

**Dated: July 08, 2025
The following is ORDERED:**



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

**M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**In re
Burrell Farms and Gardens, LLC
Debtor**

**Case No. 23-21037
Chapter 11, Subchapter V**

**Thomas Burrell,
Plaintiff,**

v.

Adv. Proc. No. 25-00044

**Alabama Growers, LLC,
WJR Equipment, LLC,
Wilma Ruffin,
Michael Bowman and
Tearie Leslie,
Defendants.**

**ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND
MOTION FOR TEMPORARY RESTRAINING ORDER**

This is an adversary proceeding brought by Thomas Burrell, individually as an interested party and not as the Debtor in this case (“Mr. Burrell”), seeking to determine the validity of claims and to obtain monetary and injunctive relief. Before the Court is Mr. Burrell’s Motion for a Temporary Restraining Order, Preliminary and Permanent Injunction [DE 2] pursuant to FED. R. BANKR. P. 7065 (the “TRO Motion”), which is opposed by Defendants Alabama Growers, LLC (“Alabama Growers”), and WJR Equipment, LLC (“WJR Equipment”). [DE 6] The TRO Motion was heard by the Court on June 10, 2025, at which time, after argument from the parties, the Court issued its oral ruling denying the TRO Motion. The Court hereby incorporates its findings read into the record on June 10, 2025 and further finds as follows:

I. Statement of Facts

Debtor in the underlying bankruptcy case owned one farm and leased several others to grow and harvest certain crops. On the petition date, the Debtor was in the business of farming CBD-grade cannabis under a license from the State of Tennessee Department of Agriculture and leasing its warehouse space for income.

On March 1, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief from its creditors pursuant to subchapter V of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) and was assigned bankruptcy case number 23-21037 (“Bankr.”). Debtor amended Schedules E/F to add certain unsecured debts including the claim of Alabama Growers, though Debtor did mark the claim as disputed. [Bankr. DE 152] Debtor did not schedule the claim of WJR Equipment.

This Court entered an order on August 8, 2023 (the “Removal Order”) [Bankr. DE 76], which removed the Debtor as debtor-in-possession and appointed the subchapter V trustee (“Sub V Trustee”) as the statutory representative of the Debtor’s bankruptcy estate under 11 U.S.C.

§ 323. During the bankruptcy proceeding, Debtor sold certain real property in a § 363 sale pursuant to an order entered by the Bankruptcy Court. [Bankr. DE 121, 123] The § 363 sale generated approximately \$2.1 million in net proceeds after satisfaction of the costs of closing and the payment of the undisputed pre-petition portion of the obligations. [Bankr. DE 123]

Since that time, Debtor was able to confirm a consensual plan of reorganization on October 3, 2024. [Bankr. DE 168] Class 2 General Unsecured Claims (which include the two (2) claims which were the subject of Mr. Burrell's objections to claims in the underlying bankruptcy case and the subject of this adversary proceeding) are to be paid as follows:

As provided in Section 9.01 of the Plan, on the later of (a) the Effective Date and (b) the date any Claim becomes an Allowed Claim pursuant to a Final Order, the Subchapter V Trustee shall make an initial distribution (each, an "Initial Distribution") to each holder of an Allowed Claim in an amount equal to eighty percent (80%) of such Allowed Claim. The remaining balance of each Allowed Claim shall be paid in accordance with the provisions of section 9.02 of the Plan.

In order to fund the Initial Distribution, the Subchapter V Trustee shall hold back cash in an amount equal to 80% of the as-filed or as-scheduled amount of each Claim. Based upon the Claims filed and scheduled by the Debtor, the Trustee will retain the sum of \$1,235,976.76 which sum includes \$695,976.76 representing 80% of the Claims filed and/or scheduled by the Debtor; \$340,000 representing the settlement amount of the Claim of the Estate of David Allen Hall; and \$200,000 in estimated administrative expenses.

After payment in full of all (a) Allowed Claims (including Claims which may not become Allowed Claims until resolution of any pending objection to such Claims) and (b) Allowed Non-Classified Claims, the Subchapter V Trustee, shall release any remaining funds to the Debtor.¹

¹ As provided in Section 9.02 of the Plan, Class 2 Allowed Claims shall receive payment in full of the remaining 20% of each Allowed Claim from Net Cash Flow generated from (a) sale of cannabis or crop; and (b) the operation of the Debtor's business. Payments will be made annually after distribution from the Subchapter V Trustee October 1, 2025 and on a pro rata basis on the 1st day of October each year thereafter

[Bankr. DE 168, ¶ 4]. After confirmation, Debtor filed an Objection to certain claims on October 28, 2024 [Bankr. DE 191] and later amended the Objection [Bankr. DE 194]. The objections to Claim 8-3 of Alabama Growers and Claim 9 of WJR Equipment were later set for hearing. Subsequently, Alabama Growers amended its claim and the Debtor's Objection to Claims 8-3 and 9 were ultimately resolved. However, Mr. Burrell, an individual, formally objected to both claims. [Bankr. DE 252] A trial was conducted on May 22, 2025 regarding Mr. Burrell's objection to the claims which resulted in the Court granting Alabama Growers and WJR Equipment's motion for judgment on partial findings under FED. R. CIV. P. 52(c), made applicable herein by FED. R. BANKR. P. 7052.

During the time the Court took Alabama Growers and WJR Equipment's motion for judgment on partial findings under advisement, Mr. Burrell instituted the above-styled adversary proceeding seeking to have the Court determine the validity of the two claims and to obtain monetary and injunctive relief. Mr. Burrell also filed a motion for a temporary restraining order and preliminary injunction which seeks an order requiring Alabama Growers and WJR Equipment to immediately discontinue prosecution of Claim Nos. 8-3 and 9 in order to facilitate the release of funds to the Debtor currently being held in suspense by the Sub V Trustee, instead of paying Claim Nos. 8-3 and 9.

II. Jurisdiction

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).

until paid in full. The proffered testimony of the Debtor's representative indicates that the inventory, crop in ground and to be harvested will be sufficient to pay the remaining 20% of Allowed Claims. [Bankr. DE 168, ¶ 5]

III. Discussion

In order to grant a temporary restraining order, the Court “must be convinced that the following factors favor granting preliminary relief: (1) the likelihood that the moving party will succeed on the merits; (2) the extent to which the moving party will suffer irreparable harm without injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the injunction is issued; and (4) the public interest.” *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharmaceuticals Co.*, 290 F.3d 578, 586 (3d Cir. 2002) (citations omitted); *see also Am. Imaging Servs. Inc. v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 963 F.2d 855, 858 (6th Cir. 1992); *Unsecured Creditors’ Comm. v. DeLorean (In re DeLorean Motor Co.)*, 755 F.2d 1223, 1228 (6th Cir. 1985); *In re Serv. Merch. Co., Inc.*, 256 B.R. 755, 766 - 67 (Bankr. M.D. Tenn. 2000).

A. Probability Of Success On The Merits

To obtain injunctive relief, the movant must demonstrate a “strong probability of success on the merits of the litigation. . . .” *Phillips Petroleum Co. v. U.S. Steel Corp.*, 616 F.Supp. 335, 337 (D.Del.1985). In Mr. Burrell’s latest pleadings before the Court, he asserts that Alabama Growers’s proof of claim seeks an interest rate which violates Alabama law.² [DE 1] In other words, Claim 8-3 seeks interest that is usurious under Alabama law. However, as Defendants point out in their response, Mr. Burrell waived this argument because he never asserted this argument during the trial on Mr. Burrell’s Objection to claims. [DE 6] Mr. Burrell did not raise this argument until he commenced this adversary proceeding, after concluding his presentation of his case-in-chief and after Defendants moved for a judgment on partial findings. Mr. Burrell had sufficient opportunity to object to Alabama Growers’s claim based on his usurious argument, but he raised

² Alabama law is the controlling law as agreed upon by the parties in their loan documents.

no such objection.³ The Court cannot and will not entertain this argument at this point because it was waived. *Peters Broad. Eng'g, Inc. v. 24 Cap., LLC*, 40 F.4th 432, 443 (6th Cir. 2022) (quoting *Blanchet v. Charter Commc'ns, LLC*, 27 F.4th 1221, 1227 (6th Cir. 2022) (“As an initial matter, claims are forfeited when a party ‘fail[s] to make the timely assertion.’”)); *see also BP Amoco Chem. Co. v. Flint Hills Res., LLC*, 697 F. Supp. 2d 1001, 1041 (N.D. Ill. 2010) (“If a party . . . fails to raise its claims at trial, the party waives those claims.”).

Mr. Burrell also asserts that the forum selection clause in the loan documents requires that the current dispute be resolved in Alabama. This argument carries no weight for two reasons. First, the forum selection clause at issue is only contained in the Guaranty Agreement between Mr. Burrell and Alabama Growers and WJR Equipment, and is not contained in the Promissory Note between the Debtor and Alabama Growers and WJR Equipment. *See* paragraph 16 of Guaranty Agreement attached to Claim Nos. 8-3 and 9. Second, even if the forum selection clause were contained in the Promissory Note at issue, this Court has exclusive jurisdiction over the claims process. *See Glassman, Edwards, Wyatt, Tuttle & Cox, P.C. v. B.J. Wade (In re B.J. Wade)*, 523 B.R. 594, 606 - 07 (Bankr. W.D. Tenn. 2014). The *Wade* case provides the Court great guidance as to this Court’s exclusive jurisdiction in the allowance and disallowance of the claims process (even in the face of an arbitration clause or in this case, a forum selection clause).

As Judge Kennedy discussed, the Sixth Circuit held in *Muskegon* that the bankruptcy court’s exclusive jurisdiction over property of the debtor should not be surrendered except under “exceptional circumstances.” *Wade* at 604, quoting *In the Matter of Muskegon Motor Specialties Co. (“Muskegon”)*, 313 F.2d 841, 842 (6th Cir. 1963). “The [*Muskegon*] court extended its exclusive jurisdiction to the allowance and determination of claims against the bankruptcy estate.”

³ WJR Equipment does not seek any interest on its claim, but just a return of its principle investment.

Id. Thus, a claim dispute, otherwise subject to a forum selection clause or arbitration clause, could be resolved by a bankruptcy court exercising its exclusive jurisdiction. “The res was in custodia legis.” *Id.* quoting *Muskegon* at 843. Analogous to an arbitration clause in a private contract, a forum selection clause in a private contract cannot remove a bankruptcy court’s jurisdiction over the bankruptcy estate and its related claims. *Id.* at 605; *see also Muskegon, citing Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940) (“Whether the bankruptcy court should surrender its jurisdiction to another tribunal involved the exercise of judicial discretion.”). *See also Cuvrell v. Mazur (In re F & T Contractors, Inc.)*, 649 F.2d 1229, 1232 (6th Cir. 1981) (“The decision to compel or deny arbitration is discretionary with the bankruptcy judge.”) (citing *Muskegon* at 842).

Judge Kennedy goes on to say, “[t]he bankruptcy court is uniquely positioned to equitably balance the competing and countervailing interests of multiple parties in pursuit of the debtor’s fresh start and the fair and equitable distribution of the estate’s general funds to creditors. *See for example and among others, In re F & T Contractors* [at 1229] (holding the bankruptcy judge did not abuse discretion by refusing to submit contract disputes to arbitration).” *In re Wade*, 523 B.R. at 606.

Simply put, this Court will continue to exercise exclusive jurisdiction over the claims process in this case because it is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and centralizing the adjudication of the claims into this forum accomplishes the judicial goals set forth in the Bankruptcy Code and Rules. *But see N. Parent, Inc. v. Cotter & Co. (In re N. Parent, Inc.)*, 221 B.R. 609, 622 (Bankr.D.Mass.1998) (public policy favors centralization of bankruptcy proceedings; however, this policy is not so strong as to abandon the forum selection clause *if the proceeding is non-core*). (emphasis added).

Given the reasoning in *Wade* and the fact that Mr. Burrell waived his usurious argument at trial on his Objection to Claims, the Court finds that Mr. Burrell has failed to establish there is a strong probability he will succeed on the merits of this case. Thus, this factor weighs against granting the TRO Motion.

B. Irreparable Harm

“In order to demonstrate irreparable harm, the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the only way of protecting the plaintiff from harm.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir.1989) (citations omitted.) “[I]njunctions will not be issued merely to allay the fears and apprehensions or to soothe the anxieties of the parties.” *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 92 (3d Cir.1992) (citation omitted.)

Mr. Burrell argues that the relief he requests is necessary in order to save the Debtor’s 2025 growing season. Mr. Burrell’s real objection is that he needs the funds the Sub V Trustee is holding in escrow for the two claims of Alabama Growers and WJR Equipment to help the Debtor properly fund the planting and growing of the Debtor’s 2025 crop. However, at the end of the day, the issue before the Court is really a budgeting issue for the Debtor and a request to amend the confirmed plan which has already been substantially consummated. Debtor already received \$234,000 in November 2024 under the confirmed plan and should receive approximately \$100,000 more upon conclusion of the bankruptcy claims process. [See Bankr. DE 196] If the Debtor needed more money to plant and harvest its 2025 crop, then a different plan should have been proposed in the Fall/Winter of 2024. Mr. Burrell cannot unwind the substantially consummated plan to essentially propose a new plan which gives the Debtor more liquidity to run the Debtor’s business.

The Court gave little to no weight to Mr. Burrell's argument that the Debtor's 2025 growing season was at risk. What Mr. Burrell wants is to have two creditors not participate in the confirmed plan distribution which is more harmful to the two creditors. Therefore, as Mr. Burrell has failed to establish the existence of any irreparable harm, this factor weighs against granting the TRO Motion.

C. Balance of Equities

The third factor in the preliminary injunction analysis is the balancing of equities. In applying this factor, "a court should consider whether granting the requested relief will result in greater harm to the party on whom it is imposed than its denial will have on the party who seeks it." *Farberware, Inc. v. Mr. Coffee, Inc.*, 740 F.Supp. 291, 304 (D.Del.1990) (citations omitted.)

Mr. Burrell claims that the equities favor him because if the Court denies the relief requested, the Debtor potentially will not be able to continue business as a "going concern." However, the Court heard no evidence as to the Debtor's costs to plant the 2025 crop or any proposed budget for the 2025 growing season—only speculation that the Debtor needs more money to operate. This factor leans towards WJR Equipment and Alabama Growers in this case. There can be no question that if these two creditors are not allowed to participate in the claims process, they will be harmed as they will not be treated pro rata with other similarly-situated creditors. Mr. Burrell has the burden to establish that the balance of equities is in favor of granting the TRO Motion; however, the Court finds that the balancing of the equities weighs against granting the TRO Motion.

D. The Public Interest

Mr. Burrell did not assert any argument as to the public interest element, but the Court did question whether the Debtor would continue to grow cannabis after the passage of Tennessee

House Bill 1376 which goes into effect January 2026. See [Tennessee General Assembly Legislation](#) (last visited July 8, 2025). Instead of diving into this issue further, the Court instead relies on the fact that WJR Equipment and Alabama Growers are entitled to participate in the confirmed plan equally with other similarly-situated creditors and the public interest is better served by following the consensual confirmed plan and the statutory language of the Bankruptcy Code. Mr. Burrell simply has not met his burden. Thus, the Court finds that the public interest is better served by following the plain language of the consensual confirmed plan and the statutory language of the Bankruptcy Code.

IV. Conclusion

This is a simple case. Mr. Burrell is essentially trying to reargue his Objection to Claim Nos. 8-3 and 9. As discussed above, Mr. Burrell's Motion does not establish the likelihood that Mr. Burrell will succeed on the merits of the case. Moreover, Mr. Burrell has failed to establish the existence of any irreparable harm. Finally, Mr. Burrell has failed to meet his burden of proof of establishing that the balance of equities support granting an injunction. In short, all of the factors relevant in this case weigh against entering an injunction. Thus, the TRO Motion is denied. Likewise, the Preliminary Injunction is denied.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested persons:

cc:

Burrell Farms and Gardens, LLC
287 Madison Avenue
Memphis, TN 38103

Ms. Toni Campbell Parker, Esq.
Law Office of Toni Campbell Parker

45 N. Third St., Suite 201
Memphis, TN 38103

Mr. Percy Squire, Esq.
Percy Squire CO, LLC
341 S. 3rd St., Suite 10
Columbus, OH 43215-7426

Mr. Bo Luxman, Esq.
44 N. Second St., Suite 1004
Memphis, TN 38103

Mr. James E. Bailey, III, Esq.
Butler Snow LLP
6075 Poplar Avenue, Suite 500
Memphis, TN 38119

Mr. Sean M. Haynes, Esq.
Office of the United States Trustee
200 Jefferson Avenue, Suite 400
Memphis, TN 38103