STATE OF NORTH CAROLINA GUILFORD COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 9346
JOSHUA T. LANGLEY, Plaintiff/Counterclaim Defendant v. AUTOCRAFT, INC., Defendant v. LB METALWORX, LLC, Counterclaim Defendant.	**ORDER AND OPINION ON COUNTERCLAIM DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

1. Autocraft, Inc. ("Autocraft") hired Joshua Langley ("Langley") to manage its business. While employed, Langley established a competing business, LB Metalworx, LLC ("LBM"), and allegedly funneled customer orders and other work from Autocraft to that new business, violating his employer's trust. After Langley sued Autocraft for breach of his employment agreement, Autocraft counterclaimed for breach of fiduciary duty, constructive fraud, and unfair and deceptive trade practices.

2. Langley and LBM move pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure (the "Rule(s)") for judgment on the pleadings with respect to Autocraft's counterclaims ("Motion"), (ECF No. 20). For the following reasons, the Court **GRANTS** the Motion.

Carruthers & Roth, P.A., by Kevin A. Rust, for Plaintiff Joshua T. Langley and Counterclaim Defendant LB Metalworx, LLC.

Tuggle Duggins P.A., by Daniel D. Stratton, Brandy L. Mansouraty, Denis E. Jacobson, and Alexandria B. Morgan, for Defendant Autocraft, Inc.

Earp, Judge.

I. FACTUAL BACKGROUND

3. On a motion for judgment on the pleadings, the Court does not find facts but rather recites the facts alleged in the pleadings that are relevant to the Court's determination of the Motion. *E.g.*, *Erickson v. Starling*, 235 N.C. 643, 657 (1952); *Agarwal v. Estate of Agarwal*, 2022 NCBC LEXIS 10, at **2 (N.C. Super. Ct. Feb. 9, 2022).

4. Autocraft is a North Carolina corporation with its principal place of business in Randolph County, North Carolina. (Answer, Affirmative Defs., and Countercl. 8-22 ["Counterclaims"], ECF No. 11, ¶ 3.)[1]

5. Autocraft's Annual Report for fiscal year 2022 filed with the North Carolina Secretary of State on 11 April 2023 reflects that Keith Clapp is the President of Autocraft and its Registered Agent.[2]

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[1] For clarity, the Court refers to pages 1-7 of Autocraft's Answer, Affirmative Defenses, and Counterclaims as Autocraft's "Answer" and to pages 8-22 of the same document as Autocraft's "Counterclaims."

[2] *See* https://www.sosnc.gov/online_services/business_registration/flow_annual report/5261981 (last visited 7 August 2023). When deciding a Rule 12(c) motion, the Court "must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *QUB Studios, LLC v. Marsh*, 262 N.C. App. 251, 260 (2018) (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,

6. Langley is a resident of Randolph County, North Carolina. He was formerly employed by Autocraft and is an owner of LBM. (Countercls. ¶¶ 1, 5, 8.)

7. LBM is a North Carolina limited liability company with a principal place of business in Randolph County, North Carolina. (Countercls. ¶¶ 7-8.)

8. Both Autocraft and LBM are in the business of providing precision machined components. (Countercls. ¶¶ 4, 9.) The two companies are competitors. (Countercls. ¶ 10.)

9. Autocraft has extensive experience and expertise in the niche market of precision machined components. (Countercls. ¶ 11.) The machinery used by Autocraft requires a high level of technical expertise. (Countercls. ¶ 11.)

10. Autocraft has invested a substantial amount of time, money, and effort to develop productive business relationships and goodwill with customers, prospective customers, vendors, employees, referral sources, and others. (Countercl. ¶ 12.) It invested in training Langley, who ultimately ran all aspects of Autocraft's business prior to his termination. (Countercls. ¶ 13.)

11. Autocraft employed Langley from on or around 28 December 2016 until 22 August 2022. (Countercl. ¶ 14.) Autocraft alleges that he was employed at will. (Answer at 7, ["Seventeenth Affirmative Defense"].)

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551 U.S. 308, 322 (2007)). *Cf. BB&T Boli Plan Trust v. Mass. Mut. Life Ins. Co.*, 2016 NCBC LEXIS 36, at **27 (N.C. Super. Ct. Apr. 29, 2016) (citing *Wood v. J.P. Stevens & Co.*, 297 N.C. 636, 641 (1979) ("[I]t is clear that judicial notice can be used in rulings on . . . motions to dismiss for failure to state a claim[.]")).

12. During his employment Langley was granted access to all aspects of Autocraft's business and had substantial responsibility for its overall operations. (Countercls. ¶ 15.)

13. Among other duties, Langley was responsible for overseeing employees, customer relationships, supplier relationships, and production facilities. (Countercls. ¶ 16.) On a daily basis, Autocraft entrusted Langley with:

a. Oversight of Autocraft's facilities;

b. Developing relationships with Autocraft's customers, potential customers, and referral sources;

c. Managing Autocraft's employees;

d. Interacting with Autocraft's suppliers, including by anticipating Autocraft's supply needs and placing orders.

(Countercls. ¶ 17.)

14. Langley also had access to Autocraft's training and development materials for its management and operating personnel, as well as to its other confidential and proprietary business information, including information regarding Autocraft's machinery, equipment, customers, marketing, and pricing. (Countercls. ¶¶ 19-20.)

15. Autocraft trusted Langley to manage its operations. (Countercls. ¶ 21.)

16. On or about 28 December 2016, Langley, Keith Clapp, and Sharon Clapp[3] executed a document titled, "Josh Langley's Autocraft Contract." The

[3] Sharon Clapp is not identified in the pleadings.

document purports to provide Langley the ability to review the company's financial records after four years of employment, and the option to become a 10% owner of "Autocraft Technologies" after he was employed for five years.[4] (Compl., Ex. A., ECF No. 3.)

17. Langley was never permitted to review the company's finances even though he worked for Autocraft for more than four years. (Countercls. ¶ 10.) Autocraft denies that Langley ever had or, prior to his discharge, ever attempted to exercise the option to become an owner. (Countercls. ¶¶ 8, 12, 14, 15, 28.) No Autocraft stock has been conveyed to Langley. (Countercls. ¶ 20.)

18. In January 2022, Langley opened LBM, a competitive business. (Countercls. ¶ 23.) Autocraft alleges that, while Langley was still employed, he purchased machining equipment capable of producing the same or similar products to those produced by Autocraft in order to compete with Autocraft. (Countercls. ¶¶ 24-25.)

19. Langley did not disclose to Autocraft that he had purchased this equipment, and it was not his job to operate such equipment. (Countercls. ¶¶ 26-27.)

20. Autocraft alleges that from January 2022 through the time of his discharge from employment, Langley took orders on behalf of LBM (and perhaps other competing companies) while on Autocraft company time. (Countercls. ¶¶ 29-30.)

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[4] Neither party addresses the inconsistency between the name of the defendant, Autocraft, Inc., and the reference in Exhibit A to "Autocraft Technologies."

21. Autocraft further alleges that, while Langley was still employed by it, he began using knowledge that he acquired on the job to perform work for customers and potential customers of Autocraft in competition with Autocraft. (Countercls. ¶ 31.)

22. Langley also allegedly used Autocraft's business relationships and confidential information to undermine Autocraft's relationships with its key employees and encourage those employees to leave Autocraft and work for LBM. (Countercls. ¶ 32.) Langley similarly undermined Autocraft's relationships with its potential and current customers. (Countercls. ¶ 33.)

23. Langley did not disclose either his financial interest in LBM or his competitive activities on behalf of LBM while he was employed by Autocraft. (Countercls. ¶ 34.)

24. Langley engaged in the activities alleged for his own personal gain. (Countercls. ¶ 35.)

25. Autocraft terminated Langley's employment immediately after discovering his conduct on or around 22 August 2022. (Countercls. ¶ 36.)

II. PROCEDURAL HISTORY

26. Plaintiff initiated this action with the filing of his Complaint on 19 December 2022. (ECF No. 3.) The matter was designated to the North Carolina Business Court and assigned to the undersigned on 6 January 2023. (ECF Nos. 1, 6.)

27. On 22 February 2023, Defendant filed its responsive pleading and asserted three (3) counterclaims: (1) breach of fiduciary duty against Langley; (2)

constructive fraud against Langley; and (3) unfair and deceptive trade practices against both Langley and LBM.

28. On 13 March 2023, the Court issued an Order adding LBM as a counterclaim defendant. (ECF No. 17.)

29. On 20 March 2023, Langley and LBM filed a motion for judgment on the pleadings seeking dismissal of all three counterclaims. (ECF No. 20.) The Motion was fully briefed, and on 13 June 2023, the Court entertained arguments at a hearing on the Motion, during which all parties were present. (*See* ECF No. 33.) The Motion is now ripe for disposition.

III. LEGAL STANDARD

30. On a motion for judgment on the pleadings pursuant to Rule 12(c), the Court must view the facts and permissible inferences in the light most favorable to the nonmoving party:

> [a]ll well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false. All allegations in the nonmovant's pleadings, except conclusions of law, legally impossible facts, and matters not admissible in evidence at the trial, are deemed admitted by the movant for purposes of the motion.

Ragsdale v. Kennedy, 286 N.C. 130, 137 (1974) (citations omitted). "Legal conclusions, however, are not entitled to a presumption of validity." *Charlotte Motor Speedway, LLC v. Cty of Cabarrus*, 230 N.C. App. 1, 6 (2013) (quoting *Guyton v. FM Lending Servs., Inc.*, 1999 N.C. App. 30, 33 (2009)).

31. The movant is held to a "strict standard." *Ragsdale*, 286 N.C. at 137. A Rule 12(c) motion should not be granted "unless the movant clearly establishes that

no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." *Carpenter v. Carpenter*, 189 N.C. App. 755, 761 (2008).

32. "[J]udgment on the pleadings is not appropriate merely because the claimant's case is weak and he is unlikely to prevail on the merits." *Huss v. Huss*, 31 N.C. App. 463, 469 (1976). The function of Rule 12(c) "is to dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit." *Ragsdale*, 286 N.C. at 137.

IV. ANALYSIS

A. Breach of Fiduciary Duty (Langley)

33. Plaintiff and LBM contend that Autocraft has failed to state a claim for breach of fiduciary duty because "an employee does not owe an employer a fiduciary duty." (Br. Supp. Mot. J. Pldgs. 5, ["Pl.'s Br."], ECF No. 21.) In their view, insufficient facts have been alleged to give rise to a *de facto* fiduciary duty, and they cite *Dalton v. Camp*, 353 N.C. 647 (2001), in support of their position that an employee will not be found to be a fiduciary of his employer absent the employee's ability to exercise "dominance and control over his employer." (Pl.'s Br. 6.)

34. Conversely, Autocraft's position is that Langley's alleged power within the company justifies imposing fiduciary duties on him. (Def. Autocraft, Inc.'s Resp. Opp. Joshua T. Langley and LB Metalworkx, LLC's Mot. J. Pldgs. ["Defs.' Br."] 2, ECF No. 30.) Autocraft argues that Langley was "entrusted with managerial control and [exercised] independent judgment over all aspects of Autocraft's business." (Defs.' Br. 12.) Autocraft further contends that Langley "overgeneralizes the holding

of *Dalton,* and fails to recognize that . . . there is not a 'one-size-fits-all' rule." (Defs.' Br. 14.)

35. Autocraft alleges that Langley "willfully, maliciously, and consciously breached his fiduciary duty to Autocraft" by:

a. Opening up businesses in direct competition with Autocraft's business;

b. Actively concealing his competing business entities;

c. Usurping corporate opportunities;

d. Misappropriating Autocraft's Business Relationships and Expectancies and confidential information;

e. Working on company time and using company resources to build his competing businesses;

f. Engaging in self-dealing;

g. Recruiting employees of Autocraft for employment by Langley and/or LBM; and

h. Causing himself and LBM to gain an unfair competitive advantage and head-start in the marketplace including based on the foregoing.

(Countercls. ¶ 45.)

36. To state a claim for breach of fiduciary duty, Plaintiff must plead the existence of a fiduciary duty, a breach of that duty, and injury proximately caused by the breach. *E.g.*, *Green v. Freeman*, 367 N.C. 136, 141 (2013). Where there is no fiduciary duty, there can be no claim for its breach. *Governor's Club Inc. v. Governors Club Ltd. P'ship,* 152 N.C. App. 240, 247 (2002).

37. A fiduciary relationship is one in which "there has been a special confidence reposed in one who in equity and good conscience is bound to act in good

faith and with due regard to the interests of the one reposing confidence." *CommScope Credit Union v. Butler & Burke, LLP*, 369 N.C. 48, 52 (2016). "[I]t extends to any possible case in which a fiduciary relationship exists in fact, and in which there is confidence reposed on one side, *and resulting domination and influence on the other." Dalton*, 353 N.C. at 651-52 (quoting *Abbitt v. Gregory*, 201 N.C. 577, 598 (1931)).

38. "North Carolina recognizes two types of fiduciary relationships: *de jure*, or those imposed by operation of law, and *de facto*, or those arising from the particular facts and circumstances constituting and surrounding the relationship." *Hager v. Smithfield E. Health Holdings, LLC*, 264 N.C. App. 350, 355 (2019) (citing *Lockerman v. S. River Elec. Mbrshp. Corp.*, 250 N.C. App. 631, 635 (2016)).

39. "The standard for finding a *de facto* fiduciary relationship is a demanding one: Only when one party figuratively holds all the cards—all the financial power or technical information, for example—have North Carolina courts found that the special circumstance of a fiduciary relationship has arisen." *Lockerman*, 250 N.C. App. at 636 (citation and internal quotation marks omitted). It is insufficient to allege mere influence over another's affairs. *Hartsell v. Mindpath Care Ctrs.*, 2022 NCBC LEXIS 130, at **11 (N.C. Super. Ct. Nov. 2, 2022).

40. A fiduciary relationship does not arise between an employee and his or her employer by operation of law, and only in rare circumstances does such a duty arise from the particular facts of an employment relationship. *Dalton*, 353 N.C. at

652 ("Under the general rule, the relation of employer and employee is not one of those regarded as confidential." (citations omitted)).

41. In *Dalton v. Camp*, the employer, Dalton, produced an employee newspaper for a client. Camp, Dalton's employee, was primarily responsible for the publication. Unbeknownst to Dalton, Camp negotiated a deal with the client to start his own business and continue the publication there. Thereafter, when Dalton's contract with the client expired, Camp, while still employed by Dalton, entered into a contract with the client to produce its newspaper at his competing business. Camp resigned from his position with Dalton two weeks later, and the client moved its work with Camp to his new competing business. *Dalton*, 353 N.C. at 654.

42. Dalton then sued Camp for, among other things, breach of fiduciary duty. But the Supreme Court upheld summary judgment for defendants on the claim because Camp's duties "were not unlike those of employees in other businesses and can hardly be construed as uniquely positioning him to exercise dominion over Dalton." *Id.* at 652.

43. Such is the case here. While undoubtedly important as a manager of the enterprise, Autocraft does not allege that Langley was in such a position of control over it that it was "subjugated" to his "improper influences or dominion." *Id.* at 652. Indeed, our Supreme Court has observed that, as a general proposition, such a scenario would be unlikely. *Id.* This is particularly true where, as here, the employee is not alleged to be a corporate officer, director, or even a shareholder of the entity employing him.

44. That, after five years of employment, Langley may have had the ability to acquire a 10% ownership interest in "Autocraft Technologies" and finance the remaining 90% —all allegations Autocraft contests—does not mean that Langley had the requisite level of control over Autocraft during the time in question to give rise to fiduciary obligations. To the contrary, his lack of control is underscored by the fact that he was summarily terminated, that he was denied the opportunity to review the company's finances, and that Autocraft does not recognize him as an owner of any percentage interest.

45. Moreover, alleging in a conclusory fashion that Langley had "substantial responsibility" and ran "all aspects" of the business is not enough. Autocraft does not allege, for example, that Langley controlled the flow of essential information such that he was able to cripple its operations by withholding it. Nor do they allege that he had authority to sign Autocraft's tax returns, to issue and sign its checks, to hire and fire its employees, to price its products, to cash and deposit its money, to negotiate and execute contracts on its behalf, or to settle its debts. Compare *Kinesis Adver., Inc. v. Hill,* 187 N.C. App. 1, 15-16 (2007) (finding that one defendant was a *de facto* officer); *Timbercreek Land & Timber Co., LLC v. Robbins*, 2017 NCBC LEXIS 64, at *14-15 (N.C. Super. Ct. July 28, 2017) (alleged duties sufficient to plead that defendant was a company official at Rule 12(b)(6) stage); *Tai Sports, Inc. v. Hall*, 2012 NCBC LEXIS 64 (N.C. Super, Ct. Dec. 28, 2012) (employee's duties rose to level of *de facto* officer).

46. Autocraft likens this situation to the facts of *Sara Lee Corp. v. Carter*, 129 N.C. App. 464 (1998), *rev'd on other grounds*, 351 N.C. 27 (1999), and *Global Textile Alliance, Inc. v. TDI Worldwide, LLC*, 2018 NCBC LEXIS 159 (N.C. Super. Ct. Nov. 29, 2018). After close review, however, the Court is not convinced that the holdings in these cases control the outcome here.

47. In *Sara Lee*, Carter, an employee who was entrusted with responsibility for purchasing computer parts for the company at the lowest possible price, secretly "developed four separate businesses through which he engaged in self-dealing by supplying Sara Lee with computer parts and services at allegedly excessive cost while concealing his interest in these businesses." 351 N.C. at 29. Finding that Carter had discretion to obtain computer parts and services from "whatever source he thought best" and that his supervisors "trusted [Carter] implicitly" with respect to this duty, the trial court concluded that Carter owed Sara Lee a fiduciary duty with respect to the purchase of computer parts and related services, and the Court of Appeals affirmed. *Sara Lee Corp.*, 129 N.C. App. at 472.

48. On appeal to the Supreme Court, however, the focus of the case was on the claim for unfair and deceptive trade practices. The Court found that Carter's status as an employee did not defeat the Chapter 75 claim because he was also acting as the seller of computer parts and services in commerce. *Sara Lee Corp.,* 351 N.C. at 33.

49. Autocraft's reliance on the analysis of the fiduciary duty claim in *Sara Lee* is misplaced given both the factual dissimilarities between *Sara Lee* and this case,

and the Supreme Court's later analysis of fiduciary duty claims in *Dalton*.[5] There is no allegation here that Langley was both Autocraft's employee and its vendor. Rather, it is alleged that Langley was, at most, a high-level manager. North Carolina's courts have consistently held that such a position does not give rise to fiduciary responsibilities absent allegations of extraordinary facts that, if proven, would establish that the employee controlled his employer to the point of domination. *See, e.g., Reichhold Chems., Inc. v. Goel*, 146 N.C. App. 137, 155 (2001) (no fiduciary duty for company vice president because "[a] managerial position alone does not demonstrate the requisite domination and influence on the other required to create a fiduciary obligation"); *Battleground Veterinary Hosp., P.C. v. McGeough,* 2007 NCBC LEXIS 33, at **16 (N.C. Super. Ct. Oct. 1, 2007) ("Even when an employee is entrusted with substantial managerial authority, a fiduciary relationship will not exist absent evidence that such authority led to the employer being subjugated to the 'improper influences or domination of [its] employee.' " (citation omitted)); *Southeast Air Charter, Inc. v. Stroud*, 2015 NCBC LEXIS 82, at **16 (N.C. Super. Ct. Aug. 17, 2015) ("Where an employee is neither an officer nor a director, extraordinary circumstances are necessary to impose a fiduciary duty[.]").

[5] Other courts have recognized that the holding in *Sara Lee* has limited application. *See, e.g.*, *William Ives Consulting, Inc. v. Guardian IT Sys., LLC*, 2020 U.S. Dist. LEXIS 206538 (W.D.N.C. 2020) ("While *Sara Lee Corp*. illustrates that there are times when an employee may have a fiduciary duty to his employer, courts have noted that its holding is narrow."); *Helms v. SellEthics Mktg. Grp. Inc*., 2006 U.S. Dist. LEXIS 87726 (W.D.N.C. 2006) ("In *Sara Lee*, the employee engaged in fraudulent buyer-seller transactions that were clearly covered by the NCUDTPA. The court held that the employee should not be shielded from liability simply because he was an employee of the company he defrauded.").

50. In *Global Textile v. TDI Worldwide, Inc.*, 2018 NCBC LEXIS 159 (N.C. Super. Ct. Nov. 29, 2018), Ryan was employed by Global Textile Alliance, Inc. ("Global Textile"), a North Carolina corporation. He was responsible for setting up an office in China and overseeing Global Textile's business in Asia. Eventually, Global Textile created "GTA Asia," a wholly-owned foreign enterprise, and named Ryan as its Director and legal representative. Global Textile essentially ceded responsibility for GTA Asia to Ryan. His job was to "[o]versee all aspects of [Plaintiff's] business with [sic] the Asia corridor." He had "vast control over Plaintiff's Asia operation," including control over its cash and capital, the authority to enter binding contracts, responsibility as the legal representative, and the power to set pricing and payment terms for goods bought and sold. Importantly, he was his employer's source of "extensive and detailed knowledge about all aspects of Plaintiff's Asia operations." *Global Textile All., Inc.* 2018 NCBC LEXIS 159, at *5-6 (N.C. Super Ct. Nov. 29, 2018). When he later decided to leverage that knowledge to open a competing Chinese company, the court found that Ryan had sufficiently dominated Global Textile's Asian operations to give rise to fiduciary responsibilities. *Id*. at *20.[6]

[6] In contrast, in a second opinion, *Global Textile Alliance, Inc. v. TDI Worldwide, LLC*, 2018 NCBC LEXIS 104 (N.C. Super. Oct. 9, 2018), the court addressed a claim for breach of fiduciary duty by Garrett, Ryan's brother, and his successor as the Director of GTA Asia. While the court observed that Garrett had "substantial managerial authority," the scope of Garrett's control was not as wide as that afforded Ryan. Instead, Garrett was supervised by both Ryan and another executive, who had "overall managerial responsibility" and served as "head of Asia Operations." On these facts, the court found that Garrett did not have the level of control over the company that his brother did, and no fiduciary duty arose. *Id*. at **16.

51. The degree of control exerted by Ryan over his employer's Asian operations and the impact of that control on the employer in *Global Textile* is several orders of magnitude greater than Langley's alleged managerial control over Autocraft. Ryan's control over essential information regarding the customer, vendor, and financial aspects of his employer's business as it developed halfway around the world allowed him to dominate his employer and warranted a deviation from the general rule that the employer-employee relationship is not a fiduciary one. *See Dalton*, 353 N.C. at 652.

52. The same conclusion may not be drawn from the allegations in the present case. The analysis focuses not only on the authority afforded the employee but also on the employee's ability to use that authority to create a situation in which his employer is essentially helpless without him.

53. Autocraft's allegations focus on the former but not the latter. It alleges, generally, that Langley ultimately ran "all aspects of Autocraft's business," was "provided access to all aspects of Autocraft's business and had substantial responsibility for Autocraft's overall operations," was "entrusted with managing Autocraft's business and running Autocraft's day-to-day operations," and "oversaw the management of Autocraft's employees, as well as its customer relationships, production facilities, and supplier relationships." It does not allege, however, that Autocraft, a corporation with officers, directors, shareholders, and apparently other managers[7] depended solely on Langley for the skills or information necessary to

[7] Autocraft alleges that Langley had "access to . . . integration of Autocraft's management," among other things. (Countercl. ¶ 19.)

sustain its operations. Indeed, when Langley's allegedly covert competitive activity was unveiled, Autocraft wasted no time in terminating the employment relationship.

54. In short, Autocraft's allegations are that Langley was a high-level manager, but not that Autocraft was subjugated to his control. No fiduciary duty arises under these circumstances. *See, e.g., DSM Dyneema, LLC v. Thagard,* 2015 NCBC LEXIS 50, at *21 (N.C. Super. Ct. May 12, 2015) (dismissing claim for breach of fiduciary duty where Plaintiff failed to allege facts supporting a conclusion that lead scientist who was aware of employer's technical information held "all the cards" in the employment relationship).

55. Because Plaintiff's allegations do not elevate Langley's status within Autocraft to the extraordinary level required to impose *de facto* fiduciary responsibilities, the Motion as to the claim against Langley for breach of fiduciary duties shall be GRANTED. *See Bourgeois v. Lapelusa,* 2022 NCBC LEXIS 111, at **15 (N.C. Super. Ct. Sept. 23, 2022) ("Without the existence of a fiduciary relationship there can be no claim for breach.").

B. Constructive Fraud (Langley)

56. "The primary difference between pleading a claim for constructive fraud and one for breach of fiduciary duty is the constructive fraud requirement that the defendant benefit himself." *White v. Consol. Planning, Inc.*, 166 N.C. App. 283, 294 (2004). Autocraft sufficiently alleges self-dealing. But because Langley does not owe Autocraft a fiduciary duty, Autocraft's constructive fraud claim—which is premised on the existence of a fiduciary relationship—also fails. *See, e.g., Plasman v. Decca*

Furniture (USA), Inc., 2016 NCBC LEXIS 80, at **30 (N.C. Super. Ct. Oct. 21, 2016) (when a plaintiff fully premises his constructive fraud claims on his breach of fiduciary duty claims and breach of fiduciary duty claims fail, constructive fraud claims must also fail); *Levin v. Jacobson*, 2016 NCBC LEXIS 66, at *12 (N.C. Super. Ct. Aug. 25, 2016) (dismissing constructive fraud claim when breach of fiduciary claim upon which it relied failed).

57. Accordingly, the Motion as to the claim against Langley for constructive fraud shall be GRANTED.

C. Unfair or Deceptive Trade Practices (Langley and LBM)

58. To bring a claim for unfair or deceptive trade practices under Section 75-1.1 of the North Carolina General Statutes, (the "UDTPA"), a party must allege "(1) an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiff or to his business." *McLamb v. T.P. Inc.*, 173 N.C. App. 586, 593 (2005); *see also* N.C.G.S. § 75-1.1.

59. The UDTPA does not apply to unfair or deceptive conduct contained within a single business because the conduct has no impact on the marketplace and therefore is not "in or affecting commerce." *Nobel v. Foxmoor Grp.*, 380 N.C. 116, 121 (2022) ("The internal operations of a business entity are not within the purview of the Act."); *White v. Thompson*, 364 N.C. 47, 51 (2010) ("[A] plaintiff must prove, *inter alia,* that a defendant's unfair or deceptive action was 'in or affecting commerce' before the plaintiff may be awarded treble damages under N.C.G.S. § 75-16."); *Bhatti*

v. Buckland, 328 N.C. 240, 245-46 (1991) (the Act regulates unfair and deceptive conduct in interactions between market participants); *Wheeler v. Wheeler*, 2018 NCBC LEXIS 38, at *12 (N.C. Super. Ct. Apr. 25, 2018) ("Section 75-1.1 does not apply to the internal conduct of individuals within a single market participant. Rather, the General Assembly intended section 75-1.1 to apply to interactions between market participants." (cleaned up)).

60. Autocraft alleges that the following conduct constitutes the basis for its Chapter 75 claim:

a. Langley opening up businesses in direct competition with Autocraft's business (including LBM), while an Autocraft fiduciary;

b. Langley actively concealing his competing business entities (including LBM) from Autocraft, while an Autocraft fiduciary;

c. Langley usurping corporate opportunities;

d. Langley and LBM misappropriating Autocraft's Business Relationships and Expectancies[8] and confidential information, and using the aforementioned information in the operation of LBM's business;

e. Langley and LBM acquiring and using Autocraft's Business Relationship and Expectancies and Autocraft's Confidential Information to their unfair competitive advantage and to Autocraft's detriment;

f. Langley, on behalf of himself and LBM, promoting dissatisfaction and distrust of Autocraft and its current management among Autocraft's present and potential customers;

[8] Autocraft defines its "Business Relationships and Expectancies" as the "productive relationships, goodwill, and business relationships and expectancies [it has] with its customers, prospective customers, vendors, lenders, insurers, employees, and business referral sources." (Countercls. ¶ 12.)

g. Langley, on behalf of himself and LBM, fomenting dissatisfaction and distrust of Autocraft and its current management among Autocraft's key employees and other employees;

h. Langley, on behalf of himself and LBM, recruiting employees of Autocraft for employment (including while Langley was an Autocrat fiduciary);

i. Langley engaging in self-dealing while an Autocraft fiduciary;

j. Langley working on company time and using company resources to build his competing businesses (including LBM); and

k. LBM otherwise obtaining an unfair competitive advantage and head-start in the marketplace including based on the foregoing.

(Countercls. ¶ 61(a)-(k).)

61. The fundamental weakness in Autocraft's pleading is that the wrongs Langley allegedly committed are alleged to have harmed Autocraft itself, not external market participants. *Alexander v. Alexander*, 250 N.C. App. 511, 516 (2016) (UDTPA not implicated when "the unfairness of [Defendant's] conduct did not occur in his dealings with other market participants" (citation omitted)); *McKee v. James*, 2014 NCBC LEXIS 74, at **40-41 (N.C. Super. Ct. Dec. 31, 2014) ("Matters of internal corporate management. . . do not affect commerce as defined by Chapter 75 and our Supreme Court.").

62. Moreover, the fact that Langley formed LBM and used that entity to usurp some of Autocraft's opportunities does not transform the misconduct into an unfair or deceptive trade practice that affected commerce. "The mere presence of [a separate entity] as a potential beneficiary of [the] alleged wrongful conduct does not alter the fundamental character of [an] internal dispute." *Poluka v. Willette*, 2021

NCBC LEXIS 105, at **18 (N.C. Super. Ct. Dec. 2, 2021) (internal business dispute not covered by UDTPA) (collecting cases); *see Howard v. IOMAXIS, LLC*, 2021 NCBC LEXIS 116, at *31 (N.C. Super. Ct. Dec. 22, 2021) ("While the caselaw with respect to intracompany and intercompany disputes can be confusing, the distinction lies in the nature of the second entity's involvement with the first. If the harm is to the second entity or to the flow of commerce between the first and second entities, commerce is impacted. However, if the second entity is used merely as an instrument or 'shell' to facilitate harm within the first entity, the dispute is intracorporate, and the UDTPA is not implicated."). Such is the case here. LBM was "used merely as an instrument to facilitate harm" within Autocraft. *Id.* at *31.

63. Autocraft again turns unsuccessfully to the Supreme Court's opinion in *Sara Lee* for support. In *Sara Lee*, the Supreme Court determined that the wrongdoer, Carter, was more than just an employee acting to harm his own employer. He was also a vendor who had engaged with the company in commercial transactions in the marketplace. In this unusual fact scenario, the Court found that Carter's status as an employee could not be used as a shield against his liability as a vendor. *Sara Lee* Corp., 351 N.C. at 33.

64. There are no such allegations here. This case is more appropriately compared to *Dalton,* in which the Supreme Court concluded that the defendant employee "did not serve his employer in the capacity of either a buyer or a seller. Nor did he serve in any alternative capacity suggesting that his employment was such that it otherwise qualified as 'in or affecting commerce.' " *Dalton*, 353 N.C. at 658.

See Hajmm Co. v. House of Raeford Farms, Inc., 328 N.C. 578, 593 (1991) ("Although [the] statutory definition of commerce is expansive, the Act is not intended to apply to all wrongs in a business setting. For instance, it does not cover employer-employee relations[.]" (citing *Buie v. Daniel International*, 56 N.C. App. 445 (1982))).[9] Accordingly, the Motion as to the claim against Langley for violation of the UDTPA shall be GRANTED.

V. CONCLUSION

65. The facts alleged in this case paint a portrait of an unfortunate company that claims it was duped by an unscrupulous employee. As morally wrong as the employer may believe the former employee's purported conduct may be, on the facts alleged, Autocraft's attempted claims cannot be stretched to address it.[10]

66. WHEREFORE, the Court **GRANTS** the Motion. Autocraft's counterclaims are DISMISSED with prejudice.

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[9] While our courts have long recognized that claims for misappropriation of trade secrets may form the basis of a UDTP claim, *see, e.g., Ge Betz, Inc. v. Conrad*, 231 N.C. App. 214, 235 (2013); *S. Fastening Sys. v. Grabber Constr. Prods.*, 2015 NCBC LEXIS 42, at *28 (N.C. Super. Ct. Apr. 28, 2015), Autocraft does not attempt a misappropriation of trade secrets claim in this case. Although it alleges that Langley used its confidential information to catapult his competing venture into a position of unfair advantage, not all confidential information is a trade secret, and therefore not all use of confidential information in a competing venture constitutes misappropriation of a trade secret. *See Kadis v. Britt*, 224 N.C. 154 (1944) (subjective knowledge acquired in the course of employment may not be a trade secret). Rather, the standard for pleading a misappropriation of trade secret is more exacting and requires that the pleading party plead both the trade secret at issue and the facts supporting misappropriation with particularity. *Krawiec v. Manly*, 370 N.C. 602 (2018).

[10] The Court observes that contractual protections including nondisclosure provisions, non-competition covenants, and non-solicitation provisions are absent from this record.

IT IS SO ORDERED, this 7th day of August, 2023.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases