215 Ex. F.



Chris claims that, because WTC has not allowed him to remove the Berkeley Road Property as collateral for the December 2008 Loan, he was unable to find alternate means to enable him to retain that Property. In that regard, I first note that WTC was not required legally or contractually to allow Chris to change the substantive terms of the December 2008 Loan by removing the Berkeley Road Property as collateral. Furthermore, when the parties executed the December 2008 Loan, Chris and Bob actively were engaged in a battle for control of NKS. It appears that Chris made a business decision to provide the Berkeley Road Property as collateral for a \$2 million loan essential to NKS's continuing vitality.<sup>36</sup> While the decision to put up the Berkeley Road Property as collateral for the December 2008 Loan may have come back to haunt him, Chris cannot now use it as a basis to prevent WTC from foreclosing on that Property. As such, no equities weigh in Chris's favor by virtue of his interactions with WTC regarding the December 2008 Loan.

Chris also argues that allowing WTC to proceed with the June 8 Sheriff's Sale will leave him "homeless,"<sup>37</sup> but he has not made any showing to that effect. Indeed, while it is certain that Chris will be forced to vacate the multimillion dollar Berkeley Road Property—which he admitted he cannot afford and on which he has not made any

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<sup>36</sup> The loan apparently was necessary to forestall serious financial difficulties at NKS at a time when Chris still occupied a senior management position at NKS.

<sup>37</sup> See D.I. 215.

payments in almost a year—there is no reason to doubt that he will be able to locate housing accommodations in line with his current financial condition.

Finally, Chris argues that denying the preliminary injunction will leave him in a tight financial position, possibly preventing him from adequately pursuing his claims against Bob, NKS, WTC, and others. I initially decided to grant the March 8 TRO in part because it appeared that allowing WTC to complete foreclosure on the Berkeley Road Property before Chris had an opportunity to present his numerous claims against Bob, NKS, and WTC at trial would put Chris in such a difficult financial and personal spot before trial that he effectively would be precluded from presenting those claims on a level playing field. If there were, in fact, a conspiracy involving WTC, such a consequence would assist them in achieving their allegedly illicit goals. At this juncture, however, the parties have completed both phases of the first trial, and no concern regarding a level playing field justifies continuing to prevent WTC from enforcing its contractual rights by the imposition of a preliminary injunction.

In sum, I see no equitable reason for blocking WTC from vindicating a portion of its contractual rights by including the Berkeley Road Property in the June 8 Sheriff's Sale. The situation is slightly different, however, as to the Entwisle Property.

Specifically, while I deny Chris's motion for a preliminary injunction with regard to both the Berkeley Road and Entwisle Properties, the circumstances here convince me that I cannot equitably allow WTC to include the Entwisle Property in the June 8 Sheriff's Sale. On March 2, I denied Chris's motion for a TRO with regard to the

Entwisle Property without prejudice because the issue was not yet ripe. In the months since that decision, none of the parties has raised the issue of the foreclosure on the Entwisle Property. Furthermore, WTC did not signify to the Court its intention to include the Entwisle Property in the June 8 Sheriff's Sale until June 4, providing the Court essentially one business day's notice. Because it is not clear what notice, if any, Chris received regarding WTC's intentions in this regard and in light of the complicated procedural history and numerous properties involved in the earlier TRO disputes, as well as the fact that Chris is self-represented, I am concerned that Chris may not have had adequate time to respond to the proposed June 8 Sheriff's Sale of the Entwisle Property. Therefore, I hereby enjoin WTC from including the Entwisle Property in the June 8 Sheriff's Sale. Because I also deny Chris's motion for a preliminary injunction with regard to the Entwisle Property, however, this decision does not prevent WTC from including that Property in the next available sheriff's sale.

### **III. CONCLUSION**

For the foregoing reasons, I find that Chris has not made the necessary showing for this Court to grant a preliminary injunction against WTC because he has shown neither a reasonable likelihood of success on the merits nor an imminent threat of irreparable harm. Thus, I hereby vacate the May 20 TRO and deny Chris's motion for a preliminary injunction because any injury Chris sustains may be adequately compensated for after a full trial on the merits, either by an award of damages or by some form of final

equitable relief. For the reasons stated, I also enjoin WTC from proceeding with a sheriff's sale of the Entwisle Property on June 8, 2010, as proposed.

**IT IS SO ORDERED.**

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

cc: All Counsel of Record