Action Learning Assocs., LLC v. Kenan-Flagler Bus. Sch. Exec. Educ. LLC, 2026 NCBC 86.

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| STATE OF NORTH CAROLINA | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION |
| ORANGE COUNTY | 24CV003280-670 |
| ACTION LEARNING ASSOCIATES, LLC,<br><br>Plaintiff,<br><br>v.<br><br>KENAN-FLAGLER BUSINESS SCHOOL EXECUTIVE EDUCATION LLC, RYAN SOARES, and JENNIFER GIORDANO.<br><br>Defendants. | **ORDER AND OPINION ON DEFENDANTS SOARES AND GIORDANO'S MOTION TO DISMISS FOR PLAINTIFF'S FAILURE TO COMPLY WITH RULE 17(a) [PUBLIC][1]** |

**THIS MATTER** is before the Court on Defendants Soares and Giordano's Motion to Dismiss for Plaintiff's Failure to Comply with Rule 17(a) ("Motion to Dismiss," or "Motion," ECF No. 70).

**THE COURT**, having considered the Motion, the briefs of the parties, the arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion should be **GRANTED in part** and **DENIED in part** for the reasons set forth below.

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

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

[1] The Court elected to file this Opinion under seal on 5 November 2026 and permitted the parties an opportunity to propose redactions to the public version of this document. The Court has concluded that no portions of this Opinion are required to be placed under seal. Accordingly, the Court now files the fully unredacted Opinion publicly.

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

Davis, Judge.

## INTRODUCTION

1. In ruling on this Motion, the Court must determine whether a transaction that occurred after the filing of this lawsuit has divested the named plaintiff of its status as the real party in interest in this case under North Carolina law.

## FACTUAL AND PROCEDURAL BACKGROUND

2. The facts in this case are set out more fully in the Court's Order and Opinion on Defendant's Motion to Dismiss First Amended Complaint. *See Action Learning Assocs., LLC v. Kenan-Flagler Bus. Sch. Exec. Educ. LLC*, 2025 NCBC LEXIS 79, at *2–9 (N.C. Super. Ct. July 2, 2025).

3. On 19 November 2024, Plaintiff Action Learning Associates, LLC, ("ALA") initiated this lawsuit by filing a complaint in Orange County Superior Court. (Compl., ECF No. 3.) On 20 November 2025, ALA filed its Second Amended Complaint ("SAC"), which is currently ALA's operative pleading, against Ryan Soares and Jennifer Giordano (collectively, the "Individual Defendants") along with Kenan-Flagler Business School Executive Education LLC ("KFEE"). (SAC, ECF No. 42.)

4. In the SAC, ALA has asserted claims for breach of contract against all Defendants, tortious interference with contractual relations against the Individual Defendants, unfair and deceptive trade practices against KFEE, and conversion against KFEE. (SAC ¶¶ 81–110.)

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

6. KFEE provides executive education services to private businesses through annual contracts with third-party providers. (SAC ¶¶ 13–16.)

7. In 2013, KFEE contracted with ALA to provide executive development services to one of KFEE's corporate clients—ExxonMobil. (SAC ¶ 15.)

8. 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 subject to renewal upon the mutual agreement of ALA and KFEE. (SAC ¶ 19.)

9. Until 2024, the MSA was renewed on an annual basis, but the contract was ultimately discontinued by KFEE. In this lawsuit, ALA contends (among other things) that (1) KFEE hired the Individual Defendants (who were ALA's former program facilitators) to take over the duties previously performed by ALA; and (2) the Individual Defendants committed acts that render them liable to ALA for claims grounded in both contract and tort. (SAC ¶¶ 44, 66.)

10. The facts related to the present Motion, however, concern a transaction that took place several months ago in which the entire ownership interest in ALA was sold to a new entity. (Defs.' Br. Supp. Exs. 1–2, ECF Nos. 71.1–2 [sealed].)

11. On 13 April 2026, L. Scott Miller, Inc. ("Miller") entered into a Membership Units Purchase Agreement ("Purchase Agreement") with Lance L.

Giddens, LLC ("Giddens"). Pursuant to the Purchase Agreement, Miller sold its 100% interest in ALA to Giddens. (Defs.' Br. Supp. Ex. 1 [sealed].)

12. On the same day, Miller and Giddens entered into a Litigation Control and Assignment Agreement ("LCAA"). (Defs.' Br. Supp. Ex. 2 [sealed].) Notably, ALA was not a party or signatory to the LCAA. (*See* Defs.' Br. Supp. Ex. 2 [sealed].)

13. The LCAA purports to assign any benefits or losses accruing from this lawsuit and all control over the lawsuit to Miller (despite Miller's current lack of any ownership interest in ALA following the 13 April transaction). (Defs.' Br. Supp. Ex. 2, at 2–3 [sealed].) However, other provisions of the LCAA purport to allow ALA to retain ownership of the claims in this lawsuit. (Defs.' Br. Supp. Ex. 2, at 1–2 [sealed].)

14. On 19 May 2026, the Individual Defendants filed the present Motion in which they assert that as a result of the LCAA, *Miller* is now the sole real party in interest in this case. Consequently, the Individual Defendants contend, this action is subject to dismissal unless ALA is replaced by Miller as the plaintiff in this case.

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. Rule 17(a) of the North Carolina Rules of Civil Procedure states as follows:

> Every claim shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own

> name without joining with him the party for whose benefit the action is brought; and when a statute of the State so provides, an action for the use or benefit of another shall be brought in the name of the State of North Carolina. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

N.C. R. Civ. P. 17(a).

18. Our Supreme Court has explained that

> [a] real party in interest is a party who is benefited or injured by the judgment in the case. An interest which warrants making a person a party is not an interest in the action involved merely, but some interest in the subject-matter of the litigation. Thus, the real party in interest is the party who by substantive law has the legal right to enforce the claim in question.

*Energy Invs. Fund, L.P. v. Metric Constructors, Inc.*, 351 N.C. 331, 337 (2000) (cleaned up); *see also Slaughter v. Swicegood*, 162 N.C. App. 457, 463 (2004) ("A real party in interest is a party who is benefitted or injured by the judgment in the case and who by substantive law has the legal right to enforce the claim in question." (cleaned up)).

19. In cases where it is determined that the named plaintiff does not meet Rule 17's requirements, a court should allow a reasonable period of time for the real party in interest to be substituted. *See*, *e.g., Land v. Tall House Bldg.*, 150 N.C. App. 132, 136 (2002) ("Pursuant to Rule 17, the trial court should have either corrected the plaintiff's error itself or refused to hear the motion for summary judgment until the real party in interest was substituted for plaintiff." (cleaned up)).

## ANALYSIS

20. The Individual Defendants acknowledge that ALA was the real party in interest at the time this lawsuit was filed and remained so until the LCAA was executed. They contend, however, that once the LCAA became effective, Miller replaced ALA as the sole real party in interest.

21. The LCAA, which is focused on the respective rights of Miller and Giddens with respect to the present lawsuit (referred to in the LCAA as the "Litigation"), states in pertinent part as follows:

> ***WHEREAS***, Seller [L. Scott Miller, Inc.] and Buyer [Lance L. Giddens, LLC] have entered into that certain . . . Purchase Agreement dated __04,13_,2026 . . . pursuant to which Seller sold and transferred one hundred percent . . . of its membership interest in ALA . . . (the "Company"), to Buyer;
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> . . .
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> ***WHEREAS***, Section 6(f) of the Purchase Agreement provides that Seller shall be solely responsible for all costs and expenses of the Litigation, and Section 6(g) provides that Seller shall retain the sole and exclusive right to all proceeds, recoveries, settlements, judgments, or awards arising from the Litigation;
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> ***WHEREAS***, the parties desire to supplement the Purchase Agreement by establishing clear and express terms governing the prosecution, control, and direction of the Litigation to avoid any ambiguity and to ensure that the Company's standing as the real party in interest under North Carolina Rule of Civil Procedure 17(a) is preserved;
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> . . .
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> **2.1. <u>Claims Remain Vested in the Company.</u>** The parties acknowledge and agree that all claims, causes of action, rights, and remedies asserted or assertable in the Litigation (collectively, the "Claims") are and shall remain vested in the Company. Nothing in the Purchase Agreement or this Agreement shall be construed as an assignment, transfer, or conveyance of the Claims from the Company to

Seller or any other person or entity. The Company is and shall remain the real party in interest with respect to the Litigation.

**2.2. No Waiver or Release**. Neither the execution of the Purchase Agreement nor the transfer of membership interests from Seller to Buyer constitutes or shall be deemed to constitute a waiver, release, or abandonment of any of the Company's Claims in the Litigation.

**2.3. Buyer's Acknowledgment.** Buyer acknowledges and agrees that (a) the Claims belong to the Company, (b) the Company suffered the injuries giving rise to the Litigation prior to the closing of the Purchase Agreement, and (c) Buyer's acquisition of membership interests in the Company does not diminish, impair, or extinguish the Company's Claims or standing in the Litigation.

. . .

**3.1. Seller's Exclusive Authority.** Notwithstanding Buyer's ownership of one hundred percent (100%) of the membership interests in the Company, Seller shall have the sole and exclusive authority to direct, manage, control, and make all decisions with respect to the Litigation, including without limitation:

(a) Selection, retention, and termination of legal counsel;

(b) All litigation strategy, including decisions regarding discovery, motions, and trial;

(c) Settlement negotiations and the authority to accept or reject any settlement offer;

(d) Decisions regarding appeal of any adverse ruling or judgment;

(e) All communications with the court, opposing counsel, and third parties regarding the Litigation; and

(f) Any and all other decisions necessary or incidental to the prosecution of the Litigation.

**3.2. Buyer's Cooperation.** Buyer shall, and shall cause the Company to, cooperate fully with Seller and Seller's counsel in connection with the Litigation, including without limitation:

(a) Providing access to all books, records, documents, and information in the Company's possession, custody, or control that are relevant to the Litigation;

(b) Making current and former officers, employees, and agents of the Company available for depositions, interviews, and testimony as reasonably requested;

(c) Executing any documents or instruments reasonably necessary to prosecute the Litigation, including verifications, certifications, and discovery responses; and

(d) Refraining from taking any action that would impair, compromise, or prejudice the Company's Claims or standing in the Litigation.

**3.3. Limitation on Buyer's Authority.** Buyer shall not, without Seller's prior written consent, (a) settle, compromise, or dismiss the Litigation or any Claim therein, (b) make any admission or stipulation in the Litigation, (c) waive any right, defense, or privilege in the Litigation, (d) communicate with opposing counsel or parties regarding the substance of the Litigation, or (e) take any other action that could reasonably be expected to adversely affect the Litigation.

**3.4. Power of Attorney.** Buyer hereby grants to Seller an irrevocable power of attorney, coupled with an interest, to act in the name of and on behalf of the Company with respect to all matters relating to the Litigation, including the execution of any documents or instruments that Seller deems necessary or appropriate in connection therewith. This power of attorney shall survive any subsequent transfer of the Company's membership interests and shall terminate only upon the final resolution of the Litigation and the distribution of all Litigation proceeds.

. . .

**4.1. Litigation Costs.** Consistent with Section 6(f) of the Purchase Agreement, Seller shall be solely responsible for all costs and expenses of the Litigation, including attorneys' fees, expert fees, court costs, and all other expenses incurred in connection with the prosecution of the Litigation.

**4.2. Litigation Proceeds.** Consistent with Section 6(g) of the Purchase Agreement, Seller shall be entitled to one hundred percent (100%) of all proceeds, recoveries, settlements, judgments, or awards arising from or relating to the Litigation. Buyer shall have no right, title, or interest in

> any such proceeds. Any funds received by the Company or Buyer on account of the Litigation shall be promptly remitted to Seller.

(Defs.' Br. Supp. Ex. 2 [sealed], at 3–5.)

22. Based on the above-quoted provisions, the Individual Defendants argue that ALA assigned its claims to Miller and that, as a result, ALA is no longer the real party in interest in this case. Consequently, they assert, this action should be dismissed unless Miller is substituted as the named plaintiff in this case within a reasonable period of time as provided in Rule 17(a).

23. The Court concludes that the Individual Defendants' Motion should be granted in part and denied in part such that Miller must be added as an additional plaintiff in this case but that ALA shall remain a co-plaintiff. The Court's ruling is based on two grounds.

24. First, it is not clear that the LCAA should be given effect to the extent that it can be interpreted as divesting ALA's rights in this lawsuit. Under North Carolina law, a limited liability company exists as a legal entity separate from its owner. N.C.G.S. § 57D-2-01(a) ("An LLC is an entity distinct from its interest owners."); *see also Epic Chophouse, LLC v. Morasso,* 2019 NCBC LEXIS 55, at *7 (N.C. Super. Ct. Sept. 3, 2019) (stating that a "limited liability company . . . is an entity distinct from its interest owners") (cleaned up).

25. As noted above, ALA was not a party to the LCAA and did not sign the document. As a result, it is not readily apparent how its rights can nevertheless be stripped away from it via a written agreement that was entered into solely between Miller and Giddens.

26. Second, even assuming *arguendo* that the LCAA is, in fact, legally enforceable in all respects, an application of the two prongs of the test for determining the real party in interest to these facts leads to different results. On the one hand, the LCAA provides that Miller is the party who will be benefitted or injured by any judgment ultimately rendered in this case. On the other hand, however, it is ALA who maintains the substantive right under the law to enforce the claims it has brought (which largely stem from contracts it entered into with Defendants).[2]

27. Therefore, the Court believes that on these facts the result most fully consistent with Rule 17 is for ALA and Miller to exist as co-plaintiffs.

## CONCLUSION

**THEREFORE, IT IS ORDERED** as follows:

1. For the reasons set out above, the Individual Defendants' Motion is **GRANTED in part** and **DENIED in part.**

2. Plaintiffs shall have seven days in which to file either a notice of the joinder of L. Scott Miller, Inc. as an additional plaintiff in this action or, alternatively, a motion asking the Court to order the joinder of L. Scott Miller, Inc., as an additional plaintiff in this action.

[2] Counsel for the Individual Defendants conceded as much at the 9 October hearing.

**SO ORDERED**, this the 5th day of November, 2026.[3]

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

[3] As noted above, this Opinion was originally filed under seal on 5 November 2026. This public version of the Opinion is being filed on 17 November 2026. To avoid confusion in the event of an appeal, the Court has elected to state the filing date of the public version of the Opinion as 5 November 2026.