

Georgia State University College of Law  
**Reading Room**

---

Georgia Business Court Opinions

---

2-9-2021

**Spring et al., v. McMillin et al., Order Denying Plaintiffs' Emergency Motion for Injunctive Relief**

John J. Goger  
*Senior Judge, Fulton County Superior Court*

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>



Part of the [Law Commons](#)

---

**Institutional Repository Citation**

John J. Goger, *Spring et al., v. McMillin et al., Order Denying Plaintiffs' Emergency Motion for Injunctive Relief*, Georgia Business Court Opinions 528 (2021)  
<https://readingroom.law.gsu.edu/businesscourt/528>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact [gfwke@gsu.edu](mailto:gfwke@gsu.edu).

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

FRANKLIN J. SPRING, Individually, AND  
D/B/A SPRING TRADING GROUP, LLC,  
ROBERT BRETHERTON, MARTIN  
MEEKS, and BTEC ENTERPRISES, INC.,

Plaintiffs,

v.

Civil Action No. 2020CV339777

JAMES L. McMILLIN, Individually, AND  
D/B/A BLOK INDUSTRIES, INC., KAREN  
McMILLIN, BOYD BARROW, ROBERT  
ARKIN, ROBERT ARKIN LLC D/B/A  
ARKIN.LAW, JIM THOMAS, 24-7  
PRODUCTS, LLC, McM COMPANIES,  
INC., BRW COMPANIES, INC., FAMILY  
OFFICE GROUP, LLC, PLANET  
LIQUIDATIONS INC., PLANET  
RESOURCES LLC, 1515 E HEWETT LLC,  
REDFISH M2 229 LLC, 180 GLENN  
DRIVE LLC, 19721 BETHEL CHURCH RD  
LLC, and STONYBROOK JORDAN LAND  
LLC,

Defendants.

**ORDER DENYING PLAINTIFFS’  
EMERGENCY MOTION FOR INJUNCTIVE RELIEF**

This matter came before the Court on Plaintiffs Franklin J. Spring, individually and d/b/a Spring Trading Group, LLC, Martin Meeks, and BTEC Enterprises, Inc.’s (“Plaintiffs”) Emergency Motion for Injunctive Relief. Having reviewed the record and considered the arguments and submissions of counsel on February 3, 2021, the Court enters the following order.

**I. Background**

This dispute concerns interests in approximately five million hazardous materials suits that were located in a warehouse in Theodore, Alabama (the “Hazmat Suits”). Verified First Amended

Complaint (“Compl.”) at ¶¶ 30–31. On April 2, 2019, Defendant Blok Industries (“Blok”) executed a lease for the warehouse and took possession of the Hazmat Suits. *Id.* At the time, the Hazmat Suits were of limited value, but with the advent of the Covid-19 pandemic, the value of the Hazmat Suits substantially increased. *Id.* ¶¶ 50–51.

Plaintiffs filed this lawsuit on August 24, 2020, seeking injunctive relief and damages related to two alleged oral agreements to share in the proceeds of the sale of the Hazmat Suits. *See generally id.* Plaintiffs can be divided into two separate groups, each of which claims a different interest related to the sale of the Hazmat Suits. First, Plaintiff Franklin Spring contends that he and Defendant McMillin entered into an oral partnership agreement in early 2019 to sell the Hazmat Suits and to share equally in the profits from their sale. *Id.* ¶ 33. Spring contends that he was wrongfully ousted from the business and denied his share of the profits from the sale of the Hazmat Suits. *See id.* ¶¶ 53–54.

Plaintiffs Bretherton, Meeks, and BTEC likewise contend that they entered into an oral sales commission agreement with the Blok Defendants in February 2020. *Id.* ¶ 72. They allege that their oral agreement entitles them to over \$1.8 million in commissions on sales of the Hazmat Suits. *Id.* ¶ 84. They seek to enforce this oral agreement, instead of a written sales commission agreement that they signed. *Id.* ¶¶ 88–90.

Plaintiffs and the Blok Defendants attempted to negotiate a resolution to these disputes in early 2020. *Id.* ¶ 67. The Amended Complaint alleges that during the negotiations, Blok’s attorneys—Defendant Robert Arkin and his law firm Robert Arkin LLC d/b/a Arkin.Law—“agreed to hold the funds of all payments received for the sale of the Hazmat Suits in Arkin’s IOLTA trust account where they would remain until the resolution of the dispute . . . .” *Id.* According to Plaintiffs, some of the proceeds were not, in fact, deposited into the IOLTA. *Id.* ¶ 68.

Instead, Plaintiffs contend that Arkin formed several limited liability companies where the Blok Defendants then placed sales proceeds. *Id.* ¶¶ 98–128.

Based on these allegations, Plaintiffs have brought claims for injunctive relief, fraud, violations of Georgia’s Racketeer Influence and Corrupt Organizations Act, civil conspiracy, unjust enrichment, wrongful dissolution of partnership, breach of contract, intentional interference with contractual relationships, intentional interference with business relationships, respondeat superior, alter ego, accounting, punitive damages, and attorneys’ fees.

On November 23, 2020, Plaintiffs filed this Motion, seeking an injunction to freeze the Blok Defendants’ assets and to require the Arkin Defendants to maintain all proceeds from the sale of the Hazmat Suits in the firm’s IOLTA during the pendency of the litigation. Plaintiffs argue that they are entitled to this relief under Georgia’s Uniform Fraudulent Transfer Act (“UFTA”) because of the creation of several limited liability companies by the Arkin Defendants on behalf of the Blok Defendants.

## **II. Standards**

“Whether an interlocutory injunction is warranted is a matter committed to the discretion of the trial court.” *TMX Fin’l Holdings, Inc. v. Drummond Fin’l Serv., LLC*, 300 Ga. 835, 836 (2017). In exercising that discretion, a court should balance the following four factors:

(1) whether there exists a substantial threat that a moving party will suffer irreparable injury if the injunction is not granted; (2) whether the threatened injury to the moving party outweighs the threat and harm that the injunction may do to the party being enjoined; (3) whether there is a substantial likelihood that the moving party will prevail on the merits at trial; and (4) whether granting the interlocutory injunction will not disserve the public interest.

*Id.* All four of these factors need not be demonstrated in order to secure an interlocutory injunction; however, “a trial court must keep in mind that an interlocutory injunction is an extraordinary remedy, and the power to grant it must be prudently and cautiously exercised.” *Id.* at 836–37.

### III. Analysis

Defendants argue that Plaintiffs have failed to establish that any of the four factors weigh in Plaintiffs' favor. *See* Dec. 28, 2020 Arkin Defendants' Response in Opposition to Plaintiffs' Emergency Motion for Injunctive Relief ("Arkin Resp.") at 8–15; Dec. 28, 2020 Blok Defendants' Response to Plaintiffs' Emergency Motion for Injunctive Relief ("Blok Resp.") at 2 ("The Blok Defendants join in full the brief filed by the Arkin Defendants . . ."). But the Court need only consider here whether there is a substantial likelihood that the Plaintiffs will prevail on the merits at trial.

Plaintiffs base their request for a preliminary injunction on their UFTA claim. Mot. at 2. Under the UFTA, only "creditors" are entitled to seek relief. *See* O.C.G.A. § 18-2-074(a) ("A transfer made or obligation incurred by a debtor is fraudulent as to a *creditor* . . .") (emphasis added). The Plaintiffs' claims to be creditors of the Blok Defendants rest solely on allegations of oral agreements that Plaintiffs contend are worth millions of dollars. Considering the prudence and caution a Court is required to exercise in granting the extraordinary remedy of injunctive relief, the Court does not find Plaintiffs are substantially likely to prevail on their claims to be creditors of the Blok Defendants by virtue of these oral agreements.<sup>1</sup> Based upon this factor alone, the Court declines to enter an injunction.

---

<sup>1</sup> The only evidence the Plaintiffs have put into the record in support of their Motion is their Verified First Amended Complaint. At oral argument, Defendants argued that the verifications in support of the First Amended Complaint are invalid because they are based on the Plaintiffs' "knowledge and belief." *See, e.g., Keyser v. Allied Holdings, Inc.*, 266 Ga. App. 192, 192 (2004) (verification that "the facts alleged therein are true to the best of [plaintiff's] knowledge and belief" did not satisfy personal knowledge requirement). Plaintiffs, in turn, argued that the verifications are proper under O.C.G.A. § 9-10-111. The Court need not decide this issue because, even if the allegations of the First Amended Complaint are treated as evidence, it is not substantially likely that Plaintiffs will prevail on the merits of this case at trial.

**IV. Conclusion**

In light of the foregoing, it is **ORDERED** that Plaintiffs' Emergency Motion for Injunctive Relief is **DENIED**.

SO ORDERED this 9th day of February, 2021.

/s/ John J. Goger  
JOHN J. GOGER, SENIOR JUDGE  
Fulton County Superior Court  
Business Case Division  
Atlanta Judicial Circuit

**Filed and Served via Odyssey eFileGA**

<b>Attorneys for Plaintiffs</b>	<b>Attorneys for Defendants</b>
<p>Darren W. Penn Kevin M. Ketner</p> <p><b>PENN LAW LLC</b> 4200 Northside Parkway, NW Building One, Suite 100 Atlanta, GA 30327 (404) 961-7655</p> <p><a href="mailto:darren@pennlawgroup.com">darren@pennlawgroup.com</a> <a href="mailto:kevin@pennlawgroup.com">kevin@pennlawgroup.com</a></p> <p><i>Attorneys for Plaintiffs Franklin J. Spring, individually and d/b/a Spring Trading Group, LLC, Robert Bretherton, Martin Meeks and BTEC Enterprises, Inc.</i></p>	<p>Donald F. Samuel Robin N. Loeb Sara D. Sibley</p> <p><b>GARLAND SAMUEL &amp; LOEB, P.C.</b> 3151 Maple Drive NE Atlanta, GA 30305 404-262-2225</p> <p><a href="mailto:dfs@gsllaw.com">dfs@gsllaw.com</a> <a href="mailto:rnl@gsllaw.com">rnl@gsllaw.com</a> <a href="mailto:sds@gsllaw.com">sds@gsllaw.com</a></p> <p><i>Attorneys for Defendants James L. McMillin, Individually and d/b/a Blok Industries, Inc., Karen McMillin, Boyd Barrow, 24-7 Products, LLC, McM Companies, Inc., BRW Companies, Inc., Planet Liquidations, Inc., Planet Resources, LLC, 1515 E. Hewett, LLC, Redfish M2 229 LLC, 180 Glenn Drive LLC, and Stoneybrook Jordan Land, LLC</i></p> <p>Michael A. Caplan Julia B. Stone</p> <p><b>CAPLAN COBB, LLP</b></p>

75 Fourteenth Street, NE, Suite 2750  
Atlanta, GA 30309  
404-596-5600

[mcaplan@caplancobb.com](mailto:mcaplan@caplancobb.com)  
[jstone@caplancobb.com](mailto:jstone@caplancobb.com)

*Attorneys for Defendants Robert Arkin, Robert  
Arkin, LLC d/b/a Arkin Law, Jim Thomas, Family  
Office Group, LLC and 19721 Bethel Church  
Road LLC*