

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21CVS18665-590

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**

*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.

1. All that remains in this case is Plaintiff Jacqueline McFee's motion for a default judgment against Defendants Bill Stacks and CPP International, LLC ("CPP"), neither of whom has made an appearance. McFee's claims against the other defendants, including William Presley and C. Presley Properties, LLC ("Presley Defendants"), have been dismissed. Unlike Stacks and CPP, the Presley Defendants actively opposed the claims against them, moved for summary judgment, and prevailed across the board. The Court has asked the parties to address whether the

Presley Defendants' victory on the merits forecloses a judgment by default against Stacks and CPP. For the following reasons, the Court concludes that it does and **DENIES** McFee's motion.

2. A short recap of the facts and procedural history will help frame the issue. McFee used to work for CPP, a stationery company, as its lead designer. Presley was its president during that time. In her employment agreement, McFee assigned to CPP all intellectual property rights arising from her design work but retained an option to reclaim those rights on certain conditions. CPP fired McFee in 2015. She then sued the company in 2016 in federal court for false advertising, copyright infringement, and more on the theory that her intellectual property rights had reverted to her automatically under the terms of her employment agreement. The federal court rejected that theory, holding that McFee did "not have ownership of the intellectual property rights" at issue because CPP "needed to affirmatively assign" the rights back to her. *McFee v. CPP Int'l*, 2017 U.S. Dist. LEXIS 21462, at \*8 (W.D.N.C. Feb. 15, 2017) (dismissing federal-law claims with prejudice and declining to exercise supplemental jurisdiction over state-law claims).

3. So McFee sued CPP again in 2017 in state court to compel it to reassign her intellectual property rights and to recover damages for various alleged wrongs. Just a day or two after McFee filed her state-court action, CPP sold assets from its arts and crafts division to a company called Pacon and distributed some of the proceeds to Presley. At the end of 2017, Presley stepped down and transferred control of CPP to Stacks. In 2019, under Stacks's leadership, CPP defaulted on a line of credit. The

lender foreclosed and sold the collateral securing the loan to a company called Bay Sales. CPP soon went out of business. This hastened the end of McFee's state-court action: in February 2020, she obtained a default judgment against CPP, which included an award of damages and a reassignment of intellectual property to her as of the date of the judgment. (*See* Default J., ECF No. 153.16.)

4. This case followed in November 2021. McFee claims that the 2017 asset sale to Pacon, the 2019 foreclosure sale to Bay Sales, and related distributions of proceeds from those sales were fraudulent transfers made to avoid paying her 2020 default judgment against CPP. She also alleges that Presley fraudulently induced her to assign her intellectual property rights to CPP as early as 2008. The complaint, as amended, includes claims for fraud, constructive fraud, breach of fiduciary duty, unjust enrichment, and fraudulent transfer under N.C.G.S. §§ 39-23.4(a)(1) and 39-23.5(b) against some or all of the Presley Defendants, Stacks, and CPP. (McFee named two other entities as codefendants as well, but the claims against them have been dismissed, and they are not relevant to this discussion.)

5. After discovery closed, McFee and the Presley Defendants filed cross-motions for summary judgment. The Court granted the Presley Defendants' motion in its entirety. By her own admission, McFee's section 39-23.5(b) claim for fraudulent transfer was untimely. Her section 39-23.4(a)(1) claim concerning the Pacon asset sale was also untimely because the undisputed evidence showed that she filed this lawsuit more than four years after the sale and more than two years after she had actual notice of the sale. Her section 39-23.4(a)(1) claim concerning the Bay

Sales transaction, though timely, was deficient for other reasons, including that a foreclosure sale is not a “transfer made . . . by a debtor” within the meaning of the statute. And her common-law claims (fraud, constructive fraud, breach of fiduciary duty, and unjust enrichment) were either time-barred or lacked sufficient evidence to create a jury question. *See generally McFee v. Presley*, 2023 NCBC LEXIS 173 (N.C. Super. Ct. Dec. 28, 2023).

6. McFee also moved for a default judgment against the nonappearing defendants.<sup>1</sup> In an interim order, the Court held that most claims against Stacks and CPP were defective on their face and dismissed them. Just a few claims survived: the section 39-23.4(a)(1) claim for fraudulent transfer against CPP based on the Pacon and Bay Sales transactions; the same claim against Stacks, though limited to the Bay Sales transaction; and the claims for constructive fraud and breach of fiduciary duty against Stacks, again limited to the Bay Sales transaction. As to these claims, the Court determined that McFee’s allegations, if true, were sufficient to establish liability but questioned whether entering a judgment by default in her favor would conflict with the judgment on the merits that had been entered against her on the very same issues. *See McFee v. Presley*, 2023 NCBC LEXIS 175, at \*12 n.6 (N.C. Super. Ct. Dec. 28, 2023).

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<sup>1</sup> This is McFee’s second motion for default judgment. In November 2022, the Court issued an interim order on her first motion as to liability but deferred a decision as to damages. *See McFee v. Presley*, 2022 NCBC LEXIS 142 (N.C. Super. Ct. Nov. 29, 2022). McFee then amended her complaint, rendering her motion moot. *See Moore v. Sullivan*, 123 N.C. App. 647, 649 (1996) (When a “trial court enters a judgment determining the issue of liability but ordering a trial on the issue of damages, the judgment is only an entry of default rather than a default judgment.”).

7. Following the interim order, the Court directed McFee to file a brief addressing why entering a default judgment against Stacks and CPP would not be inconsistent with the summary-judgment order. The Court allowed the Presley Defendants to brief the issue as well. Both sides timely submitted their written arguments, and the Court heard oral arguments on 25 April 2024.

8. The legal principle at issue is not controversial. “Inconsistent judgments are erroneous”—full stop. *Graham v. Mid-State Oil Co.*, 79 N.C. App. 716, 720 (1986). “When co-defendants are similarly situated, inconsistent judgments will result if one defendant defends and prevails on the merits and the other suffers a default judgment.” *Angelo Iafrate Constr., LLC v. Potashnick Constr., Inc.*, 370 F.3d 715, 722 (8th Cir. 2004). Thus, “it would be incongruous and unfair to allow a plaintiff to prevail against defaulting defendants on a legal theory rejected by a court with regard to an answering defendant in the same action.” *Moore v. Howell*, 2023 U.S. Dist. LEXIS 125880, at \*5 (D. Nev. July 21, 2023) (cleaned up); *see also SG Blocks, Inc. v. Hola Cmty. Partners*, 2024 U.S. Dist. LEXIS 28754, at \*14 (C.D. Cal. Feb. 20, 2024) (observing that “the legal determination” as to a claim against one defendant would “bar the same claim against” a nonappearing defendant); *Rivera v. Mattingly*, 2021 U.S. Dist. LEXIS 67539, at \*12 (S.D.N.Y. 2021) (denying default judgment because it “would lead to inconsistent judgments”).

9. Here, the Presley Defendants defended and prevailed on the merits. The Court determined that McFee’s section 39-23.4(a)(1) challenge to the Pacon asset sale is time-barred. The Court also determined that the Bay Sales foreclosure sale is not

a transfer “by a debtor” as required by section 39-23.4(a)(1). Entering a default judgment on identical claims against Stacks and CPP would conflict with these legal determinations. So too would a default judgment against Stacks on the claims for constructive fraud and breach of fiduciary duty as to the Bay Sales foreclosure sale. McFee’s theory as pleaded (that CPP sold its assets and that Stacks should have reserved the sale proceeds to pay her default judgment) is incompatible with the undisputed evidence and the Court’s legal rulings (that CPP’s lender, not CPP or Stacks, sold collateral after a loan default and reaped the proceeds).

10. At no point has McFee suggested that the claims and allegations against Stacks and CPP differ from those against the Presley Defendants so that a legal ruling as to one would not apply equally to the others had all defendants appeared in the case. Rather, her position is that the summary-judgment decision isn’t binding, thus erasing any inconsistency. The Court disagrees.

11. First, McFee starts with the determination that the Bay Sales foreclosure sale was not a transfer “by a debtor.” That determination, she contends, was dictum because the Court included a second, independent ground for its decision. Not so. When two “independent grounds” support a judgment, both are “material.”<sup>2</sup> *Propst*

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<sup>2</sup> Dictum or not, the Court’s ruling is correct. There is no dispute about what the Bay Sales transaction was. It was a foreclosure sale by a secured lender, which means that it was not a transfer “by a debtor.” N.C.G.S. § 39-23.4(a)(1). The twist is that Stacks and CPP, as defaulting defendants, are deemed to have admitted the allegations in the amended complaint. There, McFee portrays the Bay Sales transaction as an asset sale *by CPP*, never acknowledging that it was a foreclosure sale *by CPP’s lender*. (See Am. Compl. ¶¶ 57, 66, 68, 82, 85, 129, ECF No. 98.) These allegations, taken as true, suffice to state a claim. But they are indisputably false. Nothing compels the Court to put on blinders, accept false allegations as true, and enter a default judgment based on a legal theory that it has rejected on the merits. To do so would undermine the integrity of the judicial process.

*v. N.C. HHS*, 234 N.C. App. 165, 170 (2014) (citation and quotation marks omitted); *see also id.* at 171 (“[A]lternative, independent grounds for an appellate decision are not considered *obiter dicta* here.”); *id.* at 172 (“[W]here a trial court bases its judgment on multiple independent grounds, each of which have been fully litigated, and that judgment has not been appealed, the trial court’s determination as to every issue actually decided has preclusive effect in later litigation.”).

12. Next, McFee argues that equitable considerations concerning the Bay Sales foreclosure sale support her position. This is perplexing. For one thing, the argument’s premise is false. McFee says that CPP’s lender could not have sold collateral assets to Bay Sales “because she *owned* them.” (McFee’s Supp. Br. 4, ECF No. 208 (emphasis added).) But she didn’t own them at the time of the sale; she obtained the reassignment of her intellectual property rights later through the default judgment in her state-court action against CPP.<sup>3</sup> Moreover, McFee’s argument that the foreclosure sale was defective is a new theory that has no basis in her amended complaint. And in any event, it is not at all clear why McFee believes

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<sup>3</sup> This error was no accident. McFee’s brief repeats it more than once. (See McFee’s Supp. Br. 5 (stating that “[p]roperty *owned by McFee* should not have been conveyed or otherwise encumbered by” CPP’s lender and implying that she reclaimed her intellectual property rights automatically “by way of the ‘End of Sale’ provision” in her employment agreement (emphasis added)); *see also* McFee’s Supp. Br. 3 (“the designs were undisputedly McFee’s *at the time*” (emphasis added)).) What’s more, at the hearing, her counsel stated that the federal court dismissed her first lawsuit without deciding whether her employment agreement automatically reassigned rights to her. Let’s be clear: the federal court held that McFee did “not have ownership” of the rights at issue and that her employment agreement did not automatically reassign them. *CPP Int’l*, 2017 U.S. Dist. LEXIS 21462, at \*8. And her February 2020 default judgment in the state-court action “assigned and transferred” rights to her “as of the date of this final judgment.” (Default J.) McFee’s insistence that each court said the opposite is troubling.

a flawed foreclosure sale, as opposed to a flawless one, is a transfer “by a debtor” under section 39-23.4(a)(1).

13. Finally, McFee contends that the summary-judgment order is interlocutory and urges the Court to eliminate any inconsistency by revisiting the evidence and revising that order. She has not moved for reconsideration, however. And the Court sees no reason to retract its rulings.

14. For the foregoing reasons, the Court concludes that entering a default judgment against Stacks and CPP would be inconsistent with the previous entry of summary judgment in favor of the Presley Defendants. The Court therefore **DENIES** McFee’s motion for default judgment and **DISMISSES** her remaining claims against Stacks and CPP with prejudice.

15. There is one last administrative matter. McFee’s fellow plaintiff, Savage McFee, Inc., concedes that it lacks standing to seek relief from the nonappearing defendants but has not voluntarily dismissed its claims. (*See* Response to Show Cause Ord. 4, ECF No. 185.) The Court therefore **DISMISSES** Savage McFee’s claims against the nonappearing defendants without prejudice.

16. No issues remain for trial. Accordingly, this is a final order disposing of all issues in this action.

**SO ORDERED**, this the 10th day of June, 2024.

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