

STATE OF NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 583

WESTON DAVIS,

Plaintiff,

v.

DAVIS FUNERAL SERVICE, INC.;  
and PHILLIP TILLMAN, Vice  
President (individually and as an  
officer of Davis Funeral Service, Inc.),

Defendants/Third-  
Party Plaintiffs,

v.

DEIDRA TEDDER,

Third-Party  
Defendant.

**ORDER ON MOTION FOR  
AWARD OF ATTORNEY'S FEES**

1. Deidre Tedder has moved to recover the reasonable attorney's fees and expenses that she has incurred in this case, including those incurred in defending against Davis Funeral Service, Inc.'s third-party complaint. (*See* ECF No. 52.) The motion has been fully briefed, and the Court held a hearing on 12 October 2023. For the following reasons, the Court **GRANTS in part** and **DENIES in part** the motion.

2. **Background.** The Court assumes some familiarity with the case and provides only a brief summary of the relevant facts here. Readers may find additional procedural and factual background in previous orders. *See, e.g., Davis v. Davis Funeral Serv. Inc.*, 2023 NCBC LEXIS 79 (N.C. Super. Ct. June 12, 2023); *Davis v. Davis Funeral Serv. Inc.*, 2022 NCBC LEXIS 79 (N.C. Super. Ct. July 20, 2022).

3. Tedder is a former employee of Davis Funeral Service. She was hired by the company's president, Weston Davis. Tedder and Davis negotiated the terms of her employment—including salary, start date, title, and her purchase of the company's Cadillac—and memorialized them in a written agreement, which she accepted and signed on 30 October 2020. Tedder began work two days later. (*See* Empl. Agrmt., ECF No. 37.6.)

4. After a change of ownership, Davis Funeral Service fired Davis and Tedder in November 2021. Tedder received a final paycheck but could not cash it because it was returned for insufficient funds. After several unsuccessful attempts to get Davis Funeral Service to reissue the check, Tedder filed a complaint with the North Carolina Department of Labor. Davis Funeral Service told the Department of Labor that it was investigating Tedder, that it believed she had violated duties owed to the company, and that she owed it money. Davis Funeral Service enclosed a copy of Tedder's employment agreement with its letter to the Department in December 2021. (*See* ECF No. 37.13 at 10–11.)

5. A few months later, Davis began this action by suing Davis Funeral Service for unpaid wages. Davis Funeral Service counterclaimed and filed a third-party complaint against Tedder for breach of fiduciary duty and embezzlement.<sup>1</sup> Its third-party claims were based on allegations that Tedder became its corporate secretary on 20 October 2020 and that she then misused her position as an officer to buy the company's Cadillac for less than market value and to pay for personal meals

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<sup>1</sup> Davis Funeral Service reissued Tedder's final paycheck in May 2022 after filing its third-party complaint.

with company funds. (See Third-Party Compl. ¶¶ 3, 5, 6, ECF No. 4; see also Davis Fun. Serv. Countercl. ¶ 5(f), (h), ECF No. 4.) Tedder denied these allegations and moved to dismiss the third-party complaint. She also asserted counterclaims, alleging that Davis Funeral Service breached her employment agreement and violated North Carolina’s wage and hour laws when it failed to timely issue her final paycheck. (See Tedder Countercl. ¶¶ 35, 40, ECF No. 12.)

6. In support of her motion to dismiss, Tedder sought to introduce her employment agreement to show that she was an administrative employee, not a corporate officer, and therefore owed no fiduciary duties to the company. The Court declined to consider this document on the ground “that evidence outside the pleadings . . . cannot be considered in determining whether the complaint states a claim on which relief can be granted.” *Jackson/Hill Aviation, Inc. v. Town of Ocean Isle Beach*, 251 N.C. App. 771, 775 (2017). Looking only to the allegations in the third-party complaint, the Court denied Tedder’s motion.

7. At the close of fact discovery, Tedder moved for summary judgment on all claims against her. Again, she pointed to her employment agreement and other evidence showing that she was not hired as a corporate officer and that she agreed to buy the Cadillac before starting her employment. In response, Davis Funeral Service abandoned its embezzlement claim. It also conceded that Tedder was not the corporate secretary as of October 2020 as it had alleged in the third-party complaint. Nevertheless, Davis Funeral Service pressed a new theory—that Tedder was elected as “Secretary of the Board of Directors” in March 2021, triggering a duty to pay more

for the Cadillac than she had previously bargained for in her employment agreement. The Court rejected this new theory and granted summary judgment in Tedder's favor.

8. Tedder also moved for summary judgment on her own counterclaims. The Court granted her motion on those claims, too, though limited to the issue of liability.

9. Having prevailed, Tedder now seeks an award of attorney's fees and expenses. "In North Carolina, a trial court may award attorney's fees only as authorized by statute." *Winkler v. N.C. State Bd. of Plumbing*, 374 N.C. 726, 729 (2020). Tedder seeks an award under Rules 11 and 37(c) of the North Carolina Rules of Civil Procedure and N.C.G.S. § 1D-45.

10. **Rule 11.** "Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record." N.C. R. Civ. P. 11(a). By signing, the attorney certifies that the paper is "well grounded in fact," "warranted by existing law" (or a good-faith attempt to change existing law), and "not interposed for an improper purpose." *Bryson v. Sullivan*, 330 N.C. 644, 655 (1992). Sanctions for a violation of Rule 11 may include an award of "reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee." N.C. R. Civ. P. 11(a).

11. The issue here is whether the third-party complaint is well-grounded in fact. The Court must determine whether Davis Funeral Service made "a reasonable inquiry into the facts" and, after assessing that inquiry, "reasonably believed that [its] position was well grounded in fact." *Kohler Co. v. McIvor*, 177 N.C. App. 396, 402 (2006) (citation and quotation marks omitted). "[I]n determining compliance with

Rule 11, courts should avoid hindsight and resolve all doubts in favor of the signer.” *Twaddell v. Anderson*, 136 N.C. App. 56, 70 (1999) (citation and quotation marks omitted).

12. Tedder’s position, in short, is that Davis Funeral Service knew, at the time it filed its third-party complaint, that it had no basis to allege that she was a corporate officer as of October 2020. Davis Funeral Service offers no meaningful response, does not deny that the allegation was false, and does not say whether it undertook a reasonable inquiry before filing its pleading. Given a second chance to address these matters at the hearing, Davis Funeral Service’s counsel attempted to rest on its brief.

13. After careful review, the Court agrees with Tedder. In its third-party complaint, Davis Funeral Service alleged that Davis hired Tedder “on or about October 20, 2020” and that she “owed a fiduciary duty to the [company] as its Secretary.” (Third-Party Compl. ¶¶ 3, 5.) Davis Funeral Service doubled down on that allegation by stating that “Davis contrived a scheme on or about October 20, 2020, in concert with Deidra Tedder, the corporate Secretary, to sell to said Tedder a 2013 Cadillac.” (Davis Fun. Serv. Countercl. ¶ 5(f); *see also* Third-Party Compl. ¶ 4.) The allegation that Tedder was an officer from day one of her employment was the linchpin of Davis Funeral Service’s third-party claims. And it was indisputably false. Tedder’s employment agreement shows that she began work on “November 2, 2020” (not “October 20, 2020”), that she negotiated the purchase of the Cadillac before her employment started (not after), and that she was hired as the “Office Manager” (not

the “corporate Secretary”). (*Compare* Empl. Agrmt., *with* Third-Party Compl. ¶¶ 3–5.)

14. What’s more, Davis Funeral Service knew or should have known that this allegation was false at the time it filed its third-party complaint. Davis Funeral Service does not dispute that Tedder’s employment agreement was in its corporate records. In fact, the company had reviewed the agreement and produced a copy of it to the North Carolina Department of Labor by the end of 2021, long before it filed its third-party complaint. (*See* ECF No. 37.13 at 10–11.) Having reviewed its records, Davis Funeral Service could not have reasonably believed that Tedder was the corporate Secretary in October 2020.

15. This false allegation infects the entire third-party complaint. Davis Funeral Service pleaded its claims for breach of fiduciary duty and embezzlement as an intertwined unit, grounded in Tedder’s status as an officer. *See* N.C.G.S. § 55-8-42 (imposing fiduciary duties on corporate officers); *id.* § 14-90(a)(4) (making embezzlement by a person who is “an officer or agent of a corporation” a crime). Because she was not an officer in October 2020, Davis Funeral Service had no basis to allege that she abused any official position or breached any fiduciary duty, particularly when it comes to negotiating the purchase of the Cadillac in an arm’s-length transaction before her employment began. *See, e.g., King v. Bryant*, 369 N.C. 451, 464 (2017) (“For a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties.” (citation and quotation marks omitted));

*Dallaire v. Bank of Am., N.A.*, 367 N.C. 363, 368 (2014) (holding that arm's-length transactions do "not typically give rise to fiduciary duties").

16. It bears noting that Tedder put Davis Funeral Service on notice of the dispositive evidence in connection with her motion to dismiss. The Court was constrained to disregard the employment agreement under the applicable standard of review. But Davis Funeral Service was not so constrained. Its continued pursuit of these claims is inexplicable.<sup>2</sup>

17. The Court therefore concludes that the third-party complaint is not well-grounded in fact. Sanctions are appropriate. *See Se. Air Charter, Inc. v. Stroud*, 2015 NCBC LEXIS 68, at \*21–22 (N.C. Super. Ct. June 30, 2015) (imposing Rule 11 sanctions because "Plaintiff was well aware that [Defendants] were not officers with corresponding fiduciary duties" and "had no reasonable basis to believe [its claims] were factually supported").

18. The only sanction that Tedder seeks is to recover her reasonable attorney's fees and expenses. The Court agrees that this is an appropriate sanction but defers its decision as to the amount that she is entitled to recover. The parties shall first confer in an effort to agree to the amount due. If that conference is not successful, Tedder may supplement her materials, and Davis Funeral Service may file an objection to the reasonableness of her request.

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<sup>2</sup> At summary judgment, Davis Funeral Service introduced a new theory that Tedder became a corporate officer nearly six months after her employment began. Not surprisingly, Davis Funeral Service does not rely on that theory, which appears nowhere in the third-party complaint, to defend itself against Rule 11 sanctions.

19. **Section 1D-45.** Tedder contends, in the alternative, that she is entitled to recover her reasonable attorney's fees and expenses in defending against Davis Funeral Service's third-party complaint because its demand for punitive damages is frivolous or malicious. *See* N.C.G.S. § 1D-45. Having granted Tedder's motion under Rule 11 in connection with her defense of Davis Funeral Service's third-party complaint, it is unnecessary to decide whether section 1D-45 provides a second basis to award the same fees.

20. **Rule 37(c).** Finally, Tedder seeks to recover attorney's fees incurred in conducting discovery related to her own counterclaims. In discovery, Tedder asked Davis Funeral Service to admit, first, that it employed her; second, that her net wages equaled \$4,500; and third, that it paid her via check on the last business day of each month. Tedder asserts that Davis Funeral Service improperly denied each request for admission and that, as a result, she is entitled to recover fees incurred in proving the truth of these matters. *See* N.C. R. Civ. P. 37(c). The Court may deny relief if "the request was held objectionable," "the admission sought was of no substantial importance," "the party failing to admit had reasonable ground to believe that he or she might prevail on the matter," or "there was other good reason for the failure to admit." *Id.*

21. The Court concludes that the admissions sought were of no substantial importance. Davis Funeral Service had already admitted much of the substance of these matters—for example, that it employed Tedder and that her take-home pay was \$4,500 per month—in its third-party complaint and in its answer to Tedder's



counterclaims. (See, e.g., Ans. Countcl. ¶¶ 16, 17, 20, 30, 38, 39, ECF No. 16.) Indeed, two of Davis Funeral Service’s denials were qualified denials based on quibbles about how Tedder characterized the circumstances of her hiring and pay. The Court doubts whether Tedder would have gained anything from unqualified admissions and therefore denies her request for sanctions under Rule 37(c). See, e.g., *Mane v. Tri-City Healthcare Dist.*, 2007 U.S. Dist. LEXIS 102633, at \*10 (S.D. Cal. Mar. 21, 2007) (denying sanctions under analogous federal Rule 37(c) when party “would have gained nothing [from admissions] that it did not already have”).

22. **Conclusion.** For all these reasons, the Court **GRANTS in part** and **DENIES in part** the motion for award of attorney’s fees as follows:

- a. Tedder shall recover from Davis Funeral Service her reasonable expenses, including attorney’s fees, incurred in defending against the third-party complaint. The Court encourages the parties to stipulate to the total amount of fees and expenses to be awarded, and they shall have through and including 18 March 2024 to file a joint stipulation. If the parties are unable to come to an agreement, Tedder shall have through and including 25 March 2024 to supplement her fee petition, and Davis Funeral Service shall have through and including 8 April 2024 to file an objection. No reply brief is allowed.
- b. In all other respects, Tedder’s motion is **DENIED**.

**SO ORDERED**, this the 4th day of March, 2024.

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