

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23CV040664-590

DESIGN GAPS, INC.; DAVID  
GLOVER, Individually and Officer of  
Design Gaps, Inc.; and EVA  
GLOVER, Officer of Design Gaps,  
Inc.,

Plaintiffs,

v.

JOCELYN HALL, Individually and  
Owner Hall Interiors, LLC; HALL  
INTERIORS, LLC; PETERS  
CUSTOM HOMES, INC.;  
NICHOLAS PETERS, Individually  
and Owner Peters Custom Homes,  
Inc.; PETERS CUSTOM DESIGN,  
LLC d/b/a EMERALD & OAK  
DESIGN STUDIO; and MIRIAM  
PETERS, Individually and Owner  
and Manager Peters Custom Design,  
LLC,

Defendants.

**ORDER AND OPINION  
ON MOTIONS TO DISMISS**

1. Design Gaps, Inc. is an interior-design company owned by David and Eva Glover. In this lawsuit, Design Gaps and the Glovers have sued a former employee, Jocelyn Hall, for breach of contract, misappropriation of trade secrets, embezzlement, and more. They have also sued Hall's new employer and its principals. All defendants have moved to dismiss the complaint. For the following reasons, the Court **DENIES** the motion to dismiss the embezzlement claim but **GRANTS** the motions to dismiss all other claims.

*Hess Law, PLLC, by Todd M. Hess, for Plaintiffs Design Gaps, Inc.,  
David Glover, and Eva Glover.*

*Maloney Law & Associates, PLLC, by Margaret B. Maloney, for  
Defendants Jocelyn Hall and Hall Interiors, LLC.*

*Shumaker, Loop & Kendrick, LLP, by Lucas D. Garber and Samuel A. Long, for Defendants Peters Custom Homes, Inc., Nicholas Peters, Peters Custom Design, LLC d/b/a Emerald & Oak Design Studio, and Miriam Peters.*

Conrad, Judge.

## I. BACKGROUND

2. The Court does not make findings of fact on a motion to dismiss made under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The following background assumes that the allegations in the complaint are true.

3. Design Gaps “specializes in high-end residential custom construction and renovations including fine custom cabinetry that is used throughout the home.” It operates “throughout the Carolinas” and claims to have developed valuable trade secrets and other intellectual property. (Compl. ¶¶ 1, 12, ECF No. 3.)

4. Hall joined Design Gaps in 2018. Her duties, which are reflected in a written employment agreement, included meeting with prospective clients to determine their needs, taking measurements for use in designs, maintaining the showroom, and assisting with a variety of sales and marketing activities. Also within Hall’s employment agreement are provisions that restrict her right to compete against Design Gaps and solicit its customers during her employment and for another two years after. The noncompetition clause states that Hall “shall not in any manner, directly or indirectly, anywhere where the Company conducts the Company Business, (i) [sic] own, manage, operate, join, control, or participate in the ownership, management, operation, or control of, or be connected in any manner with, any entity the business of which competes with the Company Business.” “Company Business”

is defined to “mean the design and selling of residential cabinetry.” The nonsolicitation clause states that she shall not “directly or indirectly . . . solicit customers or suppliers of the Company or its affiliates” for her own benefit or for any other person’s or entity’s benefit. (Compl. ¶¶ 17, 21; Compl. Ex. A [“Empl. Agrmt.”] §§ 1.3, 1.4, 4.1, 4.2, ECF No. 3.)

5. Hall resigned in 2021, ostensibly because she was burned out. She asked to keep her work laptop after her departure, telling Design Gaps that this would make it easier for her to answer any questions her replacement might have about ongoing projects. Design Gaps agreed. A few weeks later, though, Design Gaps learned that Hall had joined its competitor, Peters Custom Design, LLC (doing business as Emerald & Oak Design Studio). At that point, Design Gaps retrieved Hall’s laptop and blocked her access to its web-based data. (*See* Compl. ¶¶ 22–24.)

6. This episode led Design Gaps to investigate Hall’s activities further. Design Gaps now believes that Hall routinely invoiced clients through her personal company, Hall Interiors, LLC, so that they paid her, not Design Gaps, for products and services. In one example, a client gave Hall a check made out to Design Gaps for over \$5,000. Rather than convey the check to Design Gaps, Hall destroyed it and directed the client to pay the sum to Hall Interiors. (*See* Compl. ¶¶ 30–35.)

7. Design Gaps also believes that Hall has given its trade secrets and creative designs to Peters Custom Design and its proprietor, Miriam Peters, as well as a related company called Peters Custom Homes, Inc. and its proprietor, Nicholas Peters (together, “Peters Defendants”). As alleged, the Peters Defendants have since passed

off some of Design Gaps' cabinet and closet designs as their own. Faced with what it believes to be unfair competition, Design Gaps closed its Charlotte, North Carolina location in 2023. (See Compl. ¶¶ 16, 36, 38–40, 42.)

8. Design Gaps and the Glovers sued Hall, Hall Interiors, and the Peters Defendants in early 2023 in federal court. Central to that lawsuit were claims for false designation of origin under the federal Lanham Act and for misappropriation of trade secrets under the federal Defend Trade Secrets Act. The federal court dismissed both, concluding that copyright laws preempted the Lanham Act claim and that the complaint did not adequately identify the alleged trade secrets for purposes of the Defend Trade Secrets Act. Having dismissed these federal-law claims, the court declined to exercise supplemental jurisdiction over the state-law claims and dismissed them without prejudice. *See generally Design Gaps, Inc. v. Hall*, 2023 U.S. Dist. LEXIS 208773 (W.D.N.C. Nov. 21, 2023).

9. This lawsuit followed. Design Gaps and the Glovers have not reasserted any federal-law claims or any claims based on alleged trademarks, trade dress, or copyrighted designs. They have, however, reasserted the state-law claims dismissed in the earlier federal litigation. The complaint includes eight causes of action: breach of contract (by Design Gaps against Hall); misappropriation of trade secrets (by all plaintiffs against all defendants); tortious interference with contract (by Design Gaps against the Peters Defendants); unfair or deceptive trade practices under N.C.G.S. § 75-1.1 (by Design Gaps against all defendants); breach of fiduciary duty (by Design

Gaps against Hall); fraud (by all plaintiffs against Hall); embezzlement (by all plaintiffs against Hall); and constructive fraud (by all plaintiffs against Hall).

10. Two motions to dismiss are pending: one by Hall and Hall Interiors and the other by the Peters Defendants. The motions have been fully briefed, and the Court held a hearing on 30 April 2024. The motions are ripe for disposition.

## II. LEGAL STANDARD

11. A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of the complaint.” *Isenhour v. Hutto*, 350 N.C. 601, 604 (1999) (citation and quotation marks omitted). The motion should be granted only when “(1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Corwin v. Brit. Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (citation and quotation marks omitted).

12. In deciding the motion, the Court must treat the well-pleaded allegations of the complaint as true and view the facts and permissible inferences “in the light most favorable to” the nonmoving party. *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 332 (2019) (citation and quotation marks omitted). Exhibits to the complaint are deemed to be part of it and may also be considered, *see Krawiec v. Manly*, 370 N.C. 602, 606 (2018), but the Court need not accept as true any “conclusions of law or unwarranted deductions of fact,” *Wray v. City of Greensboro*, 370 N.C. 41, 46 (2017) (citation and quotation marks omitted).

### III. ANALYSIS

13. These motions present garden-variety disputes that are governed by settled law.<sup>1</sup> The Court begins with the claim for breach of contract.

#### A. Breach of Contract

14. Design Gaps claims that Hall breached the noncompetition and nonsolicitation clauses in her employment contract. Restrictive covenants like these must be “(1) in writing; (2) made part of a contract of employment; (3) based on valuable consideration; (4) reasonable both as to time and territory; and (5) not against public policy.” *United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 649–50 (1988). “If a contract by an employee in restraint of competition is too broad to be a reasonable protection to the employer’s business it will not be enforced.” *Whittaker Gen. Med. Corp. v. Daniel*, 324 N.C. 523, 528 (1989); *see also InVue Sec. Prods., Inc. v. Stein*, 2017 NCBC LEXIS 115, at \*10 (N.C. Super. Ct. Dec. 18, 2017).

15. Hall’s noncompetition clause is facially overbroad and unenforceable. It purports to stop her from “directly or indirectly” owning, joining, or being “connected in any manner with” a competitor for two years following the end of her employment with Design Gaps. (Empl. Agrmt. § 4.2.) This sweeping restriction—which would

---

<sup>1</sup> Copyright preemption, which is not a garden-variety issue in this Court, featured prominently in the earlier federal litigation. The Peters Defendants initially made similar arguments here out of an abundance of caution, noting that the complaint in this case retains all the allegations that supported the plaintiffs’ federal-law claims in that case. But Design Gaps and the Glovers have since confirmed that they are not relying on any allegations related to trademarks, trade dress, or copyrighted designs and that those allegations are simply a vestige of the original federal complaint. Thus, there is no need to address copyright preemption.

prevent Hall from having *any* association with a competitor, even if unrelated to the duties she performed for Design Gaps—isn't remotely tailored to protect Design Gaps' legitimate business interests. *See VisionAIR, Inc. v. James*, 167 N.C. App. 504, 508–09 (2004) (concluding that a noncompetition clause that barred an employee from “participat[ing] in, directly or indirectly, any business similar to” the former employer's was unenforceable).<sup>2</sup>

16. Hall's nonsolicitation clause is facially overbroad for similar reasons. It purports to stop her (again for two years) from “directly or indirectly” soliciting all “customers” of Design Gaps “or its affiliates”—even those she had no contact with and did not know. (Empl. Agrmt. § 4.1.) A restriction on solicitation that “extends to areas where [the employee] had no connections or personal knowledge of customers” is unreasonable, especially when it sweeps in customers of affiliated companies for whom the employee did not work. *Hejl v. Hood, Hargett & Assocs., Inc.*, 196 N.C. App. 299, 307 (2009); *see also Prometheus Grp. Enters.*, 2023 NCBC LEXIS 42, at \*13

---

<sup>2</sup> Cases with similar holdings are legion. *See, e.g., Med. Staffing Network, Inc. v. Ridgway*, 194 N.C. App. 649, 656 (2009) (“[W]e have held that restrictive covenants are unenforceable where they prohibit the employee from engaging in future work that is distinct from the duties actually performed by the employee.”); *Hartman v. W.H. Odell & Assocs.*, 117 N.C. App. 307, 317 (1994) (refusing to enforce a noncompetition covenant that “requires plaintiff to have no association whatsoever with any business that provides actuarial services”); *Prometheus Grp. Enters., LLC v. Gibson*, 2023 NCBC LEXIS 42, at \*13 (N.C. Super. Ct. Mar. 21, 2023) (“North Carolina courts have repeatedly warned the drafters of restrictive covenants about the dangers of using the phrase ‘directly or indirectly’ when defining the scope of a non-compete.”); *Power Home Solar, LLC v. Sigora Solar, LLC*, 2021 NCBC LEXIS 55, at \*25 (N.C. Super. Ct. June 18, 2021) (“North Carolina courts have routinely refused to enforce noncompete provisions that prohibit former employers from ‘indirectly’ working for a competitor or similar business.”); *Aeroflow Inc. v. Arias*, 2011 NCBC LEXIS 21, at \*17–18 (N.C. Super. Ct. July 5, 2011) (“The plain language of the non-competition provision, drafted by Aeroflow, would prevent Arias working for a competitor in a position wholly outside the scope of his employment with Aeroflow.”).

(collecting cases); *Mech. Sys. & Servs. v. Howard*, 2021 NCBC LEXIS 69, at \*9–10 (N.C. Super. Ct. Aug. 11, 2021) (same).

17. Because the noncompetition and nonsolicitation clauses in Hall’s employment contract are overbroad and unenforceable, the Court grants her motion to dismiss the claim for breach of contract.

#### B. Misappropriation of Trade Secrets

18. Design Gaps and the Glovers assert their claim for misappropriation of trade secrets against all defendants. “To plead misappropriation of trade secrets, a plaintiff must identify a trade secret with sufficient particularity so as to enable a defendant to delineate that which he is accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur.” *Krawiec*, 370 N.C. at 609 (citation and quotation marks omitted).

19. The complaint doesn’t come close to satisfying this standard. In vague and conclusory fashion, it identifies the trade secrets to include “customer lists, pricing formulas, and bidding formulas,” as well as “product sources, products, price lists, advertising plans, designs and materials, technical drawings, services, pricing points, methods of sales and business contracts and training methods as well as . . . customers’ pricing programs, unit sales, dollar volume, models, financial information, product roadmaps, channelization and sales strategies.” (Compl. ¶¶ 69, 70.) As in *Krawiec*, there is “no further detail about these” customer lists, formulas, plans, materials, methods, information, roadmaps, and strategies “sufficient to put defendants on notice as to the precise information allegedly misappropriated.” 370

N.C. at 611 (concluding that identification of trade secrets as “original ideas and concepts for dance productions, marketing strategies and tactics, as well as student, client and customer lists and their contact information” was insufficiently particular).<sup>3</sup>

20. Accordingly, the Court grants the motions to dismiss the claim for misappropriation of trade secrets.

### C. Tortious Interference with Contract

21. Design Gaps claims that the Peters Defendants tortiously interfered with Hall’s employment agreement by causing her to terminate the agreement and to breach its noncompetition and nonsolicitation clauses. To state a claim for tortious interference with contract, the plaintiff must allege that a valid contract exists between it and a third person and that the defendant knew of the contract, intentionally induced the third person not to perform the contract, did so without justification, and caused actual damage. *See Embree Constr. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 498 (1992).

22. Hall’s noncompetition and nonsolicitation clauses are unenforceable. As a result, they “cannot support [Design Gaps’] claim for tortious interference with

---

<sup>3</sup> This Court has routinely granted motions to dismiss claims for misappropriation of trade secrets based on similarly vague and generalized identifications of the alleged trade secrets. *See, e.g., Power Home Solar*, 2021 NCBC LEXIS 55, at \*34 (identifying trade secrets generally as “proprietary practices, methods, techniques, and pricing models” was not sufficiently particular); *Bite Busters, LLC v. Burris*, 2021 NCBC LEXIS 26, at \*20–21 (N.C. Super. Ct. Mar. 25, 2021) (identifying trade secrets generally as “processes” and “procedures” was insufficiently particular); *AECOM Tech. Corp. v. Keating*, 2012 NCBC LEXIS 9, at \*8 (N.C. Super. Ct. Feb. 6, 2012) (identifying trade secrets generally as “customer lists, customer contract information, pricing information and product information” was insufficiently particular).

contract.” *Phelps Staffing, LLC v. C.T. Phelps, Inc.*, 226 N.C. App. 506, 512 (2013); *see also Power Home Solar*, 2021 NCBC LEXIS 55, at \*45.

23. Moreover, the complaint on its face shows that the Peters Defendants were legally justified in offering Hall a new job and, by extension, causing her to end her employment agreement with Design Gaps. As our Supreme Court has explained, “competition in business constitutes justifiable interference in another’s business relations and is not actionable so long as it is carried on in furtherance of one’s own interests and by means that are lawful.” *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 221 (1988). In addition, “everyone has the right to offer better terms to another’s employee, so long as the latter is free to leave.” *Id.* at 222. Here, the Peters Defendants and Design Gaps are competitors, (*see* Compl. ¶¶ 14, 23), and Hall’s employment agreement allowed her to terminate it on thirty-days’ notice, (Empl. Agrmt. § 3.1).

24. Design Gaps argues that the Peters Defendants acted without justification because their goal was to misappropriate trade secrets rather than to engage in legitimate competition. As discussed, though, the complaint does not adequately allege misappropriation.

25. The Court therefore grants the motion to dismiss the claim for tortious interference with contract. *See Peoples Sec. Life Ins.*, 322 N.C. at 220 (“A motion under Rule 12(b)(6) should be granted when the complaint reveals that the interference was justified or privileged.”).

#### D. Section 75-1.1

26. The section 75-1.1 claim is predicated entirely on the claims for breach of contract, misappropriation of trade secrets, and tortious interference with contract. Having dismissed those claims, the Court dismisses the section 75-1.1 claim for the same reasons.

#### E. Breach of Fiduciary Duty & Constructive Fraud

27. Design Gaps alleges that Hall breached fiduciary duties arising from her employment with the company. (See Compl. ¶¶ 88, 89, 115.) As Hall correctly observes, though, employees who are not officers or directors typically do not owe their employers fiduciary duties. See *Dalton v. Camp*, 353 N.C. 647, 652 (2001) (“[T]he relation of employer and employee is not one of those regarded as confidential.” (citation and quotation marks omitted)). The rare exception is when the employee “exercise[s] dominion” over the employer. *Id.*; see also *Reichhold Chems., Inc. v. Goel*, 146 N.C. App. 137, 155 (2001) (“A managerial position alone does not demonstrate the requisite domination and influence on the other required to create a fiduciary obligation.” (cleaned up)). Nothing in the complaint suggests that Hall exercised dominion over Design Gaps.

28. Accordingly, Design Gaps has not adequately alleged that a fiduciary relationship exists. The Court therefore dismisses its claims for breach of fiduciary duty and constructive fraud. See *Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 599 (2018) (holding that a claim for constructive fraud arises only when “a confidential or fiduciary relationship exists” (citation and quotation marks omitted)); *Dalton*, 353

N.C. at 651 (“For a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties.”).

#### F. Fraud

29. The claim for fraud is also deficient. A “false representation . . . of a material fact” is essential to fraud. *Rowan Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 332 N.C. 1, 17 (1992). Equally essential, the plaintiff who claims fraud must have relied on and been deceived by the misrepresentation. *See id.* Although the complaint alleges that Hall misled *customers*, there are no allegations that she made any false representations to *Design Gaps* or *the Glovers*. (See Compl. ¶¶ 93, 95.) Indeed, the complaint alleges that Design Gaps and the Glovers did not find out about, much less rely on, the supposedly false statements to customers until after her resignation. (See Compl. ¶ 100.) The Court therefore dismisses the fraud claim. *See Bucci v. Burns*, 2018 NCBC LEXIS 37, at \*15 (N.C. Super. Ct. Apr. 25, 2018) (“It goes without saying that an individual cannot be defrauded by a misrepresentation he never sees, hears, or even knows about.”).

#### G. Embezzlement

30. Design Gaps and the Glovers allege that Hall embezzled money belonging to them during her employment. It is unlawful for an agent of a corporation to “[e]mbezzle or fraudulently or knowingly and willfully misapply or convert to his own use” the corporation’s “money, goods or other chattels.” N.C.G.S. § 14-90; *see also id.* § 1-538.2(a), (c) (authorizing civil action for embezzlement). Hall contends that the allegations in the complaint, even if taken as true, show that the money at issue

belonged to her, not Design Gaps. This is unpersuasive. Viewing the allegations in the light most favorable to Design Gaps and the Glovers, Hall received at least one check from a customer made out to Design Gaps that she destroyed. She then told the customer to pay her directly. (*See* Compl. ¶ 34.) That is sufficient to allege that Hall knowingly misapplied or converted to her own use money belonging to Design Gaps. Accordingly, the Court denies Hall's motion to dismiss the embezzlement claim.

#### IV. CONCLUSION

31. For all these reasons, the Court **DENIES** Hall's motion to dismiss the embezzlement claim. The Court **GRANTS** the remainder of her motion and **GRANTS** the Peters Defendants' motion. Plaintiffs' claims for breach of contract, misappropriation of trade secrets, tortious interference with contract, violations of section 75-1.1, breach of fiduciary duty, constructive fraud, and fraud are **DISMISSED** with prejudice.

**SO ORDERED**, this the 1st day of May, 2024.

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