Action Learning Assocs., LLC v. Kenan-Flagler Bus. Sch. Exec. Educ., LLC, 2026 NCBC 84.

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
ORANGE COUNTY	24CV003280-670
ACTION LEARNING ASSOCIATES, LLC, Plaintiff, v. KENAN-FLAGLER BUSINESS SCHOOL EXECUTIVE EDUCATION, LLC, RYAN SOARES, and JENNIFER GIORDANO, Defendants.	**ORDER AND OPINION ON DEFENDANT KENAN-FLAGLER BUSINESS SCHOOL EXECUTIVE EDUCATION, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

THIS MATTER is before the Court on Defendant Kenan-Flagler Business School Executive Education, LLC's ("KFEE") Motion for Partial Summary Judgment ("Motion for Partial Summary Judgment" or "Motion," ECF No. 91).

THE COURT, having considered the Motion, briefs, affidavits, deposition testimony, exhibits, arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion should be **GRANTED in part** and **DENIED without prejudice in part** for the reasons set forth below.

Miano Law PC, by Bert Miano for Plaintiff Action Learning Associates, LLC.

Ellis & Winters LLP, by Jonathan D. Sasser, Chelsea Pieroni, and Katherine Bandy for Defendant Kenan-Flagler Business School Executive Education, LLC.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, by Hope Garber, Edward Roche, Kathryn A. Spangler, and Benjamin A. Spencer for Defendants Jennifer Giordano and Ryan Soares.

Davis, Judge.

INTRODUCTION

1. This case arises from the deterioration of a decade-long relationship between two businesses in the corporate leadership and executive education industry. For years, Plaintiff Action Learning Associates, LLC ("ALA") contracted with KFEE to design and facilitate executive learning courses for KFEE's clients, including ExxonMobil, until KFEE ultimately decided not to renew its contract with ALA. In this lawsuit, ALA alleges (among other things) that KFEE has wrongfully shared its proprietary materials with ALA's competitors and taken other actions that caused ALA to suffer economic harm. In the present Motion for Partial Summary Judgment, KFEE asks that the Court dismiss two of ALA's claims—namely, its claims for conversion and for unfair and deceptive trade practices.

FACTUAL AND PROCEDURAL BACKGROUND

2. "The Court does not make findings of fact on motions for summary judgment; rather, the Court summarizes material facts it considers to be uncontested." *McGuire v. LORD Corp.*, 2021 NCBC LEXIS 4, at *1–2 (N.C. Super. Ct. Jan. 19, 2021) (cleaned up).

3. On 19 November 2024, Plaintiff ALA initiated this lawsuit by filing a complaint in Orange County Superior Court. (Compl., ECF No. 3.)

4. On 20 November 2025, ALA filed its Second Amended Complaint ("SAC"), which is currently its operative pleading, against KFEE, Ryan Soares, and Jennifer Giordano. (SAC, ECF No. 42.) In the SAC, ALA has asserted claims for breach of contract against all Defendants, tortious interference with contractual

relations against Soares and Giordano, unfair and deceptive trade practices (UDTP) against KFEE, and conversion against KFEE. (SAC ¶¶ 81–110.)

5. The present Motion only relates to ALA's claims for conversion and UDTP against KFEE. (ECF No. 91.)

6. ALA is primarily in the business of providing executive education services to businesses throughout the world. (SAC ¶ 9.)

7. KFEE provides executive education services to private businesses through annual contracts with third-party providers. (SAC ¶ 11.)

8. In 2013, KFEE contracted with ALA to provide executive development services to one of KFEE's corporate clients—ExxonMobil. (SAC ¶ 15.) ALA was responsible for providing personnel to conduct executive development services through an Emerging Leadership Program and a Business Leadership Program. (SAC ¶¶ 15, 17.)

9. In 2019, KFEE engaged ALA to redesign the Emerging Leadership Program for ExxonMobil. (SAC ¶¶ 18–19.) The terms of the redesign were reflected in a Master Services Agreement ("MSA") which provided that the contract would be for a one-year term. (SAC ¶ 19; Pl. Br. Opp. Ex. 12, ECF No. 96.5 [sealed], at 1.) Until 2024, the MSA was renewed on an annual basis.

10. Throughout ALA's course of business with KFEE, ALA developed certain training materials that were ultimately stored on KFEE's SharePoint Server. (Def. Br. Supp. Ex. B, ECF No. 92.2, at 2–3; Def. Br. Supp. Ex. G, ECF No. 92.7.) ALA contends that these training materials contained proprietary information. (Def. Br.

Supp. Ex. B, at 2–3; Miller Dep. Tr., ECF No. 95.3, at 93, 122, 132, 136–37, 224–27; Nute Dep. Tr., ECF No. 95.4, at 44–46, 63–68, 73; Giddens Dep. Tr., ECF No. 95.5, at 68–71.)

11. ALA asserts that pursuant to the MSA, these proprietary materials were to be protected by KFEE and that KFEE was barred from authorizing third party access to these materials. (Pl. Br. Opp. Ex. 12, at 7; Miller Dep. Tr., ECF No. 95.3, at 122–23.)

12. Nevertheless, according to ALA, KFEE intentionally granted others unauthorized access to the KFEE SharePoint Server that contained ALA's proprietary materials. (SAC ¶ 77; Pl. Br. Opp. Ex. 18, ECF No. 95.13, at 13–14; Pl. Br. Opp. Ex. 19, ECF No. 95.14, at 12–13.) ALA further alleges that this access was granted before KFEE archived and password-protected these materials.

13. ALA asserts that KFEE continued to utilize the training materials after the contract between the parties ended. (Def. Br. Supp. Ex. C, ECF No. 92.3, at 4–5, 22–23; Giddens Dep. Tr., ECF No. 92.4, at 111–13; Nute Dep. Tr., ECF No. 92.5, at 239–40.)

14. On 2 July 2026, KFEE filed the present Motion. (ECF No. 91.)

15. On 9 October 2026, the Court held a hearing on the Motion at which all parties were represented by counsel.

16. Having been fully briefed, the Motion is now ripe for resolution.

LEGAL STANDARD

17. It is well established that "[s]ummary judgment is proper 'if 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 a judgment as a matter of law.'" *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018) (quoting N.C. R. Civ. P. 56(c)). "[A] genuine issue is one which can be maintained by substantial evidence." *Kessing v. Nat'l Mortg. Corp.*, 278 N.C. 523, 534 (1971). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference." *Daughtridge v. Tanager Land, LLC,* 373 N.C. 182, 187 (2019) (cleaned up).

18. On a motion for summary judgment, "[t]he evidence must be considered 'in a light most favorable to the non-moving party.'" *McCutchen v. McCutchen*, 360 N.C. 280, 286 (2006) (quoting *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470 (2004)). "[T]he party moving for summary judgment ultimately has the burden of establishing the lack of any triable issue of fact." *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491 (1985).

19. The party moving for summary judgment may satisfy its burden by proving that "an essential element of the opposing party's claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense . . . or by showing through discovery that the opposing party cannot produce evidence to support an essential element of [the] claim[.]" *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (cleaned

up). "If the moving party satisfies its burden of proof, then the burden shifts to the non-moving party to 'set forth specific facts showing that there is a genuine issue for trial.'" *Lowe v. Bradford*, 305 N.C. 366, 369–70 (1982) (quoting N.C. R. Civ. P. 56(e)). If the nonmoving party does not satisfy its burden, then "summary judgment, if appropriate, shall be entered against [the nonmovant]." *United Cmty. Bank (Ga.) v. Wolfe*, 369 N.C. 555, 558 (2017) (quoting N.C. R. Civ. P. 56(e)).

ANALYSIS

20. KFEE's Motion for Partial Summary Judgment does not implicate ALA's breach of contract claim against KFEE or any of ALA's claims against Defendants Soares and Giordano. Instead, KFEE's Motion is addressed only to ALA's claims against it for conversion and UDTP.

I. Conversion

21. This Court has previously stated the following regarding the tort of conversion:

> Conversion is a tort with deep roots in the common law. It "is defined as 'an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights.'" *Spinks v. Taylor*, 303 N.C. 256, 264–65, 278 S.E.2d 501, 506 (1981) (quoting *Peed v. Burleson*, Inc., 244 N.C. 437, 439, 94 S.E.2d 351, 353 (1956)). "The essence of conversion is not the acquisition of property by the wrongdoer, but a wrongful deprivation of it to the owner." *Bartlett Milling Co. v. Walnut Grove Auction & Realty Co.*, 192 N.C. App. 74, 86, 665 S.E.2d 478, 488 (2008).

Addison Whitney, LLC v. Cashion, 2017 NCBC LEXIS 51, at *15 (N.C. Super. Ct. June 9, 2017).

22. Under North Carolina law, "only goods and personal property are properly the subject of a claim for conversion." *Norman v. Nash Johnson & Sons' Farms, Inc.*, 140 N.C. App. 390, 414 (2000). Our courts have treated electronic documents as forms of personal property that can form the basis of a conversion claim. *Addison Whitney,* 2017 NCBC LEXIS 51, at *16. However, "intangible interests such as business opportunities and expectancy interests" cannot support such a claim. *Norman,* 140 N.C. App. at 414.

23. KFEE argues that summary judgment is proper as to ALA's conversion claim for two reasons. First, KFEE contends that ALA cannot satisfy the wrongful deprivation requirement because ALA has maintained access to the proprietary materials at issue. Second, KFEE argues that the property that forms the basis for ALA's conversion claim is intangible. Because the Court finds that summary judgment is proper based on KFEE's first argument, the Court need not reach the second argument.

24. Our Supreme Court has made clear that

> the essence of conversion is not the acquisition of property by the wrongdoer, but a wrongful deprivation of it to the owner and in consequence it is of no importance what subsequent application was made of the converted property, or that defendant derived no benefit from the act.

Variety Wholesale, Inc. v. Salem Logistics Traffic Services, LLC, 365 N.C. 520, 530 (2012) (cleaned up); *see Addison Whitney,* 2017 NCBC LEXIS 51, at *18 ("[T]he essence of a conversion claim is *deprivation* to the owner." (cleaned up)).

25. In ALA's discovery responses, it conceded that it had retained copies of all of the documents forming the basis for its conversion claim. For example, in its responses to KFEE's Requests for Admission, ALA admitted the following:

> 35. Please admit that at the time You [ALA] uploaded Your Proprietary Materials to the Microsoft SharePoint server maintained by KFEE (to which You refer, e.g., in Paragraph No. 63 of the SAC), You retained at least one copy of Your Proprietary Materials in Your own files.
>
> **ANSWER**: Admitted.
>
> 20. If you have admitted Request for Admission Nos. 35, 36, or 37 below, please identify the copy or copies of the Proprietary Materials retained, state whether any of these copies or materials were produced in collaboration or discussion with KFEE and/or ExxonMobil, and the extent to which such claimed Proprietary Materials were included in subsequent versions of such claimed Proprietary Materials.
>
> **ANSWER:** . . . ALA possesses or has access to its own copies of each of the eleven Activities and the related materials identified as ALA's proprietary materials in ALA's Response to KFEE's First Set of Interrogatories No. 2 (collectively, the "Proprietary Materials"). Those copies are ALA's own original development copies, working files, facilitator guides, instructor materials, video recordings, and related work product, retained in ALA's own files and systems independent of KFEE's SharePoint server.

(Def. Br. Supp. Ex. C, ECF No. 92.3, at 4, 22.)

26. In addition, ALA's counsel conceded at the 9 October hearing that ALA has maintained possession of all of the materials that it claims KFEE converted.

27. Although ALA contends that its conversion claim remains viable as long as it can show that it no longer has *exclusive control* over the documents at issue, that argument is inconsistent with North Carolina law. *See Duo-Fast Carolinas, Inc. v. Scott's Hill Hardware & Supply Co.,* 2018 NCBC LEXIS 2, at *36 (N.C. Super. Ct.

Jan. 2, 2018) ("[R]etention by a wrongdoer of an electronic copy in a manner that does not deprive the original owner of access to the same electronic data cannot constitute conversion under current North Carolina law."); *Addison Whitney,* 2017 NCBC LEXIS 51, at *19 ("[Plaintiff] concedes that many of its allegations 'relate to documents it still has in its possession.' Such allegations are insufficient to state a claim for conversion."); *RCJJ, LLC v. RCWIL Enters., LLC*, 2016 NCBC LEXIS 46, at *67 (N.C. Super. Ct. June 20, 2016) ("[M]aking a copy of electronically-stored information which does not deprive the plaintiff of possession or use of information, does not support a claim for conversion." (cleaned up)).

28. Accordingly, KFEE's Partial Motion for Summary Judgment as to ALA's conversion claim is **GRANTED**, and the conversion claim is **DISMISSED** with prejudice.

II. UDTP

29. Next, KFEE argues that summary judgment should also be granted in its favor on ALA's UDTP claim because (1) the UDTP claim can no longer be predicated on ALA's conversion claim (assuming the Court dismisses the conversion claim); and (2) ALA's remaining UDTP-related allegations are simply a rehashing of its breach of contract claim, which are not sufficient to establish liability under a UDTP theory.

30. To establish a prima facie claim for UDTP, a plaintiff must show: "(1) the defendant committed an unfair or deceptive act or practice, (2) the action in

question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff." *Gen. Fid. Ins. v. WFT, Inc.*, 269 N.C. App. 181, 191 (2020) (cleaned up).

31. Under North Carolina law, the existence of a conversion claim can by itself serve as a basis for UDTP liability against the defendant. However, because the Court has now granted KFEE's Motion for Partial Summary Judgment as to ALA's conversion claim, the only remaining question is whether the evidence supports a standalone claim for UDTP.

32. ALA contends that UDTP liability can be established here by the deceptive circumstances under which KFEE breached its contractual duty to keep ALA's proprietary materials confidential.

33. North Carolina courts have repeatedly held that "actions for [UDTP] are distinct from actions for breach of contract, and a mere breach of contract, even if intentional, is not sufficiently unfair or deceptive to sustain an action under N.C.G.S. § 75-1.1." *McDonald v. Bank of N.Y. Mellon Tr. Co., Nat'l Ass'n*, 259 N.C. App. 582, 589 (2018) (cleaned up). Instead, "[w]hen a plaintiff alleges a UDTP violation based upon a breach of contract, the plaintiff must show substantial aggravating circumstances attending the breach." *Dan King Plumbing Heating & Air Conditioning, LLC v. Harrison*, 281 N.C. App. 312, 320 (2022) (cleaned up).

34. "As a general proposition, unfairness or deception either in the formation of the contract or in the circumstances of its breach may establish the existence of substantial aggravating circumstances." *SciGrip, Inc. v. Osae*, 373 N.C. 409, 426 (2020) (cleaned up). However, "[i]t is not enough to allege [the] aggravating

or egregious *results* of a breach. If that were the case, then any contract dispute that results in serious losses could present a valid UDTPA claim, a result North Carolina courts have repeatedly rejected." *Edwards v. Genex Coop., Inc.*, 777 Fed. Appx. 613, 623 (4th Cir. 2019) (cleaned up), *cert. denied*, 140 S. Ct. 853 (2020).

35. Here, the parties' respective briefs on the UDTP issue mainly discuss the extent to which ALA's UDTP claim relates to its conversion claim. Neither party has thoroughly briefed the question of whether the evidence in the record shows sufficient aggravating factors accompanying the alleged breach of KFEE's contract with ALA that would allow for UDTP liability.

36. The Court believes that it would benefit from more fully developed briefing on this issue.

37. Therefore, the Court **DENIES** KFEE's Motion for Partial Summary Judgment as to ALA's UDTP claim without prejudice to its right to reassert this argument in connection with any forthcoming summary judgment motion.[1]

38. On 26 October 2026, ALA filed a document captioned Plaintiff's Motion for Leave to Supplement the Summary Judgment Record ("Motion to Supplement," ECF No. 111) in which it sought leave to submit four additional exhibits to the summary judgment record with regard to the UDTP issue. In light of the Court's decision to deny without prejudice KFEE's Motion for Partial Summary Judgment on

[1] Piecemeal summary judgment motions are disfavored in this Court. At the 9 October Hearing, counsel for KFEE stated that it intends to file another summary judgment motion by the dispositive motion deadline in this case that would address all of ALA's remaining claims. Therefore, to the extent KFEE intends to reassert its claimed entitlement to summary judgment as to ALA's UDTP claim, it will only be permitted to do so as part of a final summary judgment motion (rather than in another partial motion).

that claim, the Motion to Supplement is **DISMISSED** as moot. In the event that KFEE does, in fact, seek summary judgment on the UDTP claim at a later date, ALA will have an opportunity to submit these additional exhibits at that time in its opposition to the motion.

CONCLUSION

THEREFORE, IT IS ORDERED as follows:

1. KFEE's Motion for Partial Summary Judgment is **GRANTED** as to the conversion claim, and that claim is **DISMISSED** with prejudice;
2. KFEE's Motion for Partial Summary Judgment is **DENIED** as to the UDTP claim without prejudice to KFEE's right to seek summary judgment on that claim at a later date; and
3. ALA's Motion to Supplement is **DISMISSED** as moot.

SO ORDERED, this the 10th day of November 2026.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge for
Complex Business Cases