Multifamily Select, Inc. v. Williams, 2026 NCBC 82.

STATE OF NORTH CAROLINA FORSYTH COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25CVS002370-330
MULTIFAMILY SELECT, INC., Plaintiff, v. CALVIN SMALL, as Executor of the Estate of LUCINDA WILLIAMS; TANNJA JOHNSON; and PRESKEN MANAGEMENT, LLC, Defendants.	**ORDER AND OPINION ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

1. **THIS MATTER** is before the Court upon Plaintiff Multifamily Select, Inc.'s (the "Plaintiff" or "MSI") Motion for Summary Judgment (the "Motion"), filed pursuant to Rule 56 of the North Carolina Rules of Civil Procedure on 18 May 2026 in the above-captioned case. (Pl.'s Mot. Summ. J. ["Pl.'s MSJ"], ECF No. 40.)

2. Having considered the Motion, the Plaintiff's brief in support of the Motion, the relevant pleadings, and other appropriate matters of record, the Court, in the exercise of its discretion, hereby **GRANTS** the Motion as set forth below.

Blanco Tackabery & Matamoros, P.A., by Chad A. Archer and Ryan T. Dovel, for Plaintiff Multifamily Select, Inc.

McGrath & Spielberger, PLLC, by Trent Grissom, for Defendants Calvin Small, as Executor of the Estate of Lucinda Williams,[1] *Tannja Johnson, and Presken Management, LLC.*

Shirley, Judge.

[1] Lucinda Williams was an original named Defendant in this action. (*See* Compl., ECF No. 3.) Calvin Small, as Executor of the Estate of Lucinda Williams, was substituted as a named Defendant in place of Defendant Lucinda Williams pursuant to an order entered by the Court on 23 March 2026. (ECF No. 37.)

I.

FACTUAL AND PROCEDURAL BACKGROUND

3. While the Court does not make findings of fact on a motion for summary judgment, "it is helpful to the parties and the courts for the trial judge to articulate a summary of the material facts which he considers are not at issue and which justify entry of judgment." *Collier v. Collier*, 204 N.C. App. 160, 161–62 (2010) (citation and quotation marks omitted). Accordingly, the following background, drawn from the undisputed evidence submitted by the Plaintiff, is intended only to provide context for the Court's analysis and ruling, and not to resolve issues of material fact.[2]

4. Plaintiff MSI is a North Carolina corporation with a registered office in Winston-Salem, North Carolina. (Compl. ¶ 3.) MSI "manages, develops, and consults for FHA-insured multifamily property owners and developers" within North Carolina and South Carolina. (Pl.'s Br. Supp. Mot. Summ. J. ["Pl.'s Br. Supp. MSJ"], ECF No. 41.)

5. Defendant Lucinda Williams ("Williams") was a resident of Charlotte, North Carolina. (Compl. ¶ 4; Def. Williams's Answer ["Williams Ans."] ¶ 4, ECF No. 15.) Williams began working for MSI in 2013 as Senior Vice President of Affordable Housing. (Decl. of Michael Jameyson Supp. Mot. Summ. J. ["Jameyson Decl."] ¶ 7, ECF No. 41.2.) Williams was a director and officer of MSI from the date of her hiring until she resigned from MSI in 2023. (Jameyson Decl. ¶ 7.) Williams passed away on 1 November 2025. (Joint Mot. Amend Case Mgmt. Order ¶ 1, ECF No. 26.)

---

[2] Defendants did not file a brief or any material in opposition to the Motion. Pursuant to B.C.R. 7.4, "the [M]otion will be considered and decided as an uncontested motion."

6. Defendant Tannja Johnson ("Johnson") is an individual resident of Columbia, South Carolina. (Compl. ¶ 5; Def. Johnson's Answer ["Johnson Ans."] ¶ 5, ECF No. 14.) Johnson also began working for MSI in 2013 as a property manager, and in 2016 was promoted to district manager. (Tannja Johnson Dep. Tr. ["Johnson Dep."] at 6:2–15; 7:14–18, ECF No. 41.3.) Because they began their careers with MSI at approximately the same time, Williams and Johnson formed a close working relationship over the subsequent years. (Johnson Dep. at 17:13–25.)

7. Defendant Presken Management, LLC ("Presken") is a North Carolina limited liability company with offices in Charlotte, North Carolina. (Compl. ¶ 6; Def. Presken's Answer ["Presken Ans."] ¶ 6, ECF No. 16.) Williams founded Presken in 2013. (Compl. ¶ 18; Williams Ans. ¶ 18.)

8. In the years after Williams joined MSI, six multifamily properties that she had previously managed throughout her career entered into management contracts with MSI: Topeka Heights Apartments ("Topeka Heights"), Trinity Gardens Apartments ("Trinity Gardens"), First Baptist Homes I, First Baptist Homes II, Shiloh Randolph Manor, and Edwards Place Apartments ("Edwards Place," and collectively, the "Six Properties"). (Jameyson Decl. ¶¶ 5–8; *see also* Jameyson Decl. Ex. 1 [the "MSI Contracts"].)

9. Williams and Johnson continued working in their respective roles at MSI until March 2021, when Johnson was ultimately promoted to Regional Vice President. (Jameyson Decl. ¶ 18; Johnson Dep. at 7:22–25; 8:1.) In this role, Johnson was tasked with overseeing several properties managed by MSI, including five of the

Six Properties. (Johnson Dep. at 9:13–17; 10:20–25.) This oversight included attending each property's quarterly board meetings on MSI's behalf to present property financials, HUD requirements, and other information. (Johnson Dep. at 14:3–22.)

10. At some point in late 2022 or early 2023, Williams informed the other MSI owners, officers, and directors that she was retiring from MSI and her role as Senior Vice President of Affordable Housing. (Jameyson Decl. ¶ 19; Johnson Dep. at 15:6–23.) Based on this information, MSI began training Johnson to take over Williams's role in early 2023. (Jameyson Decl. ¶ 20; Johnson Dep. at 16:19–25; 17:1–2.) This included making Johnson the primary point of contact for each of the Six Properties. (Jameyson Decl. ¶ 22.)

11. In early July 2023, unbeknownst to MSI, Williams approached Johnson about leaving MSI to be the President of Presken. (Johnson Dep. at 18:4–13; 20:10–18.) During this meeting, Williams informed Johnson that she was not, in fact, retiring, and was instead focusing on her company, Presken. (*See* Johnson Dep. at 19:2–14.) Williams also informed Johnson that she had already spoken with five of the Six Properties about abandoning the remainder of their contracts with MSI and joining Presken following Williams's departure. (Johnson Dep. at 19:6–14.) In an effort to incentivize Johnson, Williams then offered Johnson an ownership stake in Presken if she agreed to leave MSI. (Johnson Dep. at 19:11–14.)

12. At some point prior to 21 July 2023, Johnson accepted Williams's offer to leave MSI and join Presken as President. (Johnson Dep. at 20:2–18.) Neither

Johnson nor Williams informed MSI of this decision at that time, and both continued to work for MSI in their respective positions. (Johnson Dep. at 20:10–22.)

13. On 21 July 2023, Johnson participated in a meeting via telephone conference (the "Meeting") with the board of directors for Topeka Heights, one of the Six Properties, on behalf of MSI. (Johnson Dep. at 23:2–5; Johnson Dep. Ex. 2 [the "Meeting Minutes"], ECF No. 41.4.) At the time, Topeka Heights had a management contract with MSI, and Johnson oversaw the property as part of her duties as Regional Vice President. (*See* MSI Contracts; Jameyson Decl. ¶¶ 22–23.)

14. Without MSI's prior knowledge or approval, Johnson also invited Williams to attend the Meeting. (Johnson Dep. at 25:15–23.) When Johnson introduced Williams, she specified that Williams was attending as "a representative of Presken," and not in her capacity as Senior Vice President of Affordable Housing for MSI. (Johnson Dep. at 24:7–11; *see also* Meeting Minutes.)

15. During the Meeting, Williams informed Topeka Heights that both Williams and Johnson were leaving their positions at MSI and had "formed their own company": Presken. (Meeting Minutes.) Williams told the board that Topeka Heights's contract with MSI required 60 days' notice to terminate, so they needed to decide by 28 July 2023 whether to follow Williams and Johnson to Presken or remain with MSI. (Meeting Minutes.) Williams further pressured Topeka Heights by stating that Presken had "already brought Edwards Place on board," another of the Six Properties. (Meeting Minutes.)

16. Prior to the Meeting, neither Williams nor Johnson informed MSI that any of the Six Properties had been solicited to leave MSI to join Presken, or that they planned to solicit Topeka Heights. (Jameyson Decl. ¶¶ 28–29; Johnson Dep. at 25:15–19.) Immediately after the Meeting, neither Williams nor Johnson informed MSI that Williams had presented to the board on behalf of Presken at the Meeting, despite both women still being employed by MSI at the time. (Johnson Dep. at 25:15–23.)

17. On 2 August 2023, Williams distributed an e-mail to MSI's owners, officers, and directors containing six nearly identical letters (the "Termination Notice(s)") from each of the Six Properties. (Jameyson Decl. Ex. 2 ["Notices"], ECF No. 41.2.) Each Termination Notice stated that the property in question was terminating its service agreement with MSI, effective 30 September 2023, and moving to Presken, effective 1 October 2023. (Notices.) Williams provided no explanation for the Termination Notices, nor did she indicate her involvement in the Six Properties' decisions. In fact, all Williams said in the e-mail was, "Everyone: Please see attached." (Notices.)

18. On 12 August 2023, Johnson formally assumed her position as President of Presken. ((30)(b)(6) Dep. of Tannja Johnson ["Presken Dep."] at 6:1–6, ECF No. 41.5.) Johnson, in her capacity as President, later admitted that she believed the Termination Notices were prepared by Presken, and were then distributed to the Six Properties for them to execute. (Presken Dep. at 23:17–25.)

19. Prior to the Termination Notices, MSI had not received any complaints of dissatisfaction from any of the Six Properties regarding MSI's management services.

(Presken Dep. at 26:1–8; Jameyson Decl. ¶¶ 26–27.) In fact, four of the six Termination Notices, including the one from Topeka Heights, thanked MSI for "many, many years of excellent service[.]" (Notices.)

20. Williams continued to serve as a director and officer of MSI until 1 November 2023, when she ultimately resigned. (*See* Jameyson Decl. Ex. 3 ["Williams Resignation"], ECF No. 41.2.)

21. Despite requiring the Six Properties to terminate their contracts with MSI effective 30 September 2023, Presken did not have the "legal authorization" to actually begin managing all of the Six Properties on 1 October 2023. (Jameyson Decl. ¶ 35.) As a result, MSI continued servicing three of the Six Properties (Edwards Place, Topeka Heights, and Trinity Gardens) until early 2024 when Presken was finally able to do so. (Jameyson Decl. ¶ 35.) MSI therefore incurred the additional sunk costs of servicing three properties with whom it no longer had long-term management contracts. When Presken was finally managing all Six Properties, MSI lost all profits previously generated by those contracts, the value of which totaled $542,000.00. (Jameyson Decl. ¶ 36; Decl. Timothy F. Morrison Supp. Mot. Summ. J. Ex. A [the "Damages Report"], ECF No. 41.6.)

22. On 11 April 2025, Plaintiff filed the Complaint, asserting claims for: (a) breach of fiduciary duty against Williams and Johnson (the "First Claim"), (b) tortious interference against Williams and Johnson (the "Second Claim"), (c) misappropriation of trade secrets against all Defendants (the "Third Claim"), (d) constructive fraud against Williams and Johnson (the "Fourth Claim"), (e) civil

conspiracy against all Defendants (the "Fifth Claim"), and (f) unfair or deceptive trade practices ("UDTP") against all Defendants (the "Sixth Claim"). (Compl. ¶¶ 35–70.)

23. This case was designated as a mandatory complex business case on 14 April 2025 and assigned to the Honorable A. Todd Brown. (ECF Nos. 1, 2.) This case was re-assigned to the undersigned on 4 March 2026. (ECF No. 30.)

24. Plaintiff filed the Motion on 18 May 2026 seeking summary judgment on all of its claims except Plaintiff's Third Claim for misappropriation of trade secrets. (Pl.'s MSJ.) The Motion is now ripe for resolution, and notwithstanding Defendants' failure to respond to the Motion, the Court must decide whether the uncontested facts entitle Plaintiff to judgment as a matter of law.

II.

LEGAL STANDARD

25. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." N.C. R. Civ. P. 56(c). A genuine issue of material fact is one supported by "substantial evidence," meaning "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Head v. Gould Killian CPA Grp., P.A.*, 371 N.C. 2, 8 (2018) (citations omitted). "The summary judgment standard requires the trial court to construe evidence in the light

most favorable to the nonmoving party." *Draughon v. Evening Star Holiness Church of Dunn*, 374 N.C. 479, 482 (2020).

26. 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.*, 356 N.C. at 579.

27. "Affirmative summary judgment on a party's own claims for relief carries an even greater burden." *Faw v. Wilkes Sombrero, Inc.*, 2021 NCBC LEXIS 114, at *21 (N.C. Super. Ct. Dec. 16, 2021) (citing *Brooks v. Mount Airy Rainbow Farms Ctr., Inc.*, 48 N.C. App. 726, 728 (1980)). The movant "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).

28. Where a party against whom summary judgment is sought fails to respond to the opposing party's motion, "summary judgment, if appropriate, shall be entered against him." N.C. R. Civ. P. 56(e). If the nonmoving party fails to produce evidence demonstrating that it would survive summary judgment at trial, including by failing to file anything in opposition to a motion for summary judgment, then summary judgment will properly be granted to the movant. *See Johnson v. Nash Cmty. Coll.*,

No. COA09-57, 2010 N.C. App. LEXIS 672, at *11–14 (N.C. Ct. App. 2010) (unpublished) (holding that because the nonmovant did not submit any evidence in response to a motion for summary judgment that would show the existence of a genuine issue of material fact, and made no argument that the movant's evidence was insufficient to shift the burden, summary judgment was properly granted against the nonmovant).

III.

ANALYSIS

29. Plaintiff moves the Court to grant summary judgment as to its First, Second, Fourth, Fifth, and Sixth Claims for Relief pursuant to Rule 56. (Pl.'s Br. Supp. MSJ.) The Court will address each claim in turn.

A. Breach of Fiduciary Duty

30. Plaintiff's First Claim asserts breach of fiduciary duty against Defendants Williams and Johnson. (Compl. ¶¶ 35–41.) Plaintiff argues that Williams and Johnson owed MSI fiduciary duties by virtue of their positions as director and officers, respectively. (Compl. ¶¶ 36–37.) Plaintiff further argues that Williams and Johnson breached those fiduciary duties by (i) competing with MSI in the multifamily property management sector; (ii) usurping corporate opportunities by diverting MSI's clients to Presken; and (iii) failing to act in MSI's best interests to retain current clients. (Compl. ¶ 38.)

31. "To establish a claim for breach of fiduciary duty, a plaintiff must show that: (1) the defendant owed the plaintiff a fiduciary duty; (2) the defendant breached that

fiduciary duty; and (3) the breach of fiduciary duty was a proximate cause of injury to the plaintiff." *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 339 (2019) (citing *Green v. Freeman*, 367 N.C. 136, 141 (2013)). Accordingly, the Court's initial inquiry must be whether Williams or Johnson owed MSI any fiduciary duty.

32. "It is elementary that directors of a corporation owe fiduciary duties to the corporation." *Cone v. Blue Gem, Inc.*, 2023 NCBC LEXIS 127, at *53 (N.C. Super. Ct. Oct. 13, 2023). North Carolina law requires that directors discharge those duties "in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; [and] in a manner the director reasonably believes to be in the best interests of the corporation." N.C.G.S. § 55-8-30(a)(1–3) (cleaned up).

33. Additionally, "[o]fficers of a corporation owe a fiduciary duty to the corporation." *Brady v. Prince*, 2015 NCBC LEXIS 5, at *46 (N.C. Super. Ct. Jan. 7, 2015) (citations omitted). "Under North Carolina law corporate officers must act in a manner they reasonably believe to be in the best interests of the corporation." *Brady*, 2015 NCBC LEXIS 5, at *47 (citing N.C.G.S. § 55-8-42). Similar to directors, officers must discharge their duties "in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner he reasonably believes to be in the best interests of the corporation." N.C.G.S. § 55-8-42(a)(1–3) (cleaned up).

34. Williams served as Senior Vice President of Affordable Housing, a director and officer of MSI, from 2013 until her eventual departure in 2023. (Jameyson Decl. ¶ 7.) Johnson served as Regional Vice President, an officer of MSI, from 2021 to 2023.

(Jameyson Decl. ¶¶ 18, 31.) Johnson does not dispute that, during that period, she was an officer of MSI. (*See* Compl. ¶ 22; Johnson Ans. ¶ 22.) The Court therefore concludes that both Williams and Johnson owed fiduciary duties to MSI.

35. Plaintiff argues in its Motion that a *de facto* fiduciary relationship existed between itself and Johnson based on Johnson's level of control over the Six Properties and her intimate access to information regarding MSI's business practices. (*See* Pl.'s Br. Supp. MSJ.) Because Johnson admitted that she was an officer of MSI during the relevant time period, and therefore owed *de jure* fiduciary duties to MSI, the Court need not analyze whether a *de facto* fiduciary relationship existed.

36. Having concluded that both Williams and Johnson owed fiduciary duties to MSI, the Court now turns to whether, and how, those duties were breached by either party.

37. "Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests." *Meiselman v. Meiselman*, 309 N.C. 279, 308 (1983) (citing *Guth v. Loft, Inc.*, 23 Del. Ch. 255, 270 (1939)). "[I]n [determining] whether a corporate fiduciary [has] usurped a corporate opportunity" in violation of their fiduciary duty, a court must "examine not only whether the disputed opportunity is functionally related to the corporation's business, but also whether the corporation has an interest or expectancy in the opportunity." *Meiselman*, 309 N.C. at 311.

38. The disputed opportunities in question in this case are the management contracts with the Six Properties. These management contracts were clearly related

to MSI's business as a multifamily property management company. MSI also clearly had an expectancy in the opportunity, as it had existing management contracts with each of the Six Properties that would have presumably continued but for Williams and Johnson's actions. This expectancy is bolstered by the fact that none of the Six Properties had complained or otherwise indicated to MSI that they intended to cut their contracts short until the Termination Notices were sent.

39. Rather than limiting Presken to servicing single-family properties, which Williams knew MSI did not service, or multifamily properties not already managed by MSI, Williams used her knowledge of MSI's business to lure the Six Properties—which were already satisfactorily managed by MSI—into terminating their contracts and moving to Presken. (*See supra* ¶¶ 11–17.) This constituted abuse of MSI's trust and confidence in Williams in order for Williams to further the private interest of advancing her company, Presken.

40. Johnson also abused the position of trust and confidence bestowed on her by MSI in violation of her fiduciary duties as an officer. Johnson, as Regional Vice President, was entrusted with representing MSI at board meetings and supervising the properties she oversaw without oversight from MSI. (Jameyson Decl. ¶¶ 21–25.) Rather than furthering MSI's best interests as her fiduciary duties required, Johnson accepted a position with a competing entity, Presken, and subsequently allowed Williams to attend the Meeting and solicit Topeka Heights to join Presken without informing MSI. In putting the private interests of enriching her future employer

ahead of MSI's interest in retaining its clients, Johnson breached the fiduciary duties she owed to MSI by virtue of her position as an officer.

41. Neither Williams's representative nor Johnson has made any attempt to dispute the facts alleged by Plaintiff supporting the cause of action for breach of fiduciary duty against them. Taking the facts alleged in the light most favorable to Williams and Johnson, no genuine dispute exists as to any material fact underlying the breach of fiduciary claims against Williams and Johnson. As a direct result of Williams and Johnson's actions, each of the Six Properties terminated their management contracts with MSI in August 2023. The termination of these contracts ultimately cost MSI $542,000.00 in lost profits. (Damages Report.)

42. Accordingly, the Motion is **GRANTED** as to Plaintiff's First Claim for breach of fiduciary duty against Williams and Johnson.

B. Tortious Interference with Contract

43. Plaintiff's Second Claim asserts tortious interference with contract against Defendants Williams and Johnson. (Compl. ¶¶ 43–47.) Plaintiff argues that Williams and Johnson intentionally diverted the Six Properties to Presken and prevented them from maintaining their existing contracts with MSI. (Compl. ¶ 43.)

44. A successful claim for tortious interference with contract requires: (1) a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant intentionally inducing the third party not to perform on its contract with the plaintiff; (4) the defendant doing so without justification; and (5) the interference resulting in actual damage to the plaintiff. *Beverage Sys. of the*

Carolinas, LLC v. Associated Beverage Repair, LLC, 368 N.C. 693, 700 (2016) (citing *United Labs., Inc. v. Kuykendall*, 322 N.C. 643, 661 (1988)).

45. "A party's interference is 'without justification' when it is 'not reasonably related to the protection of a legitimate business interest,' but is instead motivated solely by malice[.]" *Charah, LLC v. Sequoia Servs., LLC*, 2020 NCBC LEXIS 32, at *14 (N.C. Super. Ct. Apr. 17, 2020) (citing *Privette v. Univ. of N.C. at Chapel Hill*, 96 N.C. App. 124, 134 (1989) and *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 221 (1988)) (cleaned up). "The malice required to sustain a tortious interference claim is legal, not actual, malice." *Charah,* 2020 NCBC LEXIS 32, at *14–15 (citing *Childress v. Abeles*, 240 N.C. 667, 675 (1954)). "A person acts with legal malice if he does a wrongful act or exceeds his legal right or authority in order to prevent the continuation of the contract between the parties." *Varner v. Bryan*, 113 N.C. App. 697, 702 (1994).

46. It is undisputed that valid contracts existed between MSI and each of the Six Properties. (*See* MSI Contracts.) It is further undisputed that Williams and Johnson knew of these contracts by virtue of their positions with MSI. Therefore, the Court must now examine whether Williams and Johnson intentionally induced the Six Properties not to perform on the remainder of their contracts with MSI and, if so, whether they were legally justified in doing so.

47. Williams clearly intended to induce the Six Properties to terminate their contracts with MSI. This is evidenced not only by the conversations Williams had with five of the properties prior to the Meeting, but also by her conversations with

Johnson and her presentation on behalf of Presken at the Meeting. It is further evidenced by Williams's circulation of the Termination Notices. Therefore, the only issue that remains is whether that interference was legally justified.

48. One legal justification for interference with existing contracts is regular competition within an industry. *See Charah*, 2020 NCBC LEXIS 32, at *16 (stating that "establishing a competing business is a legitimate business motive"). However, committing a wrongful act or exceeding legal authority to engage in competition will result in a finding of legal malice. Here, Williams committed the wrongful act of violating her fiduciary duty to MSI and soliciting all of the Six Properties to terminate their contracts with MSI while still employed by MSI. These acts were carried out behind MSI's back and the contracts were terminated without warning. Therefore, Williams's interference was committed with legal malice.

49. Johnson also acted intentionally to induce Topeka Heights to terminate its management contract with MSI. While she was not present for Williams's solicitation of five of the Six Properties prior to the Meeting, Johnson actively participated in the interference with Topeka Heights's contract with MSI. Johnson invited Williams to the Meeting and allowed her to present on behalf of Presken, knowing that Williams planned to solicit Topeka Heights to terminate its existing contract with MSI and enter into a contract with Presken. This invitation, and the accompanying nondisclosure to MSI, by Johnson constituted an intentional act designed to induce Topeka Heights not to perform on its contract with MSI.

50. Johnson also engaged in these acts without legal justification. Like Williams, Johnson owed a duty to MSI at the time of the Meeting, and failed to abide by that duty and act in the best interests of MSI. Instead, Johnson exceeded the scope of her authority with MSI by inviting Williams to present at the Meeting on behalf of Presken, and failing to notify MSI of the solicitation at any point, before or after the Meeting. Therefore, Johnson's acts were committed with legal malice that negates any potential justification for her interference with Topeka Heights's contract with MSI.

51. The undisputed record reveals that Williams acted intentionally to induce the Six Properties not to perform on the remainder of their contracts with MSI, and to instead enter into management contracts with Presken. Johnson acted intentionally to induce Topeka Heights not to perform on the remainder of its contract with MSI. Both Williams and Johnson did so intentionally, with legal malice, and without justification.

52. Accordingly, the Motion is **GRANTED** as to Plaintiff's Second Claim for tortious interference with contract against Williams and Johnson.

C. Constructive Fraud

53. Plaintiff's Fourth Claim asserts constructive fraud against Defendants Williams and Johnson. (Compl. ¶¶ 61–64.) Plaintiff alleges that Williams and Johnson took advantage of their positions and breached the fiduciary duties they owed to MSI in an effort to enrich themselves. (Compl. ¶¶ 62–63.)

54. "Constructive fraud arises where a confidential or fiduciary relationship exists, and its proof is less exacting than that required for actual fraud." *Head*, 371 N.C. at 9. "When a fiduciary relation[ship] exists between parties to a transaction, equity raises a presumption of fraud when the superior party obtains a possible benefit." *Watts*, 317 N.C. at 116 (1986) (citing 37 Am. Jur. 2d *Fraud and Deceit* § 442, at 602 (1968)). A plaintiff asserting constructive fraud "must allege facts and circumstances '(1) which created the relation of trust and confidence, and (2) led up to and surrounded the consummation of the transaction in which defendant is alleged to have taken advantage of his position of trust to the hurt of plaintiff.'" *Watts v. Cumberland Cnty. Hosp. Sys., Inc.*, 317 N.C. 110, 116 (1986) (quoting *Rhodes v. Jones*, 232 N.C. 547, 549 (1950)).

55. The undisputed facts show that both Williams and Johnson owed fiduciary duties to MSI during the relevant time period, as the Court concluded earlier. (*See supra* ¶ 34.) Therefore, there is a presumption of constructive fraud if Williams and Johnson obtained any conceivable benefit through abuse of their fiduciary relationships with MSI.

56. MSI trusted Williams and Johnson to participate in unmonitored board meetings with each of the Six Properties on MSI's behalf based on these fiduciary relationships. MSI further entrusted Williams and Johnson to maintain the relationships between MSI and each of the Six Properties, as well as all other properties overseen by Williams or Johnson within the scope of their duties as officers and/or directors.

57. Williams's position as Vice President of Affordable Housing placed her in a unique position of confidence and trust within MSI. As a director and officer of the company, MSI entrusted Williams with overseeing all of MSI's affordable managed properties, which included not only the Six Properties which followed Williams to MSI initially, but all other preexisting affordable housing contracts and properties. (Jameyson Decl. ¶ 10.) The combination of MSI's trust in Williams and Williams's unsupervised interactions with the properties she oversaw afforded Williams the opportunity to coerce the Six Properties to terminate their contracts with MSI.

58. Johnson was also in a unique position of trust and confidence within MSI. As Regional Vice President, Johnson was entrusted with serving as a liaison between MSI and several multifamily properties it managed, including five of the Six Properties. "MSI entrusted [Johnson] with the authority to address the boards of the Six Properties on MSI's behalf without oversight." (Jameyson Decl. ¶ 25.)

59. Williams and Johnson used the Meeting as an opportunity to take advantage of the trust and confidence bestowed on them by MSI and persuade Topeka Heights to abandon its management contract with MSI in favor of Presken. It is undisputed that Williams, as owner of Presken, and Johnson, as President, would obtain a benefit as a result of the actions described herein. Neither Williams's representative nor Johnson have offered any evidence rebutting the material facts established by Plaintiff's evidence. Therefore, the Court concludes that Williams and Johnson engaged in constructive fraud.

60. Accordingly, the Motion is **GRANTED** as to Plaintiff's Fourth Claim for constructive fraud against Williams and Johnson.

D. Civil Conspiracy

61. Plaintiff's Fifth Claim asserts civil conspiracy against all Defendants. (Compl. ¶¶ 66–67.) Plaintiff alleges that Williams and Johnson, while still employed by MSI, conspired to harm MSI by luring its clients to Presken. (Compl. ¶ 66.)

62. "Civil conspiracy comprises three elements: (1) a conspiracy; (2) wrongful actions taken by at least one of the conspirators in furtherance of that conspiracy; and (3) injury to the plaintiff as a result." *Hui Zhang v. CapitalNexus, LLC*, 2026 NCBC LEXIS 133, at *97 (N.C. Super. Ct. June 25, 2026). "[T]here is not a separate civil action for civil conspiracy in North Carolina." *Dove v. Harvey*, 168 N.C. App. 687, 690 (2005). "Only where there is an underlying claim for unlawful conduct can a plaintiff state a claim for civil conspiracy by also alleging the agreement of two or more parties to carry out the conduct and injury resulting from that agreement." *Toomer v. Garrett*, 155 N.C. App. 462, 483 (2002).

63. In sum, to succeed in a claim for civil conspiracy, the undisputed facts must show that (1) an underlying claim for unlawful conduct exists and (2) the Defendants agreed to carry out the conduct resulting in that underlying claim. Here, the first requirement is satisfied by the established claims for breach of fiduciary duty and tortious interference against Williams and Johnson. (*See supra* Sections III(A)–(B).) Therefore, the Court must now determine whether there was an agreement by all

Defendants to carry out the conduct which resulted in the breach of fiduciary duty and/or tortious interference claims.

64. The facts supporting the cause of action for tortious interference also tend to support a cause of action for civil conspiracy against the Defendants. In July 2023, Williams informed Johnson that she was leaving MSI to focus on Presken, and that she had already solicited five of the Six Properties to terminate their contracts with MSI and enter into new contracts with Presken following her departure. (Johnson Dep. at 18:10–13; 19:6–14.) By failing to notify MSI of these unlawful acts by Williams, Johnson manifested an agreement to participate in the conduct underlying the tortious interference claim.

65. Johnson not only assented to the unlawful conduct previously engaged in by Williams, but proceeded to actively participate in the interference with Topeka Heights's contract with MSI during the Meeting. Johnson allowed Williams to solicit Topeka Heights without notifying MSI at any point before, during, or after the Meeting. (*See* Johnson Dep. at 25:15–23.) This conduct also tends to support an agreement by Williams and Johnson to mutually breach the fiduciary duties owed to MSI by virtue of their positions as director and officers, respectively.

66. While it is not necessary that Presken itself committed any act in furtherance of the underlying breach of fiduciary duty or tortious interference claims to conclude that Presken engaged in civil conspiracy with Williams and Johnson, evidence of Presken's agreement can be found in the undisputed record. First, Johnson, in her capacity as President of Presken, admitted that she believed Presken

was responsible for preparing the Termination Notices that were distributed via e-mail by Williams. (*See* Presken Dep. at 23:17–25.) This is clear evidence of Presken's agreement to participate in the conduct underlying the tortious interference claims against Williams and Johnson. Presken further manifested agreement with the unlawful acts of Williams and Johnson by knowingly entering into contracts with each of the Six Properties following the termination of their agreements with MSI. (*See* Jameyson Decl. ¶ 30; Notices.)

67. Williams engaged in wrongful acts in furtherance of the conspiracy to commit tortious interference by soliciting each of the Six Properties, and Johnson, to leave MSI to join Presken. Johnson engaged in wrongful acts in furtherance of the conspiracy by participating in the solicitation of Topeka Heights to join Presken while still serving as an officer of MSI. The conspiracy engaged in by Williams and Johnson sought to benefit each of them individually, and Presken as an entity.

68. Williams's representative, Johnson, and Presken have made no attempt to dispute the facts alleged by Plaintiff supporting the cause of action for civil conspiracy against them. The undisputed facts taken in the light most favorable to the Defendants reveal that the Defendants conspired to interfere with Topeka Heights's management contract with MSI, and ultimately to cause the Six Properties to terminate their contracts with MSI and enter into contracts with Presken. The termination of these contracts ultimately damaged MSI in the amount of $542,000.00 in lost profits. (Damages Report.)

69. Accordingly, the Motion is **GRANTED** as to Plaintiff's Fifth Claim for civil conspiracy against all Defendants.

E. Unfair and Deceptive Trade Practices

70. Plaintiff's Sixth Claim asserts violations of N.C.G.S. § 75-1.1, the North Carolina Unfair and Deceptive Trade Practices Act, against all Defendants. (Compl. ¶¶ 69–70.) Plaintiff argues that Defendants "[used] MSI's own officers and director to vouch for Presken and facilitate the covert acquisition of the Six Properties" in violation of N.C.G.S. § 75-1.1. (Pl.'s Br. Supp. MSJ.)

71. "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." N.C.G.S. § 75-1.1(a). "'[C]ommerce' includes all business activities, however denominated[.]" N.C.G.S. § 75-1.1(b).

72. "To prevail on a claim of [UDTP] a plaintiff must show (1) an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiff or to his business." *Spartan Leasing, Inc. v. Pollard*, 101 N.C. App. 450, 460–61 (1991) (citing N.C.G.S. §§ 75-1.1 and 75-16). "North Carolina case law has held that conduct which constitutes a breach of fiduciary duty and constructive fraud is sufficient to support a UDTP claim." *Compton v. Kirby*, 157 N.C. App. 1, 20 (2003).

73. Similar to Plaintiff's claim for civil conspiracy (*see supra* Section III(D)), the successful underlying claims for breach of fiduciary duty and constructive fraud against Defendants Williams and Johnson will likewise be sufficient to constitute an

unfair or deceptive trade practice for purposes of N.C.G.S. § 75-1.1. *See Compton*, 157 N.C. App. at 20. However, there exists no underlying claim on which to support a claim for UDTP against Defendant Presken. Therefore, the Court must analyze whether Presken, as an entity, engaged in conduct constituting an unfair or deceptive trade practice.

74. The undisputed record shows that Presken, via its owner, Williams, and its soon-to-be President, Johnson, engaged in unfair methods of competition by inducing each of the Six Properties to terminate existing contracts with MSI to subsequently enter into management contracts with Presken.

75. In order for an act to be "in or affecting commerce," the conduct must occur in interactions between market participants. *See White v. Thompson*, 364 N.C. 47, 52 (2010) ("[T]he General Assembly indicated through its original statement of purpose that the Act was designed to achieve fairness in dealings *between* individual market participants.") (emphasis added). In other words, internal conduct within a single market participant is not considered in or affecting commerce. *See generally id.* at 53–54.

76. The conduct of Presken, a market participant, in inducing each of the Six Properties to terminate their contracts with MSI, another market participant, falls squarely within the parameters set forth in *White* and is therefore considered "in or affecting commerce" for purposes of N.C.G.S. § 75-1.1.

77. The conduct of Williams and Johnson was not confined to a single market participant, but involved self-dealing benefiting Presken, an entity in which they

were owners or had an expected interest. This is sufficient for their conduct to be in or affecting commerce. *See Sara Lee Corp. v. Carter,* 357 N.C. 27, 32–33 (1999) (finding that a fiduciary's self-dealing for the benefit of other companies he owned was considered in or affecting commerce).

78. Further, Presken's unfair competition practices with respect to MSI and the Six Properties caused actual injury to MSI in the form of lost profits. (*See* Damages Report.) Therefore, the Court concludes that Presken engaged in UDTP in violation of N.C.G.S. § 75-1.1.

79. Accordingly, the Motion is **GRANTED** as to Plaintiff's Sixth Claim for UDTP against all Defendants.

IV.

CONCLUSION

80. In conclusion, the Court finds that, construing the evidence in the light most favorable to Defendants as the nonmoving parties, no genuine issue of material fact exists as to Plaintiff's claims that:

1. Defendants Williams and Johnson breached the fiduciary duties owed to MSI;
2. Defendant Williams tortiously interfered with each of the Six Properties' contracts with MSI, and Defendant Johnson tortiously interfered with Topeka Heights's contract with MSI;
3. Defendants Williams and Johnson engaged in constructive fraud;

4. Defendants engaged in civil conspiracy to commit tortious interference with contract; and

5. Defendants engaged in unfair or deceptive trade practices in violation of N.C.G.S. § 75-1.1.

81. The Court notes that the damages sought by Plaintiff in each claim for relief are duplicative. Each claim, with the exception of the Sixth Claim for unfair or deceptive trade practices in violation of N.C.G.S. § 75-1.1, seeks damages in the amount of lost profits for each of the Six Properties' contracts with MSI, totaling $542,000.00. (Damages Report.) While the Court concluded that Johnson only engaged in tortious interference with contract as to Topeka Heights's contract with MSI, Johnson nonetheless is liable for the full amount detailed in the Damages Report. This liability stems from the remaining claims, including Johnson's liability for the First Claim for breach of fiduciary duty and Fifth Claim for civil conspiracy.

82. **WHEREFORE**, the Court **GRANTS** the Motion and judgment is hereby **ENTERED** in favor of Plaintiff on its First Claim for breach of fiduciary duty, Second Claim for tortious interference with contract, Fourth Claim for constructive fraud, Fifth Claim for civil conspiracy, and Sixth Claim for unfair or deceptive trade practices in violation of N.C.G.S. § 75-1.1.

83. Damages shall be awarded to Plaintiff against Defendants in the amount of $542,000.00. Those damages shall be trebled pursuant to N.C.G.S. § 75-16 to $1,626,000.00.

84. Plaintiff's Third Claim for misappropriation of trade secrets is not resolved by this Order and Opinion.

SO ORDERED, this the 28th day of October, 2026.

/s/ A. Graham Shirley

A. Graham Shirley
Special Superior Court Judge
for Complex Business Cases