

STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

BARINGS LLC,

Plaintiff,

v.

IAN FOWLER, KELSEY TUCKER, and
CORINTHIA GLOBAL MANAGEMENT
LIMITED,

Defendants.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILED

24CV012798-590

DATE: March 22, 2024

TIME: 11:16:51 AM

MECKLENBURG COUNTY

CLERK OF SUPERIOR COURT

BY: R. Lawson

STIPULATED INJUNCTION ORDER

Plaintiff Barings LLC (“Barings”) and Defendants Corinthia Global Management Limited (“Corinthia”), Ian Fowler (“Fowler”), and Kelsey Tucker (“Tucker”) (collectively, “Defendants”), hereby agree and stipulate to entry of the following Order.

WHEREAS, on March 18, 2024, Barings filed a verified complaint seeking preliminary and permanent injunctive relief (the “Complaint”), and in conjunction with that embedded a motion for a temporary restraining order pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 1-485(1); and

WHEREAS, Barings alleges that, unless the relief requested by it in its Motion for Temporary Restraining Order is issued, Barings will suffer irreparable injury, including the prospect that Defendants will retain and use confidential and proprietary information of Barings; that Defendants will solicit Barings’ clients; that Defendants will disclose Barings’ employees’ information; and that Defendants will use Barings’ confidential or proprietary information to solicit Barings’ employees and/or clients; and

WHEREAS, Barings alleges that “Fowler entered into a letter agreement with Barings on June 30, 2022, containing Confidentiality, Non-Interference & Non-Raiding Restrictions,” which Barings attached as Exhibit A to the Complaint, and that, pursuant to that agreement, “during his employment at Barings and for twelve months thereafter, Fowler agreed not to: a) ‘Solicit, encourage, cause or attempt to cause’ [Restricted Clients] ‘not to do business with the Company or to reduce any part of its business with the Company;’ b) ‘Solicit, encourage, cause or attempt to cause’ [Restricted Clients] ‘to purchase any services or products from any business other than [Barings] that are competitive with or a replacement for the services or products offered by the Company;’ ... d) Assist anyone in engaging in such prohibited conduct; e) Hire or engage for employment or as an independent contractor any Barings employee, consultant, director or trustee; or f) Solicit or encourage such individuals to leave the Company”; and

WHEREAS, Barings alleges that on March 8, 2024, Fowler; Fowler’s co-head of Barings’ Global Private Finance (“GPF”) group, Adam Wheeler; and at least eighteen additional employees who were members of the GPF and related teams submitted resignations and/or notices of termination with an intention of joining Corinthia; and

WHEREAS, the eighteen additional employees are Nathan Bourne, Mark Flessner, Sunny Khorana, Salman Mukhtar, Brian Baldwin and Pierre Quantin (collectively with Fowler, the “Barings US Employees”) and Mark Wilton, Alice Foucault, Matt Carty, Ben Gillet, Joseph Buckley, Camilla Klang, Priyanka Surya,

April Gagnon, Philip Ashley, Natasha Sahi, Volker Samonigg and Sabih Hussain, all of whom were employed by a Barings' affiliate in the United Kingdom, Barings Investment Services Limited (collectively with Wheeler, the "Barings Non-US Employees"; the Barings US Employees and the Barings Non-US Employees are collectively referred to as the "Barings Employees"); and

WHEREAS, Corinthia has accepted service of the Summons and Complaint on its own behalf, while reserving its right to contest the claims and allegations on all available grounds including lack of personal jurisdiction and improper venue; and

WHEREAS, Barings has served the Summons and Complaint on Fowler by personal service in the state of Florida; and

WHEREAS, Tucker has appeared in this action through counsel; and

WHEREAS, Fowler and Tucker acknowledge that this Court has personal jurisdiction over them and that venue is proper in this Court; and

WHEREAS, Defendants deny the claims and allegations in the Complaint and Fowler and Tucker deny that they violated any enforceable restrictive covenants, but Defendants are willing to agree to the entry of a preliminary injunction on the terms set forth herein, without any admission of liability, wrongdoing, violation of law, or the validity or enforceability of the alleged restrictive covenants; and

WHEREAS, on March 18, 2024, Barings filed a motion for expedited discovery in support of its motion for a temporary restraining order ("Barings

Motion for Expedited Discovery”); and

WHEREAS, the parties have met and conferred in good faith in order to obviate the need of further proceedings relating to Barings’ request for a temporary restraining order and preliminary injunctive relief; and

WHEREAS, the Court has jurisdiction over the subject matter of this case; and

WHEREAS, Corinthia is willing to submit to the jurisdiction of this Court for the limited purpose of entering and enforcing the present Order, without prejudice to its right to file a motion to dismiss the Complaint herein on all available grounds including lack of *in personam* jurisdiction and pursuant to the doctrine of *forum non conveniens*; and

WHEREAS, venue in this court is proper under N.C. Gen. Stat. §§ 1-80 and 1-82; and

WHEREAS, it appears to the Court that granting the injunctive relief stipulated to in this Order would not be contrary to public policy.

NOW, THEREFORE, IT IS ORDERED that:

- a) Solely for purposes of this Order, “Barings Confidential Information” shall mean all confidential, proprietary or business information furnished to, obtained by, or created by any Barings Employee while employed by Barings, which could be used to harm or compete against Barings; provided that Barings Confidential Information shall not include information known generally to the public (other than

information known generally to the public as a result of any violation by any Barings Employee of their duties to Barings with respect to confidential information). Barings Confidential Information includes, by way of illustration, such information relating to: (i) Barings' clients and investors, including client lists, contact information and information regarding products or services provided by Barings; (ii) Barings' finances, including financial statements, balance sheets, sales data, forecasts, and cost analyses; (iii) Barings' plans and projections for business opportunities for new or developing business; (iv) Barings' research and development activities, technical data, computer files, and software; (v) Barings' operating methods, business processes, services, products, prices, costs, service performance, and operating results; and (vi) the terms of the Barings LLC Deferred Cash Plan or any documents or instruments referred to or issued pursuant to the Plan. For purposes of this definition, "Barings" shall mean Barings and any affiliate or successor of Barings for or with whom a Barings Employee performed any services or had any responsibilities at any time during the 12 months ending March 8, 2024 ("Barings Affiliate").

- b) Solely for purposes of this Order, "Fowler Confidential Information" shall mean all confidential, proprietary or business information furnished to, obtained by, or created by Fowler while employed by Barings, which could be used to harm or compete against Barings;

provided that Fowler Confidential Information shall not include information known generally to the public (other than information known generally to the public as a result of any violation by any Fowler of his duties to Barings with respect to confidential information). Fowler Confidential Information includes, by way of illustration, information relating to: (i) Barings' clients and investors, including client lists, contact information and information regarding products or services provided by Barings; (ii) Barings' finances, including financial statements, balance sheets, sales data, forecasts, and cost analyses; (iii) Barings' plans and projections for business opportunities for new or developing business; (iv) Barings' research and development activities, technical data, computer files, and software; (v) Barings' operating methods, business processes, services, products, prices, costs, service performance, and operating results; and (vi) the terms of the Barings LLC Deferred Cash Plan or any documents or instruments referred to or issued pursuant to the Plan. For purposes of this definition, "Barings" shall mean Barings and any affiliate or successor of Barings for or with whom Fowler performed any services or had any responsibilities at any time during the 12 months ending March 8, 2024 ("Fowler Affiliate").

- c) Solely for purposes of this Order, "Barings Restricted Client" shall mean (i) a client of Barings with whom any Barings Employee had

business contact or communications at any time during the 12 months ending March 8, 2024; (ii) a client of Barings for whom any Barings Employee supervised or assisted with Barings' dealings at any time during the 12 months ending March 8, 2024; or (iii) a client of Barings about whom any Barings Employee obtained any Barings Confidential Information during the 12 months ending March 8, 2024. For purposes of this definition, "Barings" shall mean Barings and any Barings Affiliate.

- d) Solely for purposes of this Order, "Fowler Restricted Client" shall mean (i) a client of Barings with whom Fowler had business contact or communications at any time during the 12 months ending March 8, 2024; (ii) a client of Barings for whom Fowler supervised or assisted with Barings' dealings at any time during the 12 months ending March 8, 2024; or (iii) a client of Barings about whom Fowler obtained any Fowler Confidential Information during the 12 months ending March 8, 2024. For purposes of this definition, "Barings" shall mean Barings and any Fowler Affiliate.
- e) Solely for purposes of this Order, "Restricted Employee" shall mean (i) each Barings employee; (ii) each Barings consultant; (iii) each Barings director or trustee; and (iv) any person who was employed by Barings at any time during the six months ending March 8, 2024. For

purposes of this definition, “Barings” shall mean Barings and any Barings Affiliate.

- f) Fowler shall, as soon as reasonably practicable, return all copies of Fowler Confidential Information and all other property, documents and data belonging to Barings or any Fowler Affiliate, if any, in his possession or control and shall refrain from using Fowler Confidential Information or providing this information to anyone besides his counsel or Barings, and shall certify under oath that he has done so and provide such certification to counsel for Barings on or before March 31, 2024;
- g) Corinthia and Tucker shall, as soon as reasonably practicable, return all copies of Fowler Confidential Information or Barings Confidential Information and all other property, documents and data belonging to Barings or any Barings Affiliate, if any, in their possession or control and shall refrain from using Fowler Confidential Information or Barings Confidential Information or providing this information to anyone besides their counsel or Barings, and shall certify under oath that they have done so and provide such certification to counsel for Barings on or before March 31, 2024;
- h) Fowler shall, as soon as reasonably practicable, return to Barings any files, work product, or other materials, if any, into which he has incorporated Fowler Confidential Information, and shall certify under

oath that he has done so and provide such certification to counsel for Barings on or before March 31, 2024;

- i) Corinthia and Tucker shall, as soon as reasonably practicable, return to Barings any files, work product, or other materials, if any, into which they have incorporated Fowler Confidential Information or Barings Confidential Information, and shall certify under oath that they have done so and provide such certification to counsel for Barings on or before March 31, 2024;
- j) Corinthia shall use reasonable best efforts to cause each Barings Employee to certify under oath prior to commencing employment with Corinthia, and to provide such certification to counsel for Barings prior to the commencement of employment, that (i) such Barings Employee has returned to Barings all copies of Barings' Confidential Information and all other property, documents and data belonging to Barings or any Barings Affiliate, if any, in their possession or control and shall refrain from using Confidential Information or providing such information to anyone besides their counsel or Barings or its counsel; and (ii) returned to Barings any files, work product, or other materials, if any, into which they have incorporated Confidential Information; and
- k) Defendants' counsel shall be permitted to retain copies of any information, property, documents, or data returned pursuant to this Order for purposes of defending this action, and in accordance with any

stipulation and/or order governing the confidentiality of information exchanged in this case.

- l) Fowler shall not use or disclose to any person other than Barings any Fowler Confidential Information;
- m) Corinthia and Tucker shall not use or disclose to any person other than Barings any Fowler Confidential Information or Barings Confidential Information;
- n) Corinthia shall instruct Fowler and any Barings Employee employed by it not to use, and shall use best efforts to cause Fowler and any such Barings Employee not to use, Fowler Confidential Information or Barings Confidential Information;
- o) Until March 8, 2025, Fowler shall not solicit, encourage, cause or attempt to cause any Fowler Restricted Client not to do business with Barings or any Fowler Affiliate or to reduce any part of its business with Barings or any Fowler Affiliate;
- p) Until March 8, 2025, Corinthia shall not permit any Barings US Employee employed by it to, and shall instruct any such Barings US Employee not to and use its best efforts to cause any such Barings US Employee not to, solicit, encourage, cause or attempt to cause any Fowler Restricted Client or Barings Restricted Client not to do business with Barings or any Barings Affiliate or to reduce any part of its business with Barings or any Barings Affiliate;

- q) Until March 8, 2025, Fowler shall not solicit, encourage, cause or attempt to cause any Fowler Restricted Client to purchase any services or products from any business other than Barings that is competitive with or a replacement for the services or products offered by Barings or any Fowler Affiliate;
- r) Until March 8, 2025, Corinthia shall not permit Fowler or any Barings US Employee employed by it to, and shall instruct Fowler and any such Barings US Employee not to and use its best efforts to cause Fowler and any such Barings US Employee not to, solicit, encourage, cause or attempt to cause any Fowler Restricted Client or Barings Restricted Client to purchase any services or products from any business other than Barings that is competitive with or a replacement for the services or products offered by Barings or any Barings Affiliate;
- s) Until September 8, 2024, Corinthia and Tucker shall not solicit business from any Fowler Restricted Client or Barings Restricted Client;
- t) No Barings Non-US Employee shall commence employment with Corinthia, directly or indirectly, prior to the date on which each such Barings Non-US Employee is permitted to commence employment with another company under the terms of any legally enforceable agreement into which the Barings Non-US Employee entered with his or her Barings Employer;

- u) On or before April 5, 2024, each Defendant shall provide a sworn certification to counsel for Barings identifying each Fowler Restricted Client or Barings Restricted Client with whom he, she, or it or, to his, her, or its knowledge, any Barings Employee, had communications from July 1, 2023 to the present concerning (i) Corinthia or (ii) any Barings Employee's actual, planned or potential resignation, departure from or termination of employment with Barings or any Barings Affiliate, and for each such Fowler Restricted Client or Barings Restricted Client identify the date of the communications and individual parties to the communication.
- v) Until March 8, 2025, Defendants shall not solicit or encourage, directly or indirectly, any Restricted Employee to leave Barings or any Barings Affiliate;
- w) Until March 8, 2025, Corinthia shall not permit Fowler or any Barings Employee employed by it to, and shall instruct Fowler and any such Barings Employee not to and use its best efforts to cause Fowler and any such Barings Employee not to, solicit or encourage, directly or indirectly, any Restricted Employee to leave Barings or any Barings Affiliate;
- x) Fowler shall immediately secure against unauthorized access, use, or disclosure any and all electronic files that contain personal information relating to Fowler Restricted Clients that may have been taken from

Barings' or any Fowler Affiliate's computer networks and that are stored on any personal storage devices (including without limitation USB flash drives, iPads, or cell phones), corporate systems or networks, or online or cloud email or storage service accounts that are controlled in whole or in part by Fowler; and to refrain from accessing, using, disclosing, transferring, or deleting such files until a full accounting can be performed, and the parties can arrange for secure deletion of such files; and

- y) Corinthia and Tucker shall immediately secure against unauthorized access, use, or disclosure any and all electronic files that contain personal information relating to Fowler Restricted Clients or Barings Restricted Clients taken from Barings' or any Barings Affiliate's computer networks and stored on any personal storage devices (including without limitation USB flash drives, iPads, or cell phones), corporate systems or networks, or online or cloud email or storage service accounts that are controlled in whole or in part by Corinthia or Tucker; and to refrain from accessing, using, disclosing, transferring, or deleting such files until a full accounting can be performed, and the parties can arrange for secure deletion of such files; and
- z) Corinthia shall use reasonable best efforts to cause any Barings Employee employed by it, prior to the commencement of such employment, to secure against access, use, or disclosure any and all

electronic files that contain personal information relating to Fowler Restricted Clients or Barings Restricted Clients taken from Barings' or any Barings Affiliate's computer networks and stored on any personal storage devices (including without limitation USB flash drives, iPads, or cell phones), corporate systems or networks, or online or cloud email or storage service accounts that are controlled in whole or in part by any of the Defendants; and to refrain from accessing, using, disclosing, transferring, or deleting such files until a full accounting can be performed, and the parties can arrange for secure deletion of such files; and

- aa) Defendants shall not access or attempt to access any Barings or Barings Affiliate's computer system or data, and Corinthia shall instruct and use its best efforts to cause any Barings Employee employed by it not to access any Barings or Barings Affiliate's computer system or data.

IT IS FURTHER ORDER THAT Barings' Motion for Expedited Discovery is DENIED as moot.

IT IS FURTHER ORDERED THAT the Court may extend or modify this Order upon the application of any Party.

IT IS FURTHER ORDERED THAT this Order has no effect on any Defendant's ability to contest any issue or claim asserted in the Complaint and this Order shall not be binding or admissible as to any issue or claim presented by

dispositive motion or at trial, other than proceedings for enforcement or arising from any violation of this Order.

IT IS FURTHER ORDERED THAT this Order shall terminate with respect to any Defendant upon (1) the dismissal of all claims against such Defendant for lack of personal jurisdiction or pursuant to the doctrine of *forum non conveniens*, (2) the dismissal with prejudice of all claims against that Defendant, or (3) upon the expiration of the time periods specified in the operative paragraphs above, whichever is sooner.

IT IS FURTHER ORDERED that Plaintiff is not required to provide any security as a condition precedent to the issuance of this Order pursuant to and in accordance with Rule 65(c) of the North Carolina Rules of Civil Procedure.

[SIGNATURES ON THE FOLLOWING PAGES]

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SO ORDERED, this the 21st day of March, 2024.

3/21/2024 3:44:08 PM



Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases