

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 18665

JACQUELINE S. MCFEE and
SAVAGE MCFEE, INC.,

Plaintiffs,

v.

WILLIAM C. PRESLEY; BILL
STACKS; SABR LEME, INC.; C.
PRESLEY PROPERTIES, LLC;
STACKS HOLDING, INC.; and CPP
INTERNATIONAL, LLC,

Defendants.

**ORDER AND OPINION ON
PLAINTIFFS' MOTION FOR
DEFAULT JUDGMENT**

1. Plaintiffs Jacqueline S. McFee and Savage McFee, Inc. have moved for a default judgment against Defendants Bill Stacks, Sabr Leme, Inc., Stacks Holding, Inc., and CPP International, LLC ("CPP"). (See ECF No. 138.) For the reasons set forth below, the Court **GRANTS** the motion in part and **DENIES** it in part.

Terpening Law P.L.L.C., by William R. Terpening and Tomi M. Suzuki, and Allan Law Firm, PLLC, by Albert P. Allan, for Plaintiffs Jacqueline S. McFee and Savage McFee, Inc.

Johnston, Allison & Hord, P.A., by Kimberly J. Kirk and Katie D. Burchette, for Defendants William C. Presley and C. Presley Properties, LLC.

No counsel appeared for Defendants Bill Stacks, Sabr Leme, Inc., Stacks Holding, Inc., and CPP International, LLC.

Conrad, Judge.

I. PROCEDURAL BACKGROUND

2. Plaintiffs initiated this action in November 2021. (See Compl., ECF No. 3.) Defendants William Presley and C. Presley Properties, LLC timely filed their answer.

(See Answer, ECF No. 87.) Stacks, Sabr Leme, Stacks Holding, and CPP (“Defaulting Defendants”) did not answer or otherwise respond to the complaint. After an entry of default, Plaintiffs moved for a default judgment against the Defaulting Defendants and, in November 2022, the Court granted that motion in part as to liability but deferred an evidentiary hearing as to damages. See *McFee v. Presley*, 2022 NCBC LEXIS 142 (N.C. Super. Ct. Nov. 29, 2022).

3. Plaintiffs then amended their complaint before the evidentiary hearing took place. (See Am. Compl., ECF No. 98.) The amendment rendered moot their motion for default judgment based on the original complaint: when a “trial court enters a judgment determining the issue of liability but ordering a [hearing] on the issue of damages, the judgment is only an entry of default rather than a default judgment.” *Moore v. Sullivan*, 123 N.C. App. 647, 649 (1996); see also *Houston v. Tillman*, 234 N.C. App. 691, 695 (2014) (noting that “an amended complaint has the effect of superseding the original complaint” and “rendering any argument regarding the original complaint moot” (citation and quotation marks omitted)).

4. Following the amendment, Presley and C. Presley Properties again timely filed their answer. (See Answer, ECF No. 107.) Defaulting Defendants did not answer or otherwise respond to the amended complaint. Plaintiffs moved for entry of default in April 2023, (ECF No. 121), and the Court entered default against Defaulting Defendants based on the amended complaint in May 2023, (ECF No. 124).

5. Plaintiffs have now filed another motion for default judgment against Defaulting Defendants. (*See* ECF No. 138.) Defaulting Defendants did not file any responses to the motion or seek to have the entry of default set aside.

6. Presley and C. Presley Properties jointly filed a brief in response to the motion for default judgment. (*See* ECF No. 141.) In their response brief, they seek to ensure that entry of a default judgment will not prejudice their own rights, partly because the amended complaint includes allegations that some defendants are alter egos of others. In an order filed earlier today, however, the Court granted Presley and C. Presley Properties' motion for summary judgment and dismissed all claims against them. (*See* ECF No. 183.)

7. On 11 October 2023, the Court held a hearing on the motion for default judgment, at which all parties other than Defaulting Defendants appeared through counsel. The motion is ripe for determination.

II. FINDINGS OF FACT¹

8. “When default is entered due to a defendant’s failure to answer, the substantive allegations contained in plaintiff’s complaint are no longer in issue, and for the purposes of entry of default and default judgment, are deemed admitted.” *Luke v. Omega Consulting Grp., LC*, 194 N.C. App. 745, 751 (2009). The facts referred to below are taken from the amended complaint and are deemed admitted by the Defaulting Defendants.²

¹ Any findings of fact that are more appropriately deemed conclusions of law are incorporated by reference into the Court’s conclusions of law.

² To be clear, these facts are not deemed admitted by Presley and C. Presley Properties.

9. Jacqueline McFee is a former member and employee of CPP. (*See Am. Compl.* ¶¶ 20, 21, 28.)

10. Savage McFee is a dissolved North Carolina corporation. McFee is Savage McFee's sole shareholder. (*See Am. Compl.* ¶ 3.)

11. Defaulting Defendants are three companies and one individual. CPP is a North Carolina limited liability company, which is now administratively dissolved.³ Stacks Holding and Sabr Leme are North Carolina corporations, which are also administratively dissolved. Stacks is a resident of Charlotte, North Carolina. (*See Am. Compl.* ¶¶ 5, 6, 8, 9.)

12. In September 2001, McFee joined CPP as its lead designer. She was responsible for developing CPP's creative department, including overseeing the design and creative direction for the company. McFee's contributions led to CPP's financial success. (*See Am. Compl.* ¶¶ 22, 24, 26, 29.)

13. In 2008, McFee became a minority member of CPP. She also entered into a written employment agreement, which included terms governing her rights to intellectual property in designs that she created during her employment. McFee believed that her intellectual property rights "would completely and unconditionally revert back to her when certain simple conditions were met." (*Am. Compl.* ¶¶ 31, 32.)

14. In 2012, McFee agreed to amend her employment agreement and reduce her compensation. In 2013, she relinquished her ownership interest in CPP. And in early

³ Paragraph 9 of the amended complaint refers to CPP as a North Carolina corporation, but it is in fact an LLC as stated in the case caption.

2015, she agreed to amend her employment agreement and reduce her compensation a second time. McFee claims that she was defrauded into taking these actions. (*See* Am. Compl. ¶¶ 36, 37, 39, 41.)

15. CPP fired McFee in May 2015. She immediately asked CPP to reassign her intellectual property rights to her under the terms of her employment agreement. After her requests went unanswered while CPP continued using her designs, McFee sued CPP in federal court for breach of her employment agreement and copyright infringement in April 2016. The court dismissed her copyright claim because McFee did “not have ownership of the intellectual property rights” at issue. The court also dismissed the claim for breach of the employment agreement without prejudice to McFee’s right to sue again in state court. *McFee v. CPP Int’l*, 2017 U.S. Dist. LEXIS 21462, at *8, *10 (W.D.N.C. Feb. 15, 2017). McFee then sued CPP in state court in October 2017, asserting claims for breach of contract, fraud, violations of N.C.G.S. § 75-1.1, and more. In February 2020, McFee obtained a default judgment in the state action against CPP, which included an award of damages and an assignment of intellectual property to her as of the date of the judgment. (*See* Am. Compl. ¶¶ 43–46, 48, 50, 53.)

16. While the state action was pending, CPP ceased doing business. On the day after that action was filed, CPP sold many of its assets to a company called Pacon for about \$11 million. A month after the asset sale to Pacon, Stacks acquired ownership of CPP through Stacks Holding, became CPP’s president, and controlled the company.

In 2019, a company called Bay Sales bought some of CPP's other assets. (*See Am. Compl.* ¶¶ 49, 55–58, 66, 89.)

17. The Pacon and Bay Sales transactions left CPP insolvent. Stacks “directed a substantial amount of” the income received from the sales to himself through Sabr Leme and Stacks Holding. McFee did not receive any income from the sale of CPP's assets, but she contends that she should have received at least ten percent, plus the amount she claimed in her 2017 state-court lawsuit. Defaulting Defendants concealed these transfers from McFee and effectuated them with the intent to hinder, delay, and defraud her. (*See Am. Compl.* ¶¶ 85, 89(d), 130–33, 139.)

18. Plaintiffs filed this amended complaint in March 2023. Defaulting Defendants were properly served with copies of the amended complaint.

III. CONCLUSIONS OF LAW⁴

A. Procedural Requirements

19. “For a default judgment order to be valid, there must be compliance with the procedural requirements set forth in Rule 55 and section 1-75.11 of the North Carolina General Statutes.” *KBT Realty Servs. v. AppyCity, LLC*, 2021 NCBC LEXIS 68, at *9 (N.C. Super. Ct. Aug. 9, 2021). In short, there must be an entry of default, proof that the summons has been served, and proof of personal jurisdiction over the defendant by affidavit or other evidence. In addition, the defendant must not be an infant or incompetent person.

⁴ Any conclusions of law that are more appropriately deemed findings of fact are incorporated by reference into the Court's findings of fact.

20. These requirements have been met. Defaulting Defendants are not infants or incompetent, they were properly served with a summons and the original complaint, they were properly served with the amended complaint, and the Court has entered default against them.

21. In addition, Plaintiffs have offered proof of personal jurisdiction through the verified allegations of the amended complaint, (*see* Am. Compl. ¶¶ 5–9). *See also* N.C.G.S. § 1-75.4(1) (allowing personal jurisdiction over any party who “[i]s a natural person present [or domiciled] within this State” or “a domestic corporation”).

B. Claims for Relief

22. Even though a defaulting defendant is deemed to have admitted the factual allegations in the complaint, those allegations are “not sufficient to support a default judgment for plaintiff” if they fail to state a cause of action. *Brown v. Cavit Scis., Inc.*, 230 N.C. App. 460, 467 (2013). The Court must therefore assess the sufficiency of the allegations, giving them a “liberal construction.” *Id.* And “if any portion of the complaint presents facts sufficient to constitute a cause of action, or if facts sufficient for that purpose fairly can be gathered from it, the pleading will stand.” *Id.* (cleaned up).

23. **Savage McFee’s Standing.** Although Savage McFee is a named plaintiff, its role in the alleged events is unclear. All that the amended complaint alleges is that Savage McFee is a dissolved corporation and that McFee is its sole shareholder. (*See* Am. Compl. ¶ 3.) There are no allegations that Savage McFee took part in the relevant events or was harmed by Defaulting Defendants. Nor does the prayer for

relief mention Savage McFee or state that it is entitled to damages or other relief. The Court therefore directs Savage McFee to show cause why its claims should not be dismissed for lack of standing. *See, e.g., Wilson v. Pershing, LLC*, 253 N.C. App. 643, 650 (2017) (“If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim.” (citation and quotation marks omitted)).

24. **Breach of Fiduciary Duty and Constructive Fraud.** McFee asserts related claims for breach of fiduciary duty and constructive fraud against Stacks. A claim for breach of fiduciary duty requires a plaintiff to show that “(1) the defendant owed the plaintiff a fiduciary duty; (2) the defendant breached that fiduciary duty; and (3) the breach of fiduciary duty was a proximate cause of injury to the plaintiff.” *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 339 (2019). Likewise, a claim for constructive fraud requires the existence of a confidential or fiduciary relationship between the parties. *See Forbis v. Neal*, 361 N.C. 519, 528 (2007).

25. McFee alleges that Stacks, in his role as an officer of CPP, owed a fiduciary duty to her, in her roles as a member and an employee. (*See* Am. Compl. ¶ 96.) In general, an officer of an LLC owes a fiduciary duty to the company but not to its members, former members, or employees. *See, e.g., Kaplan v. O.K. Techs., L.L.C.*, 196 N.C. 469, 474 (2009). Moreover, “a fiduciary relationship will generally not be found in the workplace.” *Reichhold Chems., Inc. v. Goel*, 146 N.C. App. 137, 155 (2001). Thus, the amended complaint does not adequately allege that Stacks owed McFee a fiduciary duty based on her membership and employment status.

26. McFee also alleges that a fiduciary relationship arose when she became a creditor of CPP. She alleges that Stacks breached that duty by transferring proceeds from the Pacon and Bay Sales transactions to himself and others when those proceeds should have been used to pay her. (See Am. Compl. ¶¶ 100, 101, 104.)

27. Our courts have held that, “[w]hen an LLC finds itself in circumstances amounting to a winding-up or dissolution, the managers of the LLC owe a fiduciary duty to the LLC’s creditors to treat members of the same creditor class fairly and equally.” *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2017 NCBC LEXIS 91, at *7 (N.C Super. Ct. Oct. 3, 2017) (quoting *Keener Lumber Co. v. Perry*, 149 N.C. App. 19, 33 (2002)). Here, though, McFee does not allege that Stacks was a manager or officer of CPP in October 2017 at the time of the Pacon transaction. As alleged, he became an officer and owner of CPP in December 2017. (See Am. Compl. ¶ 49.) Thus, the amended complaint does not sufficiently allege that Stacks owed a fiduciary duty to McFee as a creditor of CPP at the time of the Pacon transaction in October 2017.

28. McFee has, however, alleged that Stacks was a manager at the time of the Bay Sales transaction, that CPP was winding up at that time, and that she was a known creditor. McFee has also alleged that Stacks took proceeds from the Bay Sales transaction for himself when those proceeds should have been paid to her. These allegations, which have been deemed admitted are sufficient to state a claim.⁵

⁵ The Court notes that evidence submitted in connection with Presley and C. Presley Properties’ motion for summary judgment shows that the Bay Sales transaction was a foreclosure sale and that all proceeds went to CPP’s secured lender. (See ECF Nos. 181.1, 181.2.) McFee will need to address that evidence at a future hearing on her damages.

29. Accordingly, the Court denies McFee's motion as to the claims for breach of fiduciary duty and constructive fraud to the extent based on the Pacon transaction but grants her motion as to those claims to the extent based on the Bay Sales transaction.

30. **Fraudulent Transfer.** McFee asserts claims for fraudulent transfer under N.G.G.S. § 39-23.4 and § 39-23.5 against all Defaulting Defendants. The claims are based on the sales of CPP's assets to Pacon in 2017 and to Bay Sales in 2019, as well as the later transfers of proceeds from those sales.

31. Section 39-23.4 provides as follows:

- (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - (1) With intent to hinder, delay, or defraud any creditor of the debtor;
 -
- (b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:
 - (1) The transfer or obligation was to an insider;
 - (2) The debtor retained possession or control of the property transferred after the transfer;
 - (3) The transfer or obligation was disclosed or concealed;
 - (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
 - (5) The transfer was of substantially all the debtor's assets;
 -

See also Fischer Inv. Cap., Inc. v. Catawba Dev. Corp., 200 N.C. App. 644, 658–59 (2009).

32. The Court concludes that the amended complaint alleges facts sufficient to state a claim for fraudulent transfer against CPP under section 39-23.4. The complaint alleges that McFee was a “creditor” of CPP within the meaning of the statute; that CPP was on notice of McFee’s claim from the filing of her federal action in 2016 and state action in 2017; that substantially all of CPP’s assets were transferred to Pacon and Bay Sales; that CPP concealed the transfers from McFee; and that CPP transferred the assets with the intent to hinder, delay, and defraud McFee. (*See* Am. Compl. ¶¶ 125–33.) Taking these allegations as admitted, the Court grants McFee’s motion against CPP as to its liability on the fraudulent transfer claim under section 39-23.4.⁶

33. McFee also seeks a default judgment against Stacks, Stacks Holding, and Sabr Leme. But there are no allegations that McFee was a creditor of Stacks, Stacks Holding, or Sabr Leme for purposes of section 39-23.4. McFee obtained a judgment in her 2017 lawsuit against only CPP but no other Defaulting Defendant. (*See, e.g.*, Am. Compl. ¶ 53.)

34. Even so, McFee asks the Court to pierce CPP’s corporate veil to hold the other Defaulting Defendants liable. Veil piercing “allows a plaintiff to impose legal

⁶ In the order granting Presley and C. Presley Properties’ motion for summary judgment, the Court concluded that McFee did not challenge the Pacon transaction under section 39-23.4 within the statutorily required period. *See* N.C.G.S. § 39-23.9(1) (stating that plaintiff must challenge transfer “not later than four years after the transfer was made . . . or, if later, not later than one year after the transfer . . . was or could reasonably have been discovered”). The Court further concluded that the Bay Sales transaction, which was a foreclosure sale, fell outside the scope of the statute. *See* N.C.G.S. 39-23.1(2)(a) (excluding transfers of property “encumbered by a valid lien”). Following the damages hearing, the Court intends to direct the parties to address whether the entry of a default judgment would result in inconsistent judgments.

liability for a corporation's obligations . . . upon some other company or individual that controls and dominates a corporation.” *Green v. Freeman*, 367 N.C. 136, 145 (2013). Members of an LLC “may be held individually liable for the [LLC’s] obligations through” veil piercing. *Estate of Hurst v. Moorehead I, LLC*, 228 N.C. App. 571, 576 (2013). North Carolina courts apply the instrumentality rule to determine whether veil piercing is an appropriate remedy. *Glenn v. Wagner*, 313 N.C. 450, 455 (1985) (stating that instrumentality rule requires showing that defendant exercised “complete domination” over entity, that this “control must have been used by the defendant to commit fraud or wrong,” and that this “proximately cause[d] the injury” (citation and quotation marks omitted)).

35. The amended complaint provides no basis to hold Sabr Leme or Stacks Holding liable on a veil-piercing theory. Accordingly, the Court denies the motion as to the section 39-23.4 claim against Sabr Leme and Stacks Holding.

36. In addition, the amended complaint alleges that Stacks did not acquire ownership in CPP, become its president, or control it until December 2017, well after the October 2017 sale of assets to Pacon. (See Am. Compl. ¶¶ 49, 89(d).) Accordingly, McFee has not alleged that Stacks exercised “complete domination” with respect to the Pacon transaction. *Glenn*, 313 N.C. at 455 (citation and quotation marks omitted). The Court therefore denies her motion to pierce the veil and hold Stacks liable for that transaction.

37. The amended complaint does, however, sufficiently allege facts that would support piercing CPP’s veil with respect to the Bay Sales transaction. As alleged,

Stacks “owned 100% of CPP at the time of the Bay Sales transfers”; as to that transaction, CPP “had no separate mind, will, or existence of its own”; and Stacks “exercised complete control and domination” of “CPP’s finances,” “policy[,] and business practice.” (Am. Compl. ¶ 89.) In addition, Stacks used his control to carry out the fraudulent transfer, resulting in harm to McFee. *See Fischer Inv. Cap.*, 200 N.C. App. at 651–54 (concluding that similar allegations adequately stated a veil-piercing theory).

38. Because Stacks is deemed to have admitted these allegations, the Court grants the motion to pierce CPP’s corporate veil for purposes of extending liability to him individually on the claim for fraudulent transfer of assets to Bay Sales. In all other respects, the Court denies the motion for default judgment as to the section 39-23.4 claim against Stacks.

39. Finally, the Court concludes that McFee has not adequately alleged a claim under section 39-23.5(b), which applies only to a transfer “made to an insider for an antecedent debt.” N.C.G.S. § 39-23.5(b). The amended complaint does not allege that any antecedent debt existed or that CPP transferred funds to satisfy an antecedent debt. (*See* Am. Compl. ¶¶ 137–42.) The Court therefore denies McFee’s motion as to the section 39-23.5(b) claim.⁷

40. **Unjust Enrichment.** McFee asserts a claim for unjust enrichment against all Defaulting Defendants. She alleges that she “conferred benefits on” them,

⁷ At the hearing, McFee’s counsel also conceded that her claim under section 39-23.5(b) is untimely, further supporting the Court’s decision. *See* N.C.G.S. § 39-23.9(3) (stating that claim must be asserted “not later than one year after the transfer was made”).

“including her CPP funds that should have been reserved based on her claims against CPP, her intellectual property, her goodwill, and her share of the CPP sale proceeds.” (Am. Comp. ¶ 144.)

41. “The general rule of unjust enrichment is that where services are rendered and expenditures made by one party to or for the benefit of another, without an express contract to pay, the law will imply a promise to pay a fair compensation therefor.” *Atl. Coast Line R.R. Co. v. State Highway Comm’n*, 268 N.C. 92, 95–96 (1966). A claim for unjust enrichment has five elements: (1) “one party must confer a benefit upon the other party”; (2) “the benefit must not have been conferred officiously”; (3) “the benefit must not be gratuitous”; (4) “the benefit must be measurable”; and (5) “the defendant must have consciously accepted the benefit.” *JPMorgan Chase Bank, N.A. v. Browning*, 230 N.C. App. 537, 541–42 (2013) (citation and quotation marks omitted).

42. McFee’s allegations fall short. Although McFee alleges that she conferred “her share of the CPP sale proceeds” on Stacks, (Am. Compl. ¶ 144), that allegation is conclusory and contradicted by the other allegations in her amended complaint. *See Radcliffe v. Avenel Homeowners Ass’n, Inc.*, 248 N.C. App. 541, 572 (2016) (observing that a plaintiff must plead more than “conclusory allegations that track the elements of a” cause of action). As alleged, Stacks took proceeds that McFee believes she was entitled to receive from the Pacon and Bay Sales transactions. (*See, e.g.*, Am. Compl. ¶¶ 54, 57, 58, 61, 62, 66, 68, 69.) Allegations that Stacks took for himself “some benefit to which [McFee] believes [she] is rightfully entitled” are

insufficient to support a claim for unjust enrichment. *KNC Techs., LLC v. Tutton*, 2019 NCBC LEXIS 72, at *36 (N.C. Super. Ct. Oct. 9, 2019); *see also Barrett v. Coston*, 261 N.C. App. 311, 315 (2018) (affirming order granting motion to dismiss when “the benefit was allegedly conferred upon Defendant by” someone other than the plaintiff); *Caliber Packaging & Equip., LLC v. Swaringen*, 2023 NCBC LEXIS 74, at *14 (N.C. Super. Ct. May 31, 2023) (granting motion to dismiss claim for unjust enrichment).

43. Likewise, although McFee alleges that she conferred her intellectual property and related goodwill on CPP and the other Defaulting Defendants, she admits “that she contractually retained the rights to reassignment [of] the intellectual property she designed while at CPP” as part of her employment agreement. (Am. Compl. ¶ 42; *see also* Am. Compl. ¶ 53 (alleging that McFee’s rights were reassigned to her under the terms of her employment agreement as part of her state-court default judgment).) “If there is a contract between the parties, the contract governs the claim and the law will not imply a contract.” *Se. Shelter Corp. v. BTU, Inc.*, 154 N.C. App. 321, 330–31 (2002). McFee’s allegations that an express contract governs her intellectual property rights—an allegation that Defaulting Defendants are deemed to have admitted—forecloses her claim for unjust enrichment to the extent based on those rights.

44. Therefore, the Court denies McFee’s motion for default judgment as to the claim for unjust enrichment.

IV. CONCLUSION

45. For all these reasons, the Court **GRANTS** McFee's motion only with respect to liability as to the following claims: fraudulent transfer against CPP under section 39.23-4; fraudulent transfer against Stacks under section 39.23-4 to the extent based on the Bay Sales transaction; and constructive fraud and breach of fiduciary duty against Stacks to the extent based on the Bay Sales transaction. This is not an entry of default judgment because the Court **DEFERS** consideration of damages and will schedule an evidentiary hearing by separate order at a later time.

46. The Court **DENIES** McFee's motion in all other respects. The Court **DISMISSES** her claims against Defaulting Defendants for unjust enrichment and fraudulent transfer under section 39.23.5(b); the claims against Stacks for constructive fraud and breach of fiduciary duty to the extent based on the Pacon transaction; the claim against Stacks Holding and Sabr Leme for fraudulent transfer under section 39.23-4; and the claim against Stacks for fraudulent transfer under section 39.23-4 to the extent based on the Pacon transaction.

47. The Court further **ORDERS** Savage McFee to show cause why its claims should not be dismissed for lack of standing. Savage McFee shall file a brief addressing the standing issue no later than 18 January 2024. The brief shall not exceed 2500 words. Any defendant may file a response brief of the same length no later than 1 February 2024.

SO ORDERED, this the 28th day of December, 2023.

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