

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:17-CV-140-D

SENN BROTHERS, INC.,)
)
 Plaintiff,)
)
 v.)
)
 FARMIN' BRANDS, LLC, f/k/a)
 CAROLINA FARMIN' LLC,)
 FARMIN' 2PL, LLC,)
 G. WAYNE LONG, and)
 WILLIAM BENJAMIN LONG,)
)
 Defendants.)

ORDER

On July 13, 2017, Senn Brothers, Inc., (“Senn Brothers” or “plaintiff”) filed an ex parte motion for a temporary restraining order without notice pursuant to Rule 65 of the Federal Rules of Civil Procedure [D.E. 3]. After considering the record, including the declaration of Gregg Senn, Secretary and Treasurer of Senn Brothers, the certification of counsel why notice should not be required, the memorandum of law in support of the motion, and the relevant exhibits, the court makes the following findings of fact and conclusions of law.

Senn Brothers is a creditor of defendant Farmin’ Brands, LLC, (“Farmin’ Brands”) under section 5(c) of the Perishable Agricultural Commodities Act (“PACA”), 7 U.S.C. § 499e(c). Senn Brothers has not been paid for produce Senn supplied to Farmin’ Brands in the principal amount of \$273,560.10, plus interest and attorneys’ fees. Defendants previously paid Senn Brothers for produce using checks drawn from both an account held by Farmin’ Brands and an account held by Farmin’ 2PL, LLC (“Farmin’ 2PL”). Defendants have refused to pay the amount owed Senn Brothers, and defendants issued a check drawn from an account owned by Farmin’ 2PL, which the

bank returned due to insufficient funds. At defendants' direction, Senn Brothers attempted to deposit the check a second time, but the check again was returned for insufficient funds. As a result, PACA trust assets have been dissipated and are threatened with further dissipation.

For purposes of this temporary restraining order and in light of PACA's unique statutory scheme, the court finds that Senn Brothers has shown a likelihood of success on the merits and a likelihood of imminent irreparable harm. See, e.g., Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Nickey Gregory Co. v. Agricap, LLC, 597 F.3d 591, 594–95 (4th Cir. 2010); Tanimura & Antle, Inc. v. Packed Fresh Produce, Inc., 222 F.3d 132, 137–41 (3d Cir. 2000); Frio Ice, S.A. v. Sunfruit, Inc., 918 F.2d 154, 156–60 (11th Cir. 1990); Cont'l Fruit Co. v. Thomas J. Gatziolis & Co., 774 F. Supp. 449, 453–54 (N.D. Ill. 1991). Additionally, there is little harm to defendants in granting the temporary restraining order, which requires only that defendants comply with PACA (i.e., maintain the trust required by statute and pay for the produce received). Moreover, the temporary restraining order furthers the public interest reflected in PACA's statutory scheme.

In sum, the court finds that this ex parte temporary restraining order without notice is appropriate. Thus, plaintiff's motion for a temporary restraining order [D.E. 3] is GRANTED, and it is ORDERED that:

(1) pending the hearing of plaintiff's application for a preliminary injunction, defendants, their agents, employees, officers, directors, subsidiaries, related entities, assigns, and banking institutions are temporarily restrained and enjoined from alienating, dissipating, paying over, or assigning any assets of Farmin' Brands and Farmin' 2PL or their subsidiaries or related companies, except for payment to plaintiff, until further order of this court or until defendants pay plaintiff the amount of \$273,560.10 by bank check or wire transfer, at which time this order is dissolved; and

(2) it is further ORDERED that, pursuant to Fed. R. Civ. P. 65(b)(2), this order shall expire

on August 4, 2017, unless before that time the court, for good cause, extends it or defendants consent to a longer extension; and

(3) it is further ORDERED that, pursuant to Fed. R. Civ. P. 65(b)(4), on three days' notice to plaintiff, defendants may appear and move to dissolve or modify the order; and

(4) it is further ORDERED that if defendants fail to pay plaintiff the amount of \$273,560.10 by bank check or wire transfer within five business days of service of this order, then defendants shall file with this court by August 1, 2017, with a copy to plaintiff's counsel, an accounting that identifies the assets and liabilities and accounts receivable reports of Farmin' Brands and Farmin' 2PL signed under penalty of perjury; and

(5) that defendants shall supply to plaintiff's attorney, by August 1, 2017, all documents in their possession, custody, or control concerning the assets and liabilities of Farmin' Brands and Farmin' 2PL and their related and subsidiary companies, including, but not limited to, the most recent balance sheets, profit/loss statements, accounts receivable reports, accounts payable reports, accounts paid records, and bank statements with cancelled checks for the last 90 days; and

(6) it is further ORDERED that a bond is waived in view of defendants now holding \$273,560.10 worth of plaintiff's assets; and

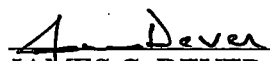
(7) it is further ORDERED that plaintiff shall serve defendants a copy of this order and the papers upon which it is based, together with the summons and complaint, by Federal Express or other nationally recognized overnight delivery service on or before Friday, July 21, 2017; and

(9) it is further ORDERED that defendants shall serve any answering papers by August 1, 2017; and

(10) it is further ORDERED that defendants show cause in courtroom one of the Terry Sanford Federal Building, 310 New Bern Avenue, Raleigh, North Carolina, on August 3, 2017, at

4:00 p.m., or as soon thereafter as counsel may be heard, why this court should not issue an order pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendants, their agents, employees, officers, directors, subsidiaries, related entities, assigns, and banking institutions, from alienating, dissipating, paying over, or assigning any assets of Farmin' Brands or Farmin' 2PL, or their subsidiaries or related companies, except for payment to plaintiff of \$273,560.10 by bank check or wire transfer.

SO ORDERED. This 20 day of July 2017.



JAMES C. DEVER III
Chief United States District Judge