

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 20789

WEAVER, BENNETT & BLAND, P.A.,

Plaintiff and
Counterclaim Defendant,

v.

MATTHEW MCCURDY VILLMER;
BO BRANDON CAUDILL; AND
VILLMER CAUDILL, PLLC,

Defendants and
Counterclaim Plaintiffs,

v.

ERAN L. WEAVER; WILLIAM G.
WHITTAKER; AND MICHAEL
DAVID BLAND,

Counterclaim Defendants.

**ORDER AND OPINION ON
DEFENDANTS' MOTION TO
DISMISS**

1. **THIS MATTER** is before the Court on Defendants' Motion to Dismiss Amended Complaint for Failure to State a Claim (the "Motion") filed by Matthew McCurdy Villmer, Bo Brandon Caudill, and Villmer Caudill, PLLC (collectively, "Defendants"). (ECF No. 45.)

2. The Court, having considered the Motion, the briefs supporting and opposing the Motion, the parties' arguments at a hearing on 28 June 2023, and other relevant matters of record, hereby **GRANTS** in part and **DENIES** in part the Motion.

Sigmon, Clark, Mackie, Hanvey & Ferrell, P.A., by Andrew J. Howell and R. Jason White, and Wilson Elser Moskowitz Edelman & Dicker, LLP by Jeremy A. Stephenson, for Plaintiff Weaver, Bennett & Bland, P.A.

Rayburn Cooper & Durham, P.A., by Ross R. Fulton and Ashley B. Oldfield, for Defendants Matthew McCurdy Villmer, Bo Brandon Caudill, and Villmer Caudill, PLLC.

Wilson Elser Moskowitz Edelman & Dicker, LLP, by Jeremy A. Stephenson, for Counterclaim Defendants Michael Bland, Eran Weaver, and William Whitaker.

Pope, Aylward, Sweeney & Santaniello, LLP, by Andrew J. Santaniello, for Counterclaim Defendant Eran Weaver.

Robinson, Judge.

I. INTRODUCTION

3. Defendants Matthew McCurdy Villmer and Bo Brandon Caudill are former partners and officers of Plaintiff, the law firm of Weaver, Bennett & Bland, P.A. (“WBB” or “Plaintiff”). In 2022 they left Plaintiff’s employ and formed a competing law firm, taking several of Plaintiff’s attorneys and clients with them. Thereafter, a dispute arose over how Plaintiff and Defendants would split fees in certain contingent-fee cases worked on by both firms, and this action followed.

II. FACTUAL BACKGROUND

4. The Court does not make findings of fact in connection with the Motion, as motions to dismiss do not address “the merits, but only whether the merits may be reached.” *Concrete Serv. Corp. v. Investors Grp., Inc.*, 79 N.C. App. 678, 681 (1986). Instead, the Court recites only those facts included in the complaint relevant to the Court’s determination of the motion.

A. The Parties

5. Plaintiff is a law firm organized as a North Carolina professional corporation with its principal place of business in Mecklenburg County, North Carolina. (Am. Compl. ¶ 1, ECF No. 43.)

6. Defendant Matthew McCurdy Villmer (“Villmer”) is a North Carolina attorney and resident of Mecklenburg County, North Carolina. (Am. Compl. ¶ 2.) WBB hired Villmer as an associate attorney on 1 September 2015, and Villmer became an officer, director, and law partner with WBB on 1 September 2017. (Am. Compl. ¶¶ 9–10.) Villmer was made a vice president of WBB on 1 September 2017 and was promoted to managing partner in June 2018. (Am. Compl. ¶¶ 9–10, 12.) Villmer served as a director of WBB from 31 August 2017 through 20 January 2022. (Am. Compl. ¶ 18.)

7. Defendant Bo Brandon Caudill (“Caudill” and with Villmer, the “Individual Defendants”) is a North Carolina attorney and resident of Mecklenburg County, North Carolina. (Am. Compl. ¶ 3.) Caudill was hired as an associate attorney with WBB on 1 March 2017 and became an officer, director, and law partner with WBB on 1 January 2019. He was promoted to head of WBB’s litigation department on 1 January 2020. (Am. Compl. ¶¶ 11, 13–15.) Caudill served as a director and vice president of WBB from 1 January 2020 until 20 January 2022. (Am. Compl. ¶¶ 17, 19.)

8. Defendant Villmer Caudill, PLLC (“VC, PLLC”) is a professional limited liability company with its principal place of business in Mecklenburg County, North

Carolina. (Am. Compl. ¶ 4.) Articles of organization for VC, PLLC were executed on 17 December 2021, (Am. Compl. ¶¶ 73–74), and the public record indicates that they were filed with the North Carolina Secretary of State on 11 January 2022. (See N.C. Sec’y State, *Villmer Caudill, PLLC*, https://www.sosnc.gov/online_services/search/by_title/_Business_Registration (last visited July 24, 2023).)

B. The Plan to leave WBB

9. Following Caudill’s promotion to head of Plaintiff’s litigation department in 2020, Villmer and he began secretly planning to leave Plaintiff and start their own law firm. (Am. Compl. ¶ 42.) From that point forward, WBB alleges that the Individual Defendants began to manipulate the Plaintiff’s client distribution, the management of the Plaintiff’s employees, and other aspects of Plaintiff’s business affairs in order to move several of Plaintiff’s clients and employees to their own law firm. (Am. Compl. ¶¶ 42–43.) The Individual Defendants planned to leave Plaintiff’s employ on or about 3 January 2022. (Am. Compl. ¶ 67.)

10. During 2020 and 2021, several of Plaintiff’s lucrative cases were billed on a contingent fee basis. (Am. Compl. ¶ 46–47.) Plaintiff alleges that Villmer, knowing that he and Caudill intended to take these cases with them upon their departure from WBB, delayed or postponed the settlement of several of these cases. He also converted hourly clients into contingent fee clients, approved large advances of Plaintiff’s funds for costs in litigated cases, and forgave certain fees incurred to curry favor with target clients. (Am. Compl. ¶¶ 49–50, 68–69.)

11. The Individual Defendants planned to take with them three of Plaintiff's associate attorneys when they left WBB: Sophia Pappalardo ("Pappalardo"), Katelin Taylor ("Taylor"), and Walton Walker ("Walker" and collectively the "Associates"). (Am. Compl. ¶¶ 39, 40, 54, 55.) The Individual Defendants managed the Associates' law practices so that the Associates were fully dependent on the Individual Defendants for work and had essentially no clients of their own. (Am. Compl. ¶¶ 55–57.) Before disclosing their departure to Plaintiff, the Individual Defendants shared their departure plans with Attorneys Taylor and Pappalardo, (Am. Compl. ¶¶ 92–93), who agreed to join VC, PLLC. (Am. Compl. ¶¶ 95–96.)

12. The Individual Defendants took other affirmative steps to establish the law firm of VC, PLLC prior to executing articles of organization for their new firm on 17 December 2021. (Compl. ¶¶ 73–74.) Throughout this time, the Individual Defendants did not inform any of Plaintiff's other officers or directors of their plans. (Compl. ¶ 75.)

13. On 28 December 2021, the Individual Defendants, as officers of Plaintiff, voted and approved the payment of bonuses from Plaintiff to themselves in the total amount of \$452,224.70. (Am. Compl. ¶ 223.)

C. Villmer and Caudill's Departure

14. On 3 January 2022, the Individual Defendants met with Weaver at Plaintiff's offices and informed him that they were leaving Plaintiff's employment effective two weeks from that date. (Compl. ¶ 88.)

15. That same day, the Individual Defendants met with the Associates to convince them to leave Plaintiff and join VC, PLLC. (Am. Compl. ¶ 54.) The Individual Defendants told Attorneys Taylor and Pappalardo that Plaintiff would not survive after the Individual Defendants' departure and the Associates would be putting their futures at risk by continuing to work for Plaintiff. (Am. Compl. ¶ 94.) Attorneys Taylor and Pappalardo gave their two weeks' notice to Plaintiff on 3 January 2022. (Am. Compl. ¶¶ 246–247.) Attorney Walker initially declined the Individual Defendants' offer of employment until the Individual Defendants met with him on 15 January 2022 and told him he was putting his family at risk by staying with Plaintiff. (Am. Compl. ¶ 250.)

16. On 9 January 2022, the Individual Defendants met with Plaintiff's other officers, directors, and shareholders to discuss their departure. (Am. Compl. ¶ 134.) During the meeting, Plaintiff and the Individual Defendants agreed to split any contingent fees earned on existing cases for clients that elected to move their work to VC, PLLC. They agreed that the fee would be divided between the two firms based on the percentage of time expended by each firm, with any expenses previously advanced by Plaintiff reimbursed when the case was resolved. (Am. Compl. ¶ 136–37.) As part of their agreement, Plaintiff agreed to refer all of the Plaintiff's Power Home Solar clients¹ to Defendants. (Am. Compl. ¶ 138.)

¹ A significant portion of WBB's litigation practice involved suits initiated by WBB attorneys on behalf of customers who purchased the installation of rooftop solar panels from Power Home Solar. (Am. Compl. ¶¶ 144–45.)

17. Plaintiff's internal policies required that attorney work product be stored in the CLIO document management system. (Am. Compl. ¶ 127.) Prior to the termination of his employment with Plaintiff, Villmer wiped clean the hard drive on his laptop computer without firm authorization and erased files on Plaintiff's CLIO document retention system that were the property of Plaintiff. (Am. Compl. ¶ 300.) Caudill likewise deleted most of the work product and data on the hard drive of his work computer without authorization. (Am. Compl. ¶ 301.)

18. Plaintiff called and noticed a shareholder's meeting for 20 January 2022 at Plaintiff's offices, during which the Individual Defendants were removed as officers and terminated as employees of Plaintiff. (Am. Compl. ¶¶ 104–08, 113–14.)

19. Plaintiff emailed and faxed a letter dated 7 March 2022 to the Individual Defendants, reiterating the agreements reached between WBB and the Individual Defendants regarding Plaintiff's contingency fee cases, and asking the Individual Defendants to notify Plaintiff when each case was settled so that the fees could be divided pursuant to the applicable agreement. (Am. Compl. ¶ 139–40.) Defendants did not respond.

20. Plaintiff learned that one of the Power Home Solar lawsuits had settled when WBB received a refund check from the American Arbitration Association on 1 June 2022. (Am. Compl. ¶ 146–148.) On 20 June 2022, Plaintiff wrote to Defendants asking for details of the settlement, including the dollar amount of the settlement, total hours expended by attorneys at VC, PLLC, and the amount of expenses advanced by VC, PLLC. (Am. Compl. ¶ 149.)

21. On 16 August 2022, Defendants emailed Plaintiff copies of Defendants' time records from the litigation. Plaintiff alleges that these billing records grossly overstate the actual amount of time Defendants expended on the matter. (Am. Compl. ¶ 152.)

22. As of the filing of the Amended Complaint, Defendants have not paid Plaintiff either the expenses advanced or the percentage share of attorney's fees they agreed to pay when the contingent fee cases resolved. (Am. Compl. ¶ 268.)

III. PROCEDURAL BACKGROUND

23. The Court sets forth here only those portions of the procedural history relevant to its determination of the Motion.

24. Plaintiff filed the Complaint in this action on 22 December 2022. (ECF No. 3).

25. Defendants filed a notice of designation on 17 January 2023, (ECF No. 5), and this action was designated as a mandatory complex business case and assigned to the undersigned on 20 January 2023. (ECF Nos. 1–2.)

26. Defendants filed their Motion to Dismiss for Failure to State a Claim, (ECF No. 10), and brief in support, (ECF No. 11), on 6 March 2023. That same day, Defendants filed their Answer and Counterclaims, (ECF No. 12), and a Motion to Join Parties, (ECF No. 13), in order to add Weaver, Whittaker, and Bland as counterclaim defendants in this action. Plaintiff did not contest the Motion to Join Parties, and on 31 March 2023, the Court granted the motion, joining Weaver, Whittaker, and Bland as counterclaim defendants and directing Defendants to file amended counterclaims

accordingly. (ECF No. 21.) On 5 April 2023, Defendants filed their Amended Counterclaims. (ECF No. 23.)

27. On 17 April 2023, Plaintiff filed its Motion to Amend the Complaint (the “Motion to Amend”) and supporting brief (ECF Nos. 24–25). Defendants filed their brief in opposition to the Motion to Amend on 8 May 2023, (ECF No. 35 [“Defs.’ Br.”]), and Plaintiff filed its reply on 18 May 2023. (ECF No. 36.)

28. On 7 June 2023, the Court granted the Motion to Amend, (ECF No. 42), and Plaintiff filed its Amended Complaint on 8 June 2023. (ECF No. 43.) Defendants’ Motion was filed on 23 June 2023. (ECF No. 45.) With consent of all parties, and to prevent duplicative re-briefing, the Court ordered that the briefing in support of and opposition to the Motion to Amend would be considered in support of this Motion. (See ECF No. 46.)

29. The Court conducted oral argument on the Motion on 28 June 2023. (ECF No. 46.) The Motion is now ripe for determination.

IV. LEGAL STANDARD

30. “On a Rule 12(b)(6) motion to dismiss, the question is whether, as a matter of law, the allegations of the complaint, treated as true, state a claim upon which relief can be granted.” *Fischer Inv. Capital, Inc. v. Catawba Dev. Corp.*, 200 N.C. App. 644, 649 (2009). “[T]he complaint is to be liberally construed, and the trial court should not dismiss the complaint unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief.” *State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, 362 N.C. 431, 444 (2008). “[W]hen

ruling on a Rule 12(b)(6) motion, a court may properly consider documents which are the subject of a plaintiff's complaint and to which the complaint specifically refers." *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60 (2001). Furthermore, a court "can reject allegations that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint." *Moch v. A.M. Pappas & Assocs., LLC*, 251 N.C. App. 198, 206 (2016) (quoting *Laster v. Francis*, 199 N.C. App. 572, 577 (2009)). "The question before us is whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not." *Gant v. NCNB Nat. Bank*, 94 N.C. App. 198, 199 (1989).

V. ANALYSIS

31. Defendants move to dismiss Plaintiff's claims for fraud, breach of contract, tortious interference with contract, facilitation of fraud, and attorney fraudulent practices, as well as Plaintiff's requested remedies of constructive trust, punitive damages, and disgorgement of salary, benefits, and bonuses. The Court takes each claim in turn.

A. Fraud

32. Plaintiff asserts claims for fraudulent misrepresentation and for fraudulent omission in the face of a duty to disclose. As to the former, Plaintiff alleges that the Individual Defendants falsely represented to Plaintiff's leadership that the reason they refused to personally guaranty a bank loan taken out by Plaintiff in October 2020 for the purpose of renovating the firm's office building was because their stock

had not yet fully vested. The true reason for the refusal, Plaintiff alleges, was that the Individual Defendants secretly planned to leave Plaintiff's employ soon thereafter and sought to avoid personal liability on a large loan for their soon-to-be former firm.

33. The Individual Defendants' planned departure likewise forms the basis for Plaintiff's fraudulent omission claims. Plaintiff alleges that the Individual Defendants had a duty to disclose, but failed to disclose, their plans: (1) to leave Plaintiff, (2) to induce Plaintiff's clients and employees to follow them to their new firm, (3) to alter fee-splitting obligations in Plaintiff's contingent fee cases, (4) to form VC, PLLC while working for Plaintiff, and (5) to destroy data, files, and work product reflecting their activities during their employment with Plaintiff. (Am. Compl. ¶ 196.)

34. Defendants argue Plaintiff has not pled all of the essential elements of fraud and, with respect to those elements that are pled, that Plaintiff fails to plead with the requisite particularity. (Defs.' Br. 4–6.)

35. The five essential elements needed to state a claim for fraud are: (1) a false representation of a material fact; (2) reasonably calculated to deceive; (3) made with intent to deceive; (4) that did in fact deceive (*i.e.*, was reasonably relied upon by the recipient of the misrepresentation); and (5) resulting in damage to the injured party. *Rowan Cty. Bd. of Educ. v. U.S. Gypsum Co.*, 332 N.C. 1, 17 (1992).

36. In addition to these elements, Rule 9(b) requires that “[i]n all averments of fraud, duress or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” N.C.G.S. § 1A-1, Rule 9(b). To meet the particularity

requirement for fraudulent misrepresentation, a plaintiff must allege the “time, place and content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations.” *Terry v. Terry*, 302 N.C. 77, 85 (1981).

37. In contrast, “[f]raudulent concealment or fraud by omission is, by its very nature, difficult to plead with particularity.” *McKee v. James*, 2013 NCBC LEXIS 33, at *22 (N.C. Super. Ct. July 24, 2013) (quoting *Lawrence v. UMLIC-Five Corp.*, 2007 NCBC LEXIS 20, at *9 (N.C. Super. Ct. June 18, 2007)). Fraud claims based on omission require a plaintiff to allege:

(1) the relationship [between plaintiff and defendant] giving rise to the duty to speak; (2) the event or events triggering the duty to speak and/or the general time period over which the relationship arose and the fraudulent conduct occurred; (3) the general content of the information that was withheld and the reason for its materiality; (4) the identity of those under a duty who failed to make such disclosures; (5) what [the defendant] gained by withholding information; (6) why plaintiff’s reliance on the omission was both reasonable and detrimental; and (7) the damages proximately flowing from such reliance.

Lawrence, 2007 NCBC LEXIS 20, at *9 (quoting *Breeden v. Richmond Cmty. Coll.*, 171 F.R.D. 189, 195-96 (M.D.N.C. 1997)).

38. The Court first addresses fraudulent misrepresentation, then turns to fraudulent omission.

i. Fraudulent Misrepresentation

39. Plaintiff’s fraudulent misrepresentation claim is based upon statements the Individual Defendants made when refusing to personally guarantee Plaintiff’s loan for renovations to its offices. At the loan closing in October 2020, the Individual

Defendants “falsely represented to *the Plaintiff*” that the reason they were unwilling to guarantee the loan to the Bank was because their stock in Plaintiff had not yet fully vested. (Am. Compl. ¶¶ 207–08 (emphasis added).) Plaintiff alleges the vesting of stock was a pretext, and the true reason was that the Individual Defendants sought to avoid personal liability for Plaintiff’s loans given their planned departure. Defendants emphasize that Plaintiff did not specify the employee or agent of Plaintiff to which the representation was made. (Am. Compl. ¶¶ 207–08 (emphasis added).) Consequently, Defendants argue that Plaintiff’s fraudulent misrepresentation claim lacks the requisite particularity.

40. The Court disagrees. For fraud claims, “[a] requirement of specificity is not a requirement of perfect and complete specificity.” *Hudgins v. Wagoner*, 204 N.C. App. 480, 487 (2010). Here, the Amended Complaint specifies when and where the misrepresentation occurred, along with the substance of the misrepresentation—a critical distinction from *Quidore v. All. Plastics, LLC*, which Defendants cite. *See Quidore*, 2020 NCBC LEXIS 140, at **20 (N.C. Super Ct., Dec. 3, 2020). The Court concludes that the Amended Complaint provides sufficient detail to enable Defendants to prepare a defense and, therefore, the specificity requirement is met.

41. Defendants also argue that Plaintiff failed to plead that the misrepresentation was reasonably calculated to deceive, made with the intent to deceive, and actually deceived Plaintiff. (Defs.’ Br. 5.) Again, the Court disagrees. The Individual Defendants allegedly persuaded Plaintiff to take out a substantial loan in order to saddle Plaintiff with debts upon their departure from Plaintiff. (Am.

Compl. ¶¶ 209–10.) To that end, Plaintiff alleges that the misrepresentation was made intentionally so that Plaintiff would proceed with the loan without learning of the Individual Defendants’ intent to leave Plaintiff’s employ. It alleges that it obtained the loan without personal guarantees from the Individual Defendants and did not learn of the Individual Defendants’ plan to form VC, PLLC for over a year after the loan was made. Consequently, Plaintiff alleges that it was deceived and relied on the representation to its detriment. (*See* Am. Compl. ¶ 88.)

42. Plaintiff has adequately alleged the essential elements of fraud. The Motion is therefore **DENIED** as to Plaintiff’s fraudulent misrepresentation claim.

ii. Fraudulent Omission

43. Plaintiff’s several claims for fraudulent omission are based upon the Individual Defendants’ duties as officers and fiduciaries of Plaintiff to inform Plaintiff’s other officers and shareholders of their plan to leave Plaintiff’s employ. Under Plaintiff’s theory, Defendants had a duty to disclose their plan, and their failure to disclose it while at the same time taking steps that would benefit the new firm they were starting (e.g., hiring and training the Associates, advancing funds to contingent fee clients, awarding themselves bonuses, and modifying Plaintiff’s fee splitting arrangements) was a fraudulent omission. (Am. Compl. ¶¶ 55–57, 289, 323.)

44. Defendants argue the Amended Complaint fails to allege that these omissions were material or that Plaintiff relied upon the omissions. (Defs’ Br. 4–6.) The Court disagrees. The Amended Complaint plainly alleges the materiality of the purported omissions by stating that “Plaintiff would not have advanced funds for

certain clients” and “would not have paid the Defendants or any of the Plaintiff’s other attorneys’ bonuses” had they known of the plan. (Am. Compl. ¶¶ 200, 223.) These allegations make clear that knowledge of the Individual Defendants’ plan would have materially affected Plaintiff’s decisions at each turn. Accordingly, the Motion is **DENIED** as to the fraud claims against the Individual Defendants.

45. Not so, as to VC, PLLC, however. While the Individual Defendants were officers with fiduciary duties that required them to disclose their intentions, the Amended Complaint does not allege that VC, PLLC owed any duty to Plaintiff that would require it to make disclosures. Accordingly, the Motion is **GRANTED** as to the fraud claims against VC, PLLC.

B. Breach of Contract

46. As to Plaintiff’s claim for breach of contract, the Amended Complaint alleges that Plaintiff contracted with the Individual Defendants on 9 January 2022 to divide the contingent fees earned in cases that transferred to the new firm based on the relative amount of time expended by each law firm. (Am. Compl. ¶¶ 227–229.)

47. Defendants argue that Plaintiff has failed to allege valid consideration for the purported agreement, mandating dismissal of the claim. (Defs.’ Br. 7.) “The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract.” *Poor v. Hill*, 138 N.C. App. 19, 26 (2000). “[S]tating a claim for breach of contract is a relatively low bar.” *Vanguard Pai Lung, LLC v. Moody*, 2019 NCBC LEXIS 39, at *11 (N.C. Super. Ct. June 19, 2019). Accordingly, “only where the complaint calls into question whether there was mutual

assent to the contract or proper consideration should the Court consider those elements of contract formation at such an early stage in litigation.” *Beam v. Sunset Fin. Servs.*, 2019 NCBC LEXIS 56, at *28 (N.C. Super. Ct. Sept. 3, 2019).

48. Plaintiff alleges that the Individual Defendants “specifically agreed with the Plaintiff at the January 9, 2022, meeting that any contingent fees that were earned on contingent matters which left with the Defendants would be divided between Defendants and Plaintiff based on the percentage of the actual amount of time expended by each law firm.” (Am. Compl. ¶ 227.) Plaintiff further alleges that “Defendants have failed and refused to pay the Plaintiff either the expenses advanced, or the percentage of the attorney fees agreed upon on the contingent fee cases[.]” (Am. Compl. ¶ 231.) Thus, the Amended Complaint states a claim at this stage. The Motion is **DENIED** to the extent it seeks to dismiss Plaintiff’s breach of contract claim.

C. **Tortious Interference with Contract**

49. To state a claim for tortious interference with contract, the Amended Complaint must allege that:

(1) A valid contract [exists] between the plaintiff and a third person which confers upon the plaintiff a contractual right against a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the contract; (4) and in doing so acts without justification; [and] (5) resulting in actual damage to plaintiff.

United Lab., Inc., v. Kuykendall, 322 N.C. 643, 661 (1988). “The pleading standards for a tortious interference with contract claim are strict.” *Urquhart v. Trenkelbach*, 2017 NCBC LEXIS 12, at *15 (N.C. Super. Ct. Feb. 8, 2017).

50. Plaintiff alleges the Individual Defendants tortiously interfered with the employment contracts of each of the Associates. (Am. Compl. ¶¶ 251–256.) Defendants contend that the Amended Complaint fails to allege three of the necessary elements of a tortious interference claim: (1) the existence of a valid contract at the relevant time, (2) inducement by the Individual Defendants for the Associates to breach their contracts with the Plaintiff, and (3) lack of justification. (Defs.’ Br. 9–12.)

i. Existence of a Valid Contract

51. Defendants contend that the Amended Complaint fails to allege that the Associates had valid employment contracts with Plaintiff in 2022—the year the alleged interference occurred. (Defs.’ Br. 14.) The Amended Complaint states that Plaintiff had employment contracts with the Associates in 2021, and “[a]t the time [Individual Defendants] began to carry out their plan to take Plaintiff’s employees[.]” (Am. Compl. ¶¶ 237–38.) The acts alleged in support of Plaintiff’s tortious interference claim occurred in January 2022. (Am. Compl. ¶¶ 241, 243 249.) Although the Amended Complaint does not expressly state that each employment contract was effective in 2022, viewed in the light most favorable to Plaintiff, the Amended Complaint sufficiently pleads that the Associates had valid contracts in place during the relevant time. The Amended Complaint specifically states that on 3 January 2022, the Individual Defendants met with a select group of Plaintiff’s employees to induce them to “terminate their employment *contracts*.” (Am. Compl.

¶ 243 (emphasis added).) Therefore, the Amended Complaint sufficiently pleads that, during all relevant times, the Associates had employment contracts with Plaintiff.

ii. Inducement

52. Defendants next contend that Plaintiff makes only conclusory allegations regarding the Individual Defendants' inducement of the Associates to terminate their employment. This Court has interpreted "induce" to mean "purposeful conduct," "active persuasion, request, or petition." *KRG New Hill Place, LLC v. Springs Inv'rs, LLC*, 2015 NCBC LEXIS 20, at *14–15 (N.C. Super. Ct. Feb. 27, 2015) (quoting *Inland Am. Winston Hotels, Inc. v. Crockett*, 212 N.C. App. 349, 354 (2011)). The Amended Complaint alleges that the Individual Defendants—in their roles as managing partner and as head of Plaintiff's litigation group—informed select employees of Plaintiff that Plaintiff was going out of business, and anyone who did not go with them to VC, PLLC would lose their job and put their family and future at risk. (Am. Compl. ¶¶ 94, 241, 243.) Following Attorney Walker's initial refusal of employment with VC, PLLC, the Individual Defendants met with Attorney Walker again, reiterating that he was putting his family at risk by staying with Plaintiff. Moreover, the Individual Defendants instructed the Associates not to disclose these discussions to anyone. (Am. Compl. ¶ 244.)

53. The Individual Defendants engaged in purposeful conduct by holding a meeting with the Associates on 3 January 2022 to convince them to leave Plaintiff and join VC, PLLC. Further, the Individual Defendants actively persuaded the Associates by telling them that their careers and families would be put at risk if they

did not join VC, PLLC. Particularly given that the Individual Defendants were in positions of authority over the Associates, these allegations are sufficient to allege the element of inducement.

iii. Lack of Justification

54. Finally, Defendants contend that the Amended Complaint reveals that the interference was for a legitimate business purpose—their desire to establish a competing business. “Generally speaking, interference with contract is justified if it is motivated by a legitimate business purpose, as when the plaintiff and the defendant, an outsider, are competitors.” *Embree Constr. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 498 (1992). Here, however, Individual Defendants were not outsiders—it is alleged they were officers and fiduciaries of Plaintiff. And although corporate fiduciaries have “a qualified privilege to interfere with contractual relations between the corporation and a third party[.]” fiduciaries “who act for their own benefit may be held personally liable.” *Id.* at 498–99. The Amended Complaint plainly states that the Individual Defendants induced the Associates to terminate their employment contracts so that they would come to work for VC, PLLC, for the direct benefit of the Individual Defendants. Therefore, the Amended Complaint reveals no legitimate business purpose and this pleading element is satisfied.

55. Accordingly, the Motion is **DENIED** to the extent it seeks dismissal of Plaintiff’s claim for tortious interference with contract.

D. Facilitation of Fraud

56. Next, Defendants seek dismissal of Plaintiff's facilitation of fraud claim on two bases: first, that Plaintiff has not stated a claim for the underlying claim of fraud and second, that the facilitation claim is duplicative of Plaintiff's civil conspiracy claim. (Defs.' Br. 15.) "Facilitation of fraud requires a showing '(1) that the defendants agreed to defraud the plaintiff; (2) that defendants committed an overt tortious act in furtherance of the agreement; and (3) that plaintiff suffered damages from that act.'" *Potts v. KEL, LLC*, 2019 NCBC LEXIS 30, at *24 (N.C. Super. Ct. May 9, 2019) (citing *Neugent v. Beroth Oil Co.*, 149 N.C. App. 38, 53 (2002)). A claim for facilitation of fraud must "be based on the conspiring parties' agreement to carry out alleged misconduct that supports a separate, underlying claim." *Loray Mill Devs., LLC v. Camden Loray Mill Phase 1, LLC*, 2023 NCBC LEXIS 21, at *52 (N.C. Super. Ct. Feb. 7, 2023).

57. As discussed in paragraph 42, *supra*, Plaintiff has stated a valid claim for fraud against the Individual Defendants regarding Plaintiff's contingency fee clients. This claim serves as the underlying claim for purposes of the facilitation claim. As a result, dismissal is not warranted on that basis. Nevertheless, Defendants are correct that, as pleaded, Plaintiff's facilitation of fraud claim is duplicative of its civil conspiracy claim. *See TaiDoc Tech. Corp. v. OK Biotech Co.*, 2016 NCBC LEXIS 26, *29–30 (N.C. Super. Ct. Mar. 28, 2016) (concluding that civil conspiracy and facilitation of fraud are essentially the same claim where the object of the parties' alleged agreement is to defraud another.)

58. Plaintiff's civil conspiracy claim rests upon both its fraud and breach of fiduciary duty claims and subsumes its claim for facilitation of fraud. This Court has previously dismissed claims which are a "species" of another surviving claim. *E.g. Zagaroli v. Neill*, 2017 NCBC LEXIS 103, at *34 (N.C. Super. Ct. Nov. 7, 2017); *Cutter v. Vojnovic*, 2023 NCBC LEXIS 14, at *12 (N.C. Super. Ct. Jan 24, 2023) (dismissing misappropriation of business opportunity claims as unnecessarily duplicative of claims for breach of fiduciary duty). Plaintiff's facilitation claim is a "species" of its civil conspiracy claim, and therefore, dismissal of the former is appropriate to avoid confusion in this case. Accordingly, the Motion is **GRANTED** without prejudice to the extent it seeks dismissal of Plaintiff's claim for facilitation of fraud. Notwithstanding this dismissal, the substantive allegations may be included in Plaintiff's claim for civil conspiracy.

E. Attorney Fraudulent Practices under N.C.G.S. § 84-13

59. Defendants seek dismissal of Plaintiff's section 84-13 claim for attorney fraudulent practices, arguing that the statute is inapplicable in this case. (Defs.' Br. Supp Mot. Dismiss 19, ECF No. 11.) Plaintiff contends that section 84-13 applies to its claims for breach of fiduciary duty, fraud, unjust enrichment, conversion, obstruction of justice, and tortious interference, and seeks double damages for those claims. (Am. Compl. ¶¶ 343–344.)

60. Section 84-13 provides, "[i]f any attorney commits any fraudulent practice, he shall be liable in an action to the party injured, and on the verdict passing against him, judgment shall be given for the plaintiff to recover double damages." N.C.G.S.

§ 84-13. Critically, section 84-13 is found in Article 2, entitled “Relation to Client.” The applicability of this section, therefore, turns on whether Plaintiff was a *client* of the Individual Defendants during the alleged fraudulent acts and omissions. The Amended Complaint contains no allegations that an attorney-client relationship existed between Plaintiff and the Individual Defendants during any relevant time. While the Individual Defendants may have been officers and fiduciaries of Plaintiff, the Court finds no basis to expand section 84-13 beyond its apparent intent—to govern the relationship between attorneys and clients. The Motion is therefore **GRANTED** to the extent it seeks dismissal of Plaintiff’s claim under section 84-13, and this claim is dismissed with prejudice.

F. **Remedies**

61. Finally, Defendants seek to dismiss Plaintiff’s requested remedies of constructive trust, disgorgement, and punitive damages because they are “disguised claims.” The Court disagrees. It is true that the original Complaint mischaracterized these remedies as causes of action, (*see* Comp., ¶¶ 295, 314, 388), but the Amended Complaint properly re-frames them as remedies. And while Defendants are correct that a remedy must be attached to a validly pleaded cause of action, the Amended Complaint does so. Accordingly, Defendants’ Motion is **DENIED** to the extent it seeks to dismiss Plaintiff’s requested remedies of constructive trust, disgorgement, and punitive damages. Plaintiff’s entitlement to those remedies shall be determined at a later stage.

VI. CONCLUSION

62. For the foregoing reasons, Defendants' Motion is **GRANTED** in part and **DENIED** in part as follows:

- a. As to Plaintiff's fraud claims against VC, PLLC, the Motion is **GRANTED** and those claims are dismissed with prejudice;²
- b. As to Plaintiff's facilitation of fraud claim, the Motion is **GRANTED** and that claim is dismissed without prejudice;
- c. As to Plaintiff's claim under section 84-13, the Motion is **GRANTED** and that claim is dismissed with prejudice;
- d. Defendants' Motion is **DENIED** as to all other claims.

SO ORDERED, this the 31st day of July, 2023.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases

² "The decision to dismiss an action with or without prejudice is in the discretion of the trial court[.]" *First Fed. Bank v. Aldridge*, 230 N.C. App. 187, 191 (2013).