

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

Dr. Wayne L. Ryan, derivatively on behalf)	Case No. CI 15-307
of the Ryan Family LLC, a Nebraska)	
limited liability company, Timothy Ryan,)	
derivatively on behalf of the Ryan Family)	
LLC, a Nebraska limited liability company,)	
Carol Ryan, derivatively on behalf of the)	
Ryan Family LLC, a Nebraska limited)	
liability company, and Steven Ryan,)	
derivatively on behalf of the Ryan Family)	
LLC, a Nebraska limited liability company,)	
)	
Plaintiffs,)	
)	MOTION FOR
vs.)	TEMPORARY INJUNCTION
)	
Constance Ryan,)	
)	
Defendant,)	
)	
Streck, Inc.,)	
)	
Intervenor,)	
)	
and)	
)	
The Ryan Family LLC, a Nebraska limited)	
liability company,)	
)	
)	
Nominal Defendant.)	

Plaintiffs Dr. Wayne L. Ryan, Timothy Ryan, Carol Ryan, and Steven Ryan, all derivatively on behalf of Nominal Defendant the Ryan Family LLC (the “Company”), hereby move this Court pursuant to Neb. Rev. Stat. §§ 25-1063 and 25-1064 for a temporary injunction to prevent Defendant Constance Ryan (“Constance Ryan”) from exercising any managerial authority in the Company related to any interaction with attempted Intervenor Streck, Inc.

(“Streck”). In support of their Motion, the Plaintiffs will submit their Brief in Support of Motion for Temporary Injunction and supporting evidence, and assert the following:

1. In Nebraska, a court may grant a temporary injunction if (1) it appears that the plaintiff is likely to succeed on the merits, (2) if a judgment be would ineffectual, or if failure to grant a temporary injunction would produce great or irreparable harm to the plaintiff, and (3) if the harm facing the plaintiff is greater than the harm to the defendant upon granting the injunction. Neb. Rev. Stat. § 25-1063; *see, e.g., Gahan ex rel. Gahan v. U.S. Amateur Confederation of Roller Skating*, 382 F. Supp. 2d 1127, 1129 (D. Neb. 2005).

2. The Plaintiffs are likely to succeed on the merits of their Amended Complaint because Constance Ryan is breaching the Operating Agreement, her fiduciary duties to the Company, and engaging in wrongful conduct that is materially harming the Company.

- a. The Company’s Operating Agreement provides that the co-Managers shall serve until either is “unable” or “unwilling.”
- b. Constance Ryan serves as one of the Company’s two co-Managers, but also serves as Streck’s controlling shareholder, President, Chief Executive Officer, and Chair of the Board of Directors.
- c. Streck’s interests in this litigation are directly adverse to those of the Company because Streck has sought to intervene in order to force the sale of the Company’s real property to Streck, which would result in great financial harm to the Company’s Members.
- d. Constance Ryan is breaching her fiduciary duties of loyalty and care to the Company because she is placing Streck’s and her own personal interests ahead of

the best interests of the Company, both in this litigation and in other Company matters.

- e. Despite demands from Plaintiffs and another member of the Company, including co-Manager Dr. Wayne Ryan, Constance Ryan refuses to relinquish her powers as co-Manager of the Company and refuses to permit all of the Company's other Members from remedying her conflict of interest. Instead, Constance Ryan is exercising her power as co-Manager and Member of the Company to prevent the Company from protecting its interests and vindicating its contractual and other rights against Streck.

3. The Plaintiffs will suffer substantial and irreparable harm if Constance Ryan is not enjoined from exercising her managerial authority, and any eventual judgment would be ineffectual if Constance Ryan continues to exercise her managerial authority during the pendency of this litigation, because the Plaintiffs and the Company cannot properly defend themselves from Constance Ryan's and Streck's attempts to dissolve the Company and sell the Property to Streck.

- a. The Company's property consists largely of real property and a steel structure that was specially designed and equipped for Streck to lease from the Company (the "Property"). Dr. Wayne Ryan's intent and purpose in creating the Company was to give a gift to his children.
- b. Constance Ryan seeks to dissolve and wind up the Company to allow Streck to buy the Property at a substantially undervalued price, which would benefit both Streck and Constance Ryan because of Constance Ryan's numerous positions with Streck.

- c. Plaintiffs have not asserted any claims or requested any relief against Streck in this litigation. However, Streck has defaulted under the Lease Agreement between Streck and the Company (the “Lease”).
 - d. Constance Ryan, acting as co-Manager of the Company, asserted that co-Manager Dr. Ryan could not act on behalf of the Company and declare a breach of the Lease without her agreement.
 - e. Streck subsequently denied default and also asserted that co-Manager Dr. Ryan could not act on behalf of the Company without Defendant’s agreement.
 - f. Without obtaining or even seeking leave of Court, Streck has improperly attempted to intervene in this action. Streck asserted claims directly against the Company, ultimately requesting to dissolve the Company and buy the Property.
 - g. Before discovery has been completed and before determination of a single issue in the case, Streck has applied for the appointment of a receiver for the Company to allow Streck to purchase the Property irrespective of all other issues before the Court.
 - h. The Company is not currently represented by legal counsel and Constance Ryan refuses to allow the Members or co-Manager from appointing and directing legal counsel independent from her direction.
 - i. Due to Defendant Constance Ryan’s conduct, the Plaintiffs and the Company face irreparable harm because of their inability to properly defend themselves in this lawsuit.
4. Defendant Constance Ryan faces no harm resulting from a temporary injunction. Any possible harm Constance Ryan may experience as the result of a temporary injunction

would be experienced solely in her roles and positions with Streck, highlighting the fact that she is unable to serve as co-Manager of the Company.

WHEREFORE, the Plaintiffs request this Court issue a temporary injunction enjoining Defendant Constance Ryan from exercising her managerial authority with the Company related to any issues concerning Streck during the pendency of this case.

Dr. Wayne L. Ryan, derivatively on behalf of the Ryan Family LLC, a Nebraska limited liability company, Timothy Ryan, derivatively on behalf of the Ryan Family LLC, a Nebraska limited liability company, Carol Ryan, derivatively on behalf of the Ryan Family LLC, a Nebraska limited liability company, and Steven Ryan, derivatively on behalf of the Ryan Family LLC, a Nebraska limited liability company, Plaintiffs,

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NOTICE OF HEARING

Please take notice that the hearing on this Motion for Temporary Injunction will be held on **October 19, 2015** before the Honorable William B. Zastera, Judge of the District Court of Sarpy County, Nebraska at **1:30 p.m.**, or as soon thereafter as the matter may be heard.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via the Court's Electronic Filing system and via first class U.S. mail, postage prepaid, this 8th day of October 2015, to the following:

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s/ Mark D. Hill

Certificate of Service

I hereby certify that on Thursday, October 08, 2015 I provided a true and correct copy of the Motion-Temp Order to the following:

Ryan, Constance, represented by Welch, Lawrence, E, Jr (Bar Number: 20507) service method: Electronic Service to larryjr@welchlawfirm.com

Streck, Inc. represented by Gwilt, Paul Ruff (Bar Number: 22660) service method: Electronic Service to paul.gwilt@kutakrock.com

Signature: /s/ Marnie Jensen (Bar Number: 22380)