

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.;
ROBERT L. MORGAN, III, President
(as an officer of Davis Funeral
Service, Inc.); PHILLIP TILLMAN,
Vice President (individually and as
an officer of Davis Funeral Service,
Inc.); and ROBIN H. MORGAN,
Secretary (as an officer of Davis
Funeral Service, Inc.),

Defendants/Third-
Party Plaintiffs,

v.

DEIDRA TEDDER,

Third-Party
Defendant.

**ORDER AND OPINION
ON THIRD-PARTY
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

1. This case began when Weston Davis sued his former employer, Davis Funeral Service, Inc., and its officers based on allegations that he was unfairly ousted from his position as president. Davis Funeral Service countered with allegations of self-dealing and other misconduct against Davis, as well as third-party claims against Deidre Tedder (misspelled “Deidra” in the caption) for her part in the alleged misconduct. Tedder then asserted counterclaims of her own.

2. The claims and counterclaims between Davis Funeral Service and Tedder are at issue here. Fact discovery has closed, and Tedder has moved for summary

judgment. (ECF No. 37.) For the following reasons, the Court **GRANTS in part** and **DENIES in part** her motion.

Brown & Associates, PLLC, by Donald Mitchell Brown, for Plaintiff Weston Davis.

Burns, Gray & Gray, by John T. Burns and Christopher A. Gray, for Defendants Davis Funeral Service, Inc., Robert L. Morgan, III, Phillip Tillman, and Robin H. Morgan.

Villmer Caudill, PLLC, by Bo Caudill, for Third-Party Defendant Deidre Tedder.

Conrad, Judge.

I. BACKGROUND

3. The Court does not make findings of fact when deciding motions for summary judgment. The purpose of this background is to give context for the Court's analysis and ruling.

4. Davis Funeral Service, as its name suggests, is in the funeral business. Its management has changed hands several times in the past few years, beginning with its owner's death in the fall of 2020. At that time, company ownership passed to the decedent's estate, and company control passed to the estate's administrator. In October 2020, the original administrator appointed Weston Davis as president and sole director. A year later, a new administrator fired Davis and appointed a slate of officers and directors to replace him, leading to this lawsuit. (*See* Davis Dep. 26:6–10, 57:15–24, ECF No. 39.1.)

5. Tedder is Davis's friend. Shortly after Davis became Davis Funeral Service's president, he asked Tedder to join him there and to become its office manager. He offered her an employment package that included a salary of \$4,500

per month and the right to buy the company's 2013 Cadillac XTS for a price of \$13,500. Rather than pay for the car all at once, Tedder arranged to put \$1,000 from each month's paycheck toward the purchase. Davis and Tedder memorialized these terms in a written agreement, which Tedder accepted and signed on 30 October 2020. She began work two days later. (*See* Tedder Aff. ¶¶ 3, 4, ECF No. 37.2; Tedder Ex. D(1), ECF No. 37.6.)

6. Three events related to Tedder's employment are most relevant. The first occurred in March 2021 when, at the company's annual meeting, Tedder was elected to serve as "Secretary of the Board of Directors." The parties dispute the significance of this role. In an affidavit, Tedder states that she was elected to take notes for the meeting and nothing more. Davis Funeral Service contends that Tedder became a corporate officer and kept that position through the end of her employment. (*See* Tedder Aff. ¶ 9; Tedder Ex. D(9), ECF No. 37.9; Davis Funeral Service 30(b)(6) Dep. 27:4–13, ECF No. 39.2 ["DFS Dep."].)

7. The second event occurred in October 2021. By that point, Tedder had put ten installments from her monthly paychecks toward the purchase of the Cadillac. A balance of \$3,500 remained. She paid that amount in cash, took title to the car, and began receiving her full monthly salary. (*See* Tedder Aff. ¶¶ 10, 11; Tedder Ex. D(2), ECF No. 37.7.)

8. The third event occurred after Davis Funeral Service fired Tedder in November 2021. Tedder received a final paycheck but could not cash it because Davis Funeral Service had closed its bank account and opened another. This led to a flurry

of activity in which Tedder unsuccessfully demanded payment and then filed a complaint with the North Carolina Department of Labor. When Davis Funeral Service eventually reissued the paycheck, Tedder refused to cash it because it was not certified and did not include interest. (*See* Tedder Aff. ¶¶ 13–19, 24, 25; Tedder Ex. F, ECF No. 37.13; DFS Dep. 106:4–14, 107:7–14, 221:3–15.)

9. In its third-party complaint, Davis Funeral Service asserts claims against Tedder for breach of fiduciary duty, embezzlement, and conspiracy. These claims are based on allegations that she owed a fiduciary duty in her role as corporate secretary, that she paid less than market value for the company’s Cadillac, and that she misused company funds to pay for personal meals. (*See* Third-Party Compl., ECF No. 4.) Tedder, in response, asserts that her untimely final paycheck is a breach of her employment agreement and a violation of the North Carolina Wage and Hour Act. (*See* Ans. to Third-Party Compl. & Countercl., ECF No. 12.)

10. Tedder has moved for summary judgment on all claims asserted against her and on both counterclaims that she has asserted against Davis Funeral Service.¹ The motion is fully briefed, and the Court held a hearing on 2 June 2023. The motion is ripe for determination.

II. ANALYSIS

11. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

¹ Although Tedder asserts her Wage and Hour Act claim against both Davis Funeral Service and its officers, she has not moved for summary judgment against the officers.

there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. R. Civ. P. 56(c). In deciding a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party and draws all inferences in its favor. *See Vizant Techs., LLC v. YRC Worldwide, Inc.*, 373 N.C. 549, 556 (2020); *N.C. Farm Bureau Mut. Ins. Co. v. Sadler*, 365 N.C. 178, 182 (2011).

12. The moving party “bears the initial burden of demonstrating the absence of a genuine issue of material fact.” *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579 (2002). If the moving party carries this burden, the opposing party “may not rest upon the mere allegations or denials of his pleading,” N.C. R. Civ. P. 56(e), but must instead “come forward with specific facts establishing the presence of a genuine factual dispute for trial,” *Liberty Mut. Ins. Co.*, 356 N.C. at 579. “An issue is ‘genuine’ if it can be proven by substantial evidence and a fact is ‘material’ if it would constitute or irrevocably establish any material element of a claim or defense.” *Lowe v. Bradford*, 305 N.C. 366, 369 (1982) (quoting *Bone Int’l, Inc. v. Brooks*, 304 N.C. 371, 374–75 (1981)).

13. “When the party with the burden of proof moves for summary judgment, a greater burden must be met.” *Almond Grading Co. v. Shaver*, 74 N.C. App. 576, 578 (1985). The moving party “must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by

the jury.” *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985); *see also Kidd v. Early*, 289 N.C. 343, 370 (1976).

A. Davis Funeral Service’s Claims

14. At the hearing, Davis Funeral Service abandoned its claims for embezzlement and conspiracy. It also abandoned the portion of its claim for breach of fiduciary duty based on allegations that Tedder misused company money for personal meals. Summary judgment on these disputes is therefore appropriate.

15. All that remains is the portion of the claim for breach of fiduciary duty based on allegations that Tedder bought the company’s Cadillac for below-market value. In its third-party complaint, Davis Funeral Service alleged that Tedder became a corporate officer in October 2020 and then immediately breached her fiduciary duty by arranging a sweetheart deal to buy the Cadillac. The company now concedes that this theory is untenable. The undisputed evidence shows that Tedder was not an employee, much less a fiduciary, of Davis Funeral Service at the time she agreed to buy the Cadillac. She negotiated the purchase price and payment plan before starting her employment, (*see* Tedder Ex. D(1)), in an arm’s-length transaction of the sort that does “not typically give rise to fiduciary duties,” *Dallaire v. Bank of Am., N.A.*, 367 N.C. 363, 368 (2014). Simply put, Tedder could not have breached a duty that didn’t exist. *See 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.” (quoting *Dalton v. Camp*, 353 N.C. 647, 651 (2001))).

16. Still, Davis Funeral Service contends that it has a viable claim. Its new theory is that Tedder's election as "Secretary of the Board of Directors" in March 2021 triggered a duty to pay more for the Cadillac than she had previously bargained for in her employment agreement. This, too, is untenable. Even if Tedder became a corporate officer in March 2021, she had no duty to renegotiate her preexisting employment agreement. Nor did she breach her fiduciary duty, assuming one existed, by carrying out the terms of that agreement and paying the balance of the purchase price for the car. Davis Funeral Service cites no law suggesting otherwise. *See, e.g., In re Walt Disney Co. Deriv. Litig.*, 2004 Del. Ch. LEXIS 132, at *28 (Del. Ch. 2004) (granting summary judgment under Delaware law on the ground that defendant "could not have breached a fiduciary duty" by carrying out a contract executed before the fiduciary relationship arose).

17. The Court therefore grants Tedder's motion for summary judgment as to all claims asserted by Davis Funeral Service.²

B. Tedder's Counterclaims

18. Tedder asserts two counterclaims: one for breach of contract and another for a Wage and Hour Act violation. Both are based on allegations that Davis Funeral Service failed to pay her November 2021 wages on time after terminating her employment.

² Elsewhere in this litigation, Davis Funeral Service has accused Davis of misusing company money to repair his Porsche Cayenne. The opposition brief alludes to this event and states that Tedder signed a receipt for some of these funds. At no point, however, does Davis Funeral Service argue that the repair of the Porsche is a basis for any claim against Tedder.

19. An employee may assert common-law and statutory claims for unpaid wages as alternatives. *See, e.g., Feldman v. Law Enft Assocs. Corp.*, 779 F. Supp. 2d 472, 502 (E.D.N.C. 2011) (applying North Carolina law). A common-law claim for breach of contract requires the “existence of a valid contract” and a “breach of the terms of that contract.” *Poor v. Hill*, 138 N.C. App. 19, 26 (2002). A statutory claim for unpaid wages under the Wage and Hour Act arises when an employer fails to pay “all wages . . . accruing to the employee on the regular payday,” N.C.G.S. § 95-25.6, including an employee “whose employment is discontinued,” *id.* § 95-25.7; *see also id.* § 95-25.22 (authorizing civil action to recover unpaid wages).

20. There is no genuine dispute as to liability. Davis Funeral Service concedes that the employment agreement is valid, that Tedder’s wages were \$4,500 per month, that it owed Tedder her monthly wages for November 2021 when it terminated her employment, and that the paycheck Tedder received could not be cashed because it came from a closed account. The record also shows that the company did not reissue the paycheck from its new bank account until much later. In sum, the undisputed evidence shows that Davis Funeral Service failed to pay Tedder’s wages on the regular payday, thus breaching her employment agreement and violating the Wage and Hour Act. It is therefore proper to grant summary judgment as to liability on both counterclaims. *See Washburn v. Yadkin Valley Bank & Tr. Co.*, 190 N.C. App. 315, 323–24 (2008) (affirming judgment on the pleadings as to claims for breach of contract and violation of the Wage and Hour Act based on unpaid wages following termination of employment).

21. Damages are another matter. Tedder seeks to recover, at a minimum, her unpaid wages plus interest. She also seeks liquidated damages (that is, double damages) under the Wage and Hour Act. *See* N.C.G.S. § 95-25.22(a1). This latter remedy is fact-dependent. The Court has discretion not to award liquidated damages if Davis Funeral Service shows that it acted “in good faith” and “had reasonable grounds for believing that” its conduct did not violate the statute. *Id.* Viewed in the light most favorable to Davis Funeral Service, some evidence suggests that the company issued Tedder’s paycheck from its closed bank account by accident, not on purpose. Other evidence suggests that the company waited to reissue the paycheck only temporarily while it investigated what it believed was misconduct by Davis and Tedder. Taken together, this evidence raises a genuine issue of material fact concerning whether Davis Funeral Service acted in good faith and had reasonable grounds to believe that its actions did not violate the Wage and Hour Act.

22. Accordingly, Tedder is not entitled to summary judgment as to the amount of her damages. The Court will decide that issue, including whether Tedder is entitled to liquidated damages, after trial. *See Kornegay v. Aspen Asset Grp., LLC*, 204 N.C. App. 213, 242 (2010) (“North Carolina appellate courts have consistently assumed that the trial judge is the one to decide the question of good faith and reasonable grounds under the NCWHA.”).

III.
CONCLUSION

23. For all these reasons, the Court **GRANTS** Tedder's motion for summary judgment as to Davis Funeral Service's claims for embezzlement, conspiracy, and breach of fiduciary duty. These claims are **DISMISSED** with prejudice.

24. In addition, as to Tedder's counterclaims for breach of contract and violation of the Wage and Hour Act, the Court **GRANTS** her motion for summary judgment on the issue of liability but **DENIES** her motion on the amount of damages and other remedies.

SO ORDERED, this the 12th day of June, 2023.

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