King v. Humphrey, 2026 NCBC 88.

STATE OF NORTH CAROLINA COUNTY OF MECKLENBURG	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 25CV064098-590
TERRY KING, Plaintiff and Counterclaim Defendant, v. RANDALL HUMPHREY, RANDALL SITE SERVICES, INC., RANDALL SITE SERVICES II, INC., RANDALL SITE SERVICES III, INC., and TARHEEL PAVEMENT CLEANING SERVICES, INC., Defendants and Counterclaim Plaintiffs, v. TERRY KING, JEFFREY HORRELL, TIDELINE DEVELOPMENT GROUP LLC, K&G LIMITED, INC., AND KG UTILITIES, INC., Third-Party Counterclaim Defendants.	**ORDER AND OPINION ON TERRY KING'S MOTIONS TO DISMISS DEFENDANTS RANDALL SITE SERVICES, INC. AND RANDALL HUMPHREY'S COUNTERCLAIMS**

1. This matter is before the Court on the Rule 12(b)(6) motions to dismiss filed by plaintiff and counterclaim-defendant Terry King, seeking dismissal of all counterclaims asserted by defendants and counterclaim-plaintiffs Randall Site Services, Inc. and Randall "Randy" Humphrey. (ECF Nos. 41 and 42).

2. In the exercise of judicial discretion, the Court dispenses with oral argument pursuant to Rule 7.4 of the Business Court Rules.

3. Having considered the counterclaims, the written arguments of counsel, and all other information of note, the Court **GRANTS IN PART** and **DENIES IN PART** the motions.

Gardner Skelton PLLC, by Kristy M. D'Ambrosio, Janelle Lyons, and Jared E. Gardner, for Plaintiff Terry King and Counterclaim Defendants KG Utilities, Inc. and K&G Limited, Inc.

Caudle & Spears, P.A., by Harold C. Spears and Christopher P. Raab, for Defendant Randall Humphrey.

Van Hoy Reutlinger, Adams, Pierce & Tisdale, PLLC, by Bryan Adams and C. Grainger Pierce, Jr., and Jackson Lewis P.C., by Brenard Tisdale, for Defendants Randall Site Services, Inc., Randall Site Services II, Inc., Randall Site Services III, Inc., and Tarheel Pavement Cleaning Services, Inc.

Houston, Judge.

I. BACKGROUND

4. The Court does not make findings of fact in ruling on a Rule 12(b)(6) motion to dismiss. Instead, for background, the Court summarizes the factual allegations of the counterclaims that are most relevant to the Court's decision and accepts the well-pleaded allegations as true for purposes of this Order and Opinion.

5. As the counterclaims asserted by both Randall Site Services, Inc. ("**RSS**") and Randy Humphrey rely on substantially similar allegations and were briefed collectively by Terry King, the Court addresses the filings as part of a single Order and Opinion. (*See* ECF Nos. 24 and 40; *see* ECF Nos. 43, 53, and 55).

6. Terry King and Randy Humphrey are "experienced businessmen who have partnered together in numerous ventures over the past four decades." (ECF No. 24,

¶ 109; ECF No. 40, ¶ 11). Humphrey has a background in construction and real estate development, and King has a background in utility subcontracting. (ECF No. 24, ¶¶ 110–11; ECF No. 40, ¶¶ 11–12). Together, the two formed and operated a number of businesses for approximately twenty-five years, each with the same ownership structure in which Humphrey owned 75% and King owned 25% of each individual business. (ECF No. 24, ¶¶ 112–16; ECF No. 40, ¶¶ 14–18).

7. The first of these businesses, Tarheel Pavement Cleaning Co., Inc., was formed around 1996, with the purpose of renting a vacuum truck to construction sites for utility line and drain cleaning services. (ECF No. 24, ¶ 112; ECF No. 40, ¶ 14). Humphrey was Tarheel's President, and King was a Vice President and Secretary, in addition to their roles as owners. (ECF No. 24, ¶ 114; ECF No. 40, ¶ 16). King made a $10,000.00 initial capital contribution, while Humphrey made a $20,000.00 initial capital contribution. Humphrey "subsequently made capital infusions to Tarheel as the business required," while King did not provide further financial support. (ECF No. 24, ¶ 113; ECF No. 40, ¶ 15).

8. In 2015, King and Humphrey created and registered a new business, RSS, by rolling Tarheel's assets and business into RSS. (ECF No. 24, ¶ 116; ECF No. 40, ¶ 18). Humphrey executed certain guarantees for the benefit of RSS, while King did not. (ECF No. 24, ¶ 116; ECF No. 40, ¶ 18). RSS's business consisted of the same ownership structure as other entities, with King owning 25% and Humphrey owning 75%. (ECF No. 24, ¶ 116; ECF No. 40, ¶ 18).

9. On 19 October 2020, King and Humphrey created Randall Site Services II,

Inc. ("**RSS II**"), again transferring the former assets and business of Tarheel (then with RSS) into RSS II to permit RSS to focus on its core utility contracting business. (ECF No. 24, ¶ 129; ECF No. 40, ¶ 31). As with other entities, King owned 25% of RSS II, while Humphrey owned 75%. (ECF No. 24, ¶ 129; ECF No. 40, ¶ 31).

10. On 3 August 2021, King and Humphrey formed and registered Randall Site Services III, Inc. ("**RSS III**") with the same ownership structure as the first two iterations of the business. (ECF No. 24, ¶ 126; ECF No. 40, ¶ 28). RSS III obtained a license to perform utility contracting work, and "most jobs contracted directly with RSS III" after its formation. (ECF No. 24, ¶ 126; ECF No. 40, ¶ 28).

11. Apart from the entities he jointly owned with Humphrey, King owned and controlled two businesses with his wife, Karen King, under the names K&G Limited, Inc. and KG Utilities, Inc. ("**K&G Entities**").[1] (ECF No. 24, ¶ 118; ECF No. 40, ¶¶ 6, 7, 20). Karen King is the licensed contracting qualifier for the K&G Entities. (ECF No. 24, ¶ 118; ECF No. 40, ¶ 20).

12. Further, in November 2021, Jeffrey Horrell, an employee of the RSS entities, organized Tideline Development Group LLC ("**Tideline**") with the North Carolina Secretary of State. (ECF No. 24, ¶ 134; ECF No. 40, ¶ 36). Similar to the RSS entities, Tideline also performed utility subcontracting work. (ECF No. 24, ¶ 134; ECF No. 40, ¶ 37).

13. In 2017, King and Humphrey verbally agreed to "enter for profit into a new,

[1] Although they are alleged to be two separate entities, Humphrey and RSS refer to the entities both individually and collectively as the "K&G Entities." (ECF No. 24 at 1; ECF No. 40 at 1).

jointly-owned business venture to perform utility subcontracting work." (ECF No. 24, ¶ 119; ECF No. 40, ¶ 21). RSS and Humphrey contend that this was a "verbal, implied partnership agreement under North Carolina law" ("**Partnership Agreement**"). (ECF No. 24, ¶ 120; ECF No. 40, ¶ 22).

14. Despite the parties' alleged agreement, no business entity was ever officially registered in North Carolina to effectuate the alleged agreement, nor were King and Humphrey operating under a separate name—instead, King and Humphrey operated through their other businesses: RSS, RSS II, RSS III, and the K&G entities. (ECF No. 24, ¶¶ 121–22; ECF No. 40, ¶¶ 23–24).

15. Under the Partnership Agreement, King and Humphrey agreed in relevant part as follows:

> (a) Humphrey and King would each use their contacts in the construction industry to locate utility subcontracting jobs that RSS would perform.
>
> (b) The jobs would be contracted under the license of Karen King, King's wife. Initially this would be done through one of the two K&G Entities, which entities King owned and controlled. However, King and Humphrey agreed that in time RSS would obtain its own license with Karen King as qualifier.
>
> (c) Once the K&G Entities obtained contracts, King would cause the K&G Entities to subcontract all such utility contracting jobs to RSS; and, all work would be performed by RSS crews.
>
> (d) Humphrey would manage RSS as its President and would oversee all aspects of the business operations. King would be Vice President and Secretary of RSS and responsible for estimating and bidding jobs. Each would use his contacts to generate work and would be authorized to contract for the company.
>
> (e) RSS would handle all billing, receive payments from general contractors, and sign lien waivers for itself and the K&G

> Entities.
>
> (f) King agreed to send all utility contracting jobs that he identified, bid on, or obtained to RSS and not to perform them directly through the K&G Entities or through another subcontractor. Likewise, Humphrey agreed to send all utility contracting jobs that he identified, bid on, or obtained to RSS and not to perform them through another entity or subcontractor.
>
> (g) King and Humphrey would benefit from their efforts on behalf of the RSS business by means of periodic ownership distributions when finances allowed and from the growth in value of their joint business.

(ECF No. 24, ¶¶ 119(a)–(g); ECF No. 40, ¶¶ 21(a)–(g)).

16. Humphrey and King, as RSS's owners, bound it "to the obligations set forth in the Partnership Agreement, including but not limited to the obligations for RSS to perform all necessary utility work and to handle all billing, receive payments from general contractors, and sign lien waivers for itself and" the K&G Entities. (ECF No. 24, ¶ 122; ECF No. 40, ¶ 24).

17. Similarly, King bound the K&G Entities to the Partnership Agreement and the obligations thereunder. (ECF No. 24, ¶ 121; ECF No. 40, ¶ 23).

18. Around the same time, RSS hired Jeffrey Horrell as the Operations Manager for the "utilities subcontracting business" (i.e., the business being conducted via the Partnership Agreement). Horrell was hired on the recommendation of King, with whom he had previously worked. (ECF No. 24, ¶ 124; ECF No. 40, ¶ 26).

19. Humphrey, King, RSS, and the K&G Entities then began to conduct business in accordance with the Partnership Agreement, and King and Humphrey "met regularly to discuss the business," with Humphrey "[making] sure that King

was fully apprised of the business's finances [] and, at Humphrey's direction, each week RSS staff emailed King copies of all payments, invoices, lien waivers, payroll, and related documents received during the week." (ECF No. 24, ¶ 127; ECF No. 40, ¶ 29).

20. Business operations ensued from 2017 until 2025, with the business resulting in "significant distributions" to King and Humphrey. (ECF No. 24, ¶¶ 127, 130; ECF No. 40, ¶¶ 29, 32).

21. However, in 2020, while still acting as Operations Manager of RSS, Horrell began the process of obtaining his own contracting license, with the permission and knowledge of Humphrey and King. (ECF No. 24, ¶ 132; ECF No. 40, ¶ 34). Despite assuring Humphrey that he would not use the license to compete with RSS for work, Horrell began using his license for Tideline, competing with the RSS entities with King's (but not Humphrey's) knowledge. (ECF No. 24, ¶¶ 133–36; ECF No. 40, ¶¶ 34–38).

22. Rather than informing Humphrey of Horrell's actions, King allegedly "kept the information to himself and began to discuss with Horrell a plan to secretly shift the utility subcontracting business away from RSS and to Tideline." (ECF No. 24, ¶ 137; ECF No. 40, ¶ 39).

23. King allegedly caused the K&G Entities to send utility contracting jobs to Tideline as opposed to the RSS entities, in violation of the Partnership Agreement. (ECF No. 24, ¶ 141; ECF No. 40, ¶ 43). Further, when Humphrey raised concerns about Horrell and Tideline's work, King represented to Humphrey that Tideline was

"only performing jobs that were too small for RSS to bid on anyway," and Horrell similarly promised that "Tideline would only do small jobs and would not compete for work that RSS could do and historically had done." (ECF No. 24, ¶ 142; ECF No. 40, ¶ 44). As a result, Humphrey allowed Horrell to keep his position as Operations Manager and continued with business as usual. (ECF No. 24, ¶ 144; ECF No. 40, ¶ 47).

24. However, Humphrey and RSS allege that these statements were knowingly false and that the K&G Entities, under King's direction, were sending work that was promised to RSS under the Partnership Agreement to Tideline instead. (ECF No. 24, ¶ 143; ECF No. 40, ¶¶ 45–46).

25. Moreover, Horrell recruited RSS employees and crews to leave RSS and join Tideline, also sending utility subcontracting work to Tideline rather than RSS. King facilitated the plan by encouraging existing clients, including one of RSS's largest clients, to transition to Tideline. (ECF No. 24, ¶¶ 145–46; ECF No. 40, ¶¶ 48–49).

26. Tideline performed work for a number of the K&G Entities' projects that otherwise would have been designated to RSS under the Partnership Agreement, including jobs from prior RSS clients. (ECF No. 24, ¶ 152; ECF No. 40, ¶ 57).

27. Eventually, in late 2023, Humphrey became aware of the diverted business opportunities after clients began reaching out to Humphrey and informing him of King and Horrell's actions and after payments and other documents were errantly directed to RSS instead of Tideline. (ECF No. 24, ¶¶ 147(a)–(f); ECF No. 40,

¶¶ 52(a)–(f)).

28. In January of 2024, Humphrey fired Horrell from his position with RSS, after which Horrell solicited all (and convinced some) of the RSS work crews to leave RSS for Tideline. (ECF No. 24, ¶¶ 149–51; ECF No. 40, ¶¶ 54–56).

29. Ultimately, after this litigation commenced, Humphrey and RSS brought the counterclaims at issue with the present motion. RSS asserts counterclaims against King for (i) breach of contract, (ii) breach of fiduciary duty, (iii) fraud, (iv) alleged unfair or deceptive trade practices under Chapter 75, and (v) civil conspiracy, while Humphrey asserts counterclaims against King for (i) breach of partnership agreement, (ii) breach of fiduciary duty, and (iii) fraud.

30. King has moved to dismiss each of the counterclaims, (ECF Nos. 41, 42), and the Court addresses each motion in turn.

II. ANALYSIS

1. King's Motion to Dismiss RSS's Counterclaims

A. Breach of Contract

31. With its first cause of action against King, RSS alleges that King (and the K&G Entities) breached the Partnership Agreement by diverting work to Tideline, failing to subcontract utility contracting work received by the K&G Entities to RSS, attempting to damage RSS's business, and breaching the implied covenant of good faith and fair dealing. (ECF No. 40, ¶¶ 63–67).

32. King argues in support of his motion that RSS lacks standing to bring a claim for a breach of the Partnership Agreement, contending that no such oral

agreement exists, and that any claims must be brought by the partnership. (ECF No. 43 at 3–4).

33. To state a claim for breach of contract, a plaintiff generally must allege the "(1) existence of a valid contract and (2) breach of the terms of the contract." *Highland Paving Co. v. First Bank*, 227 N.C. App. 36, 40 (2013) (citations and internal quotation marks omitted). Further, to plead a breach of contract on the basis of being a third-party beneficiary, "a complainant must show: '(1) the existence of a contract between two other persons; (2) that the contract was valid and enforceable; and (3) that the contract was entered into for his direct, and not incidental, benefit.'" *Davis & Taft Architecture, P.A. v. DRR-Shadowline, LLC*, 268 N.C. App. 327, 332 (2019) (citation omitted).

34. Here, under either theory and construing the counterclaims in the light most favorable to the pleader, RSS has alleged facts sufficient to state a breach of contract claim on its own, individual behalf. RSS does not assert claims belonging to the parties' nominal "partnership" but instead asserts counterclaims arising and inuring to its benefit as a counterparty (or at least third-party beneficiary) to the Partnership Agreement.

35. Specifically, RSS alleges that there was a contract (the Partnership Agreement), that RSS was a party to that contract, and that King (and the K&G Entities) breached the contract by diverting work to Tideline, failing to subcontract utility contracting work received by the K&G Entities to RSS, attempting to damage RSS's business, and breaching the implied covenant of good faith and fair dealing.

(ECF No. 40, ¶¶ 22, 63–67); *Brady v. Prince,* 2015 NCBC LEXIS 5, at *18 (N.C. Super. Ct. Jan. 7, 2015); *see also Williams v. Jones*, 322 N.C. 42, 52 (1988) (addressing validity of oral contracts).

36. Though it also alleges that it was a party to the Partnership Agreement, (ECF No. 40, ¶ 64), RSS primarily pleads that "King and Humphrey" entered into the Partnership Agreement, with RSS being bound to the "obligations" (but not specifically the benefits) of the contract. (ECF No. 40, ¶¶ 21–22).

37. Even if the Partnership Agreement were only between King and Humphrey, however, RSS pleads sufficient facts to state a breach of contract claim under a third-party beneficiary theory of liability. The same facts above allege a valid and binding agreement between at least King and Humphrey—parties other than RSS.

38. Further, the counterclaims allege facts indicating that RSS is the intended beneficiary of the Partnership Agreement, as King and Humphrey agreed that RSS (an entity they owned) was to receive all of the utility subcontracting business that they identified. (ECF No. 40, ¶ 21(f)); *see Davis*, 268 N.C. App. at 332; *Woolard v. Davenport*, 166 N.C. App. 129, 136–37 (2004).

39. RSS also plainly alleges that it was directly harmed by King's purported breach of the agreement at issue, causing lost income and profits, lost goodwill, and reduction of RSS's business. (ECF No. 40, ¶¶ 66–67).

40. Accordingly, the Court **DENIES** King's motion to dismiss RSS's first cause of action for breach of contract.

B. Breach of Fiduciary Duty

41. As to its second cause of action against King, RSS alleges that King breached his fiduciary duties as a corporate officer of RSS by, among other things, actively competing with RSS, failing to disclose the competitive conduct, and actively concealing and lying about his actions. (ECF No. 40, ¶¶ 68–75).

42. King argues that RSS has not adequately pled its cause of action with particularity. (ECF No. 43 at 20–21).

43. However, allegations of a breach of fiduciary duty are not held to the same heightened standard of pleading required to state a claim for fraud. *See McCarron v. Howell*, 2024 NCBC LEXIS 144, at *7 (N.C. Super. Ct. Nov. 19, 2024) ("[C]laims for breach of fiduciary duty are not held to a heightened pleading standard and instead must only comply with North Carolina's liberal notice pleading standard."); *Sivadhanam v. 7 Hills Learning, LLC*, 2021 NCBC LEXIS 74, at *21 (N.C. Super. Ct. Sept. 8, 2021) (applying notice pleading standard to analyze a breach of fiduciary duty claim).

44. "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) (citation omitted).

45. "Under North Carolina law corporate officers must act in a manner that they reasonably believe to be in the best interests of the corporation." *Bandy v. A*

Perfect Fit for You, Inc., 2018 NCBC LEXIS 21, at *14 (N.C. Super. Ct. Mar. 7, 2018) (citing N.C. Gen. Stat. § 55-8-42(a)); *see also Green v. Freeman*, 367 N.C. 136, 141 (2013) (recognizing that corporate officers owe fiduciary duties to their corporation); *Assur. Grp., LLC v. Shackelford*, 2026 NCBC LEXIS 51, at *9 (N.C. Super. Ct. Mar. 3, 2026) (same).

46. In its counterclaims, RSS alleges that King was a corporate officer (Vice President and Secretary) at all relevant times, such that King owed a fiduciary duty to RSS. (ECF No. 40, ¶¶ 18, 21(d), 28, 31, 69).

47. Further, RSS alleges that King breached that duty in various ways, including by diverting business from RSS and to another entity, failing to disclose Horrell's competition with RSS, affirmatively concealing Horrell's and Tideline's competition, and conspiring with Horrell to divert business from RSS (including from existing RSS clients), among other things. (ECF No. 40, ¶¶ 36–61, 73(a)–(g), 74).

48. Considering the allegations of the counterclaims in the light most favorable to the non-moving pleader, RSS has adequately alleged a claim for breach of fiduciary duty against King, and the Court therefore **DENIES** King's motion to dismiss as to RSS's second cause of action for breach of fiduciary duty.

C. Fraud

49. For its next cause of action against King, RSS alleges that King made multiple misrepresentations to, and concealments from, RSS. (ECF No. 40, ¶ 88). In support of his motion, King argues that RSS has failed to adequately plead its allegations of fraud with the requisite specificity. (ECF No. 43 at 2).

50. "The essential elements of fraud are: '(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party.'" *Rowan Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 332 N.C. 1, 17 (1992) (citation omitted). "Additionally, reliance on alleged false representations must be reasonable." *Sullivan v. Mebane Packaging Grp., Inc.*, 158 N.C. App. 19, 26 (2003) (citation omitted).

51. Whether based upon an affirmative misrepresentation or concealment of a material fact, a cause of action for fraud must be pleaded with particularity. *Trull v. Cent. Carolina Bank & Tr. Co.*, 117 N.C. App. 220, 224 (1994) (citations omitted); *see also Mary Annette, LLC v. Crider*, 2023 NCBC LEXIS 28, at *12 (N.C. Super. Ct. Feb. 23, 2023). Particularity generally requires that the pleading "allege the time and occasion of the misrepresentation or concealment of material fact and the individual who made the misrepresentation or concealment[.]" *Trull*, 117 N.C. App. at 224. It also requires pleading the place of the alleged fraud, particularly in the instance of a misrepresentation. *See Roberson v. TruPoint Bank*, 281 N.C. App. 45, 50 (2021) (quoting *Coley v. Bank*, 41 N.C. App. 121, 125 (1979)); *Alamance Family Practice, P.A. v. Lindley*, 2018 NCBC LEXIS 83, at *31 (N.C. Super. Ct. Aug. 14, 2018).

52. In its counterclaims, RSS's fraud cause of action is premised on six alleged circumstances, some of which involve purported affirmative misrepresentations and some of which involve purported concealments or omissions:

> (a) Upon learning that Horrell, RSS's Operations Manager, was actively competing with RSS, King concealed this information and did not inform Humphrey, his partner;
> (b) When Humphrey learned of Horrell's activities and spoke with King about them, King deliberately misrepresented the scope of those activities, saying that Horrell would only do small jobs RSS would not when King knew that was not true;
> (c) King concealed and did not disclose that K&G was sending utility subcontracting jobs to Tideline in violation of the Partnership Agreement;
> (d) During the conversation about Horrell and Tideline, King falsely told Humphrey that K&G would not send any utility subcontracting business to Tideline, when King knew that K&G was already doing so and when King planned to continue;
> (e) When a bid for a subcontract to Tideline was accidentally sent to RSS (to the best of Humphrey's recollection, the bid was for Grove Walk in Grove, NC), King falsely told Humphrey that it was merely a mistake and that the work, if obtained, would go to RSS;
> (f) In or around April 2024, King falsely told Humphrey that K&G had lost a bid from Warr when, in fact, K&G had obtained the bid but sent the work to Tideline.

(ECF No. 40, ¶¶ 88(a)–(f)).

53. For the events described in paragraphs 88(a)–(e), it appears from the counterclaims that these events generally occurred beginning around late 2021 and continued through late 2023 or early 2024. (*E.g.*, ECF No. 40, ¶¶ 34, 36, 54–56).

54. Though the counterclaims allege that King "was aware" of Horrell's competition and "knew that Humphrey was unaware of this important fact," (ECF No. 40, ¶ 38), the counterclaims do not clearly allege when King became aware of this alleged fact or, thus, when he began concealing the competition at issue. (*See generally* ECF No. 40).

55. Similarly, though RSS alleges that "King deliberately misrepresented the scope of those activities, saying that Horrell would only do small jobs RSS would not when King knew that was not true," (ECF No. 40, ¶ 88(b)), the references to such a discussion in the counterclaims fail to identify any specific date (or even a general date) on which such a misrepresentation occurred. (*See generally* ECF No. 40, ¶¶ 35, 44–46, 84(c), 88(b), 97(b)).

56. Further, RSS points to a discussion that Humphrey had with King "about Horrell and Tideline." (ECF No. 40, ¶ 88(d)). The date of that discussion, however, is unspecified in the counterclaims. Rather, RSS alleges that the conversation occurred at an unspecified time "[n]ot long after King and Horrell entered into their conspiracy[.]" (ECF No. 40, ¶ 44 ("Not long after King and Horrell entered into their conspiracy, Humphrey had a discussion with King about Horrell's business"—i.e., Tideline)).

57. As RSS concedes in its counterclaim, however, it does not know—and thus does not allege—"the precise date when King, Horrell, the K&G Entities, and Tideline agreed together to enter into the conspiracy[.]" (ECF No. 40, ¶ 41).

58. The Business Court and federal courts have at various times suggested that "fraudulent concealment or fraud by omission 'is by its very nature, difficult to plead with particularity[.]'" *E.g.*, *Tillery Envtl. LLC v. A&D Holdings, Inc.*, 2018 NCBC LEXIS 13, at *21–22 (N.C. Super. Ct. Feb. 9, 2018) (quoting *Breeden v. Richmond Cmty. Coll.*, 171 F.R.D. 189, 195 (M.D.N.C. 1997)). In doing so, the Business Court has suggested that fraud by concealment may be pleaded by pleading

facts sufficient to demonstrate, among other things, "the event that triggered the duty to speak or the general time period over which the relationship arose and the fraud occurred." *Id.* (citations omitted).

59. However, the North Carolina Court of Appeals has confirmed that the particularity requirement continues to apply and that a party alleging fraud "must *specifically allege the time and occasion of* the misrepresentation *or concealment* of *material fact* and the individual who made the misrepresentation or concealment in order to satisfy the requirements of Rule 9(b). *Trull*, 117 N.C. App. at 224 (citing *Coley,* 41 N.C. App. at 125) (emphasis added). The language of *Tillery* and similar cases does not displace the rule enunciated in *Trull*, and the Court therefore follows binding appellate precedent.

60. As to the allegation of paragraph 88(f) of the counterclaims (and related allegations throughout the counterclaims), RSS asserts that "[i]n or around April 2024, King falsely told Humphrey that K&G had lost a bid from Warr when, in fact, K&G had obtained the bid but sent the work to Tideline." (ECF No. 40, ¶ 88(f)); *Alamance Family Practice*, 2018 NCBC LEXIS 83, at *31 (holding that "the fall of 2017" was specific enough pleading of time for a fraud claim).

61. However, RSS fails to plead the place of the alleged fraud with respect to those circumstances. (*See, e.g.*, ECF No. 40, ¶¶ 57–62, 88(f)); *Alamance Family Practice*, 2018 NCBC LEXIS 83, at *31–32 (determining that "failure to allege the place where [the] alleged misrepresentations were made runs afoul of Rule 9(b)'s specificity requirement" (citation omitted)).

62. Thus, construing the allegations of the counterclaims in the light most favorable to RSS, and considering the mix of alleged affirmative misrepresentations, concealments, and omissions, the Court determines that, as to the allegedly fraudulent conduct referenced in paragraphs 88(a)–(f) of the counterclaims, RSS has failed to plead the alleged conduct with the requisite particularity. At the same time, it appears likely that RSS may be able to more specifically plead at least some of the circumstances at issue if the cause of action is dismissed without prejudice.

63. Accordingly, the Court **GRANTS IN PART** King's motion to dismiss and **DISMISSES WITHOUT PREJUDICE** RSS's fraud cause of action against King.

D. Chapter 75 Cause of Action

64. RSS alleges next that King engaged in unfair or deceptive trade practices in violation of Chapter 75, through his alleged fraudulent misrepresentations and his breaches of fiduciary duty to RSS. (ECF No. 40, ¶¶ 112–17).

65. To state a claim for relief under Chapter 75 of the North Carolina General Statutes for alleged unfair or deceptive conduct, "a plaintiff must show: (1) defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that plaintiff was injured thereby." *McKinnon v. CV Indus.*, 213 N.C. App. 328, 340 (2011) (citations omitted); N.C. Gen. Stat. § 75-1.1.

66. Here, RSS's Chapter 75 cause of action against King is based primarily on its allegations of breach of fiduciary duty and fraud, (ECF No. 40, ¶ 115), each of which may support a Chapter 75 claim if otherwise properly pleaded. *Hardy v. Toler*, 288 N.C. 303, 309 (1975) ("Proof of fraud would necessarily constitute a violation of

the prohibition of unfair and deceptive acts[.]"); *Sara Lee Corp. v. Carter*, 351 N.C. 27, 32–34 (1999) (explaining that a breach of fiduciary duty can form the basis for a Chapter 75 violation).

67. However, "North Carolina courts have previously concluded that when the UDTP claim rests solely upon other claims [that] . . . the court determines should be dismissed, the UDTP claim must fail as well." *Charah, LLC v. Sequoia Servs., LLC*, 2020 NCBC LEXIS 52, at *19 (N.C. Super. Ct. Apr. 17, 2020) (collecting cases) (citations omitted); *Amerigas Propane, L.P. v. Coffey*, 2015 NCBC LEXIS 98, at *40 (N.C. Super. Ct. Oct. 15, 2015); *see also Bite Busters, LLC v. Burris*, 2021 NCBC LEXIS 26, at *26–28 (N.C. Super. Ct. Mar. 25, 2021); *Prometheus Grp. Enters., LLC v. Gibson,* 2023 NCBC LEXIS 42, at *37–38 (N.C. Super. Ct. Mar. 21, 2023); *Evergreen Builder Sols., LLC v. Taylor*, 2025 NCBC LEXIS 174, at *28–29 (N.C. Super. Ct. Dec. 29, 2025).

68. Thus, to the extent RSS's Chapter 75 cause of action hinges on allegedly fraudulent conduct, dismissal is appropriate as set forth above. *Combs & Assocs., Inc. v. Kennedy*, 147 N.C. App. 362, 374 (2001); *Charah, LLC*, 2020 NCBC LEXIS 52, at *19; *Amerigas*, 2015 NCBC LEXIS 98, at *40; *Bite Busters, LLC*, 2021 NCBC LEXIS 26, at *26–28; *Prometheus,* 2023 NCBC LEXIS 42, at *11; *Evergreen*, 2025 NCBC LEXIS 174, at *28–29. Just as above, however, the Court will dismiss the cause of action without prejudice.

69. To the extent that the Chapter 75 cause of action is predicated on the same conduct as RSS's breach of fiduciary duty, however, RSS has adequately pleaded facts

to support a Chapter 75 claim, particularly where the conduct at issue involves diverting business to Tideline (a third party) and siphoning existing customers, all of which is in or affecting commerce and which goes well beyond a mere internal business dispute. *See Sara Lee*, 351 N.C. at 33.

70. Therefore, as to RSS's Chapter 75 cause of action against King, the Court **GRANTS IN PART** King's motion and **DISMISSES WITHOUT PREJUDICE** RSS's Chapter 75 cause of action to the extent it is premised upon allegations of fraud and **DENIES IN PART** King's motion to the extent that it is premised upon King's alleged breach of fiduciary duty.

E. Civil Conspiracy

71. Finally, RSS alleges that King entered a civil conspiracy with the K&G Entities, Horrell, and Tideline to divert business opportunities away from RSS. (ECF No. 40, ¶¶ 118–123).

72. "It is well established that there is not a separate civil action for civil conspiracy in North Carolina . . . [and] [i]nstead, civil conspiracy is premised on the underlying act." *Piraino Bros., LLC v. Atl. Fin. Grp., Inc.*, 211 N.C. App. 343, 350 (2011) (internal quotations and citations omitted).

73. However, a person or entity may be made a party to an action and ultimately held liable if the claimant adequately demonstrates a conspiracy to commit tortious conduct. Thus, "[t]o create civil liability for conspiracy there must have been a wrongful act resulting in injury to another committed by one or more of

the conspirators pursuant to the common scheme and in furtherance of the objective." *Krawiec v. Manly*, 370 N.C. 602, 613 (2018) (citations omitted).

74. "The elements of a civil conspiracy are: (1) an agreement between two or more individuals; (2) to do an unlawful act or to do a lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4) pursuant to a common scheme." *Privette v. Univ. of N.C.*, 96 N.C. App. 124, 139 (1989) (citations omitted).

75. Here, RSS alleges that the underlying causes to support the theory of liability for civil conspiracy are breach of fiduciary duty, fraud, and violations of Chapter 75. (ECF No. 40, ¶ 122).

76. As with the Chapter 75 claim, to the extent the alleged civil conspiracy is premised on the dismissed fraud cause of action, it fails and is appropriately dismissed. *See Piraino Bros.*, 211 N.C. App. at 350; *USA Trouser, S.A. de C.V. v. Williams*, 258 N.C. App. 192, 201 (2018) ("A civil conspiracy claim must be based on an adequately pled underlying claim.").

77. However, as RSS has adequately alleged claims for breach of fiduciary duty and violations of Chapter 75 (as arising from the breach of fiduciary duty claim), these claims can serve as the "requisite underlying" claims to support a theory of liability for civil conspiracy. *Am. Air Filter Co., Inc. v. Price*, 2017 NCBC LEXIS 55, at *32 (N.C. Super. Ct. June 26, 2017).

78. RSS alleges that King and Horrell, individually and also on behalf of the K&G Entities and Tideline, respectively, "agreed together to wrongfully use their

positions of authority and access inside of RSS to shift the utility subcontracting business away from RSS to Tideline, in violation of the terms of the Partnership agreement." (ECF No. 40, ¶ 40). Further, RSS alleges that King took overt acts resulting in harm to RSS, including by causing the K&G Entities to divert jobs directly to Tideline, reducing the flow of business to RSS. (ECF No. 40, ¶¶ 42–43).

79. Thus, as to RSS's civil conspiracy theory of liability, the Court **GRANTS IN PART** King's motion and **DISMISSES WITHOUT PREJUDICE** RSS's putative cause of action to the extent it is premised upon allegations of fraud and **DENIES IN PART** King's motion to the extent that it is premised upon King's alleged breach of fiduciary duty, violations of Chapter 75, and otherwise. *Am. Air Filter Co.*, 2017 NCBC LEXIS 55, at *32; *Sandhills Home Care, L.L.C. v. Companion Home Care-Unimed, Inc.*, 2016 NCBC LEXIS 61, at *58–59 (N.C. Super. Ct. Aug. 1, 2016); *JCG & Assocs. LLC v. Disaster Am. USA LLC*, 2022 NCBC LEXIS 156, at *22 (N.C. Super. Ct. Dec. 12, 2022).

2. <u>King's Motion to Dismiss Humphrey's Counterclaims</u>

80. The Court next addresses King's motion to dismiss Humphrey's counterclaims, the alleged facts of which largely mirror the allegations asserted in RSS's counterclaims. (*Compare* ECF No. 40 with ECF No. 24).

81. Humphrey asserts causes of action against King for (i) breach of partnership agreement, (ii) breach of fiduciary duty, and (iii) fraud.

A. Breach of Partnership Agreement

82. Humphrey alleges that King breached the Partnership Agreement by, among other things, causing the K&G Entities to subcontract utility contracting work to Tideline as opposed to sending all work to RSS and violating the implied covenant of good faith and fair dealing. (ECF No. 24, ¶¶ 158–62).

83. In support of his, King argues that Humphrey cannot assert such a claim, which King believes should instead be asserted by the purported partnership. (ECF No. 43 at 21–22).

84. However, Humphrey adequately alleges the existence of a valid oral agreement directly between himself and King, the terms of that agreement, and breaches of that agreement, including by "[f]ailing to cause K&G to subcontract all utility contracting work received to RSS," "[s]ending utility work to Tideline," and "[a]ctively seeking to damage the business of RSS." (ECF No. 24, ¶¶ 119(a)–(g); 160(a)–(d)); *Williams,* 322 N.C. at 52; *Highland Pavin*g, 227 N.C. App. at 40; *Brady*, 2015 NCBC LEXIS 5, at *18.

85. Though certain of the harm alleged might ultimately be harm to RSS, Humphrey alleges the existence of a contract that is between at least himself and King, (ECF No. 24, ¶ 160), the terms of which appear to contemplate that RSS will be at least a third-party beneficiary of the contract, if not a party directly, and alleges breaches of the contract that resulted in harm to Humphrey as well.

86. As pleaded, the facts sufficiently state a claim for breach of contract that Humphrey may personally pursue.

87. Therefore, King's motion to dismiss Humphrey's counterclaim for breach of contract (or breach of the Partnership Agreement) is **DENIED**.

B. Breach of Fiduciary Duty

88. Humphrey next alleges a breach of fiduciary duty by King, asserting that the Partnership Agreement created a valid partnership between King and Humphrey and that therefore each owed the other fiduciary duties as partners. (ECF No. 24, ¶¶ 163–72).

89. Once again, King argues that any alleged fiduciary duty belongs only to the putative partnership, not Humphrey, and that the cause of action is effectively a repackaged fraud claim that does not meet a heightened pleading standard. (ECF No. 43 at 19–20).

90. As addressed above, breach of fiduciary duty claims are not held to the same heightened standard of pleading as fraud claims. *See McCarron*, 2024 NCBC LEXIS 144, at *7; *Sivadhanam,* 2021 NCBC LEXIS 74, at *21. Regardless, Humphrey has pleaded sufficient facts in his counterclaims to state a standalone cause of action for breach of fiduciary duty, particularly where there are express allegations that business opportunities were diverted.

91. "For a breach of fiduciary duty to exist, there must first be a fiduciary relationship between the parties." *Dalton v. Camp*, 353 N.C. 647, 651 (2001) (citation omitted).

92. "It is elementary that the relationship of partners is fiduciary and imposes on them the obligation of the utmost good faith in their dealings with one another in

respect to partnership affairs. Each is the confidential agent of the other, and each has a right to know all that the others know, and each is required to make full disclosure of all material facts within his knowledge in any way relating to the partnership affairs." *Casey v. Grantham*, 239 N.C. 121, 124–25 (1954); *Zagaroli v. Neill*, 2018 NCBC LEXIS 25, at *21 (N.C. Super. Ct. Mar. 28, 2018) ("The relationship of partners is fiduciary in nature." (citation omitted)).

93. A partnership is "an association of two or more persons to carry on as co-owners of a business for profit." N.C. Gen. Stat. § 59-36(a). "To prove existence of a partnership, an express agreement is not required; the intent of the parties can be inferred by their conduct and an examination of all of the circumstances." *Compton v. Kirby*, 157 N.C. App. 1, 10–11 (2003) (quoting *Wike v. Wike*, 115 N.C. App. 139, 141 (1994)).

94. Here, Humphrey adequately alleges that he and King entered an oral agreement to form a partnership and business for profit: namely, that "King and Humphrey verbally agreed together to enter for profit into a new, jointly-owned business venture to perform utility subcontracting work." (ECF No. 24, ¶¶ 119, 119(a)–(g)). He further alleges that he and King undertook acts to further the partnership, including by "conduct[ing] business in accordance with the Partnership Agreement," meeting to discuss business, talking about potential jobs, and discussing profit distribution. (ECF No. 24, ¶¶ 123, 125, 127, 167).

95. In turn, Humphrey asserts that King breached the fiduciary duty by, among other things, "[a]ssisting Tideline, a competitor, to take away the business of

RSS," "[a]ttempting to bind RSS to a contract that King knew RSS could not perform with the goal of causing RSS, and Humphrey, financial harm," and diverting business from the partnership. (ECF No. 24, ¶¶ 170(a)–(g)).

96. Humphrey also alleges that he, personally, suffered harm as a result of King's conduct and that King owed a fiduciary duty to Humphrey personally and directly as a partner, rather than the putative "partnership" as a whole. (*E.g.*, ECF No. 24, ¶¶ 169–70). Indeed, "there exists no standing for a general partner to bring a derivative claim against another general partner," *Cutter v. Vojnovic,* 388 N.C. 1, 10 (2025), such that a putative derivative claim on behalf of the partnership would be inappropriate.

97. Thus, Humphrey has adequately pleaded facts to state a claim for breach of fiduciary duty, and the Court therefore **DENIES** King's motion to dismiss the breach of fiduciary duty cause of action.

C. Fraud

98. Finally, Humphrey identifies six purported circumstances that he contends constitute fraud, each of which is substantively the same as the allegations raised by RSS in its counterclaims. (ECF No. 24, ¶¶ 174(a)–(f); *compare* ECF No. 24, ¶¶ 174(a)–(f), *with* ECF No. 40, ¶¶ 88(a)–(f)).

99. As with RSS's counterclaims, King argues that Humphrey has failed to meet the heightened pleading standards for fraud. (ECF No. 43 at 10). The Court agrees for the same reasons set forth above as to RSS. In short, Humphrey pleads broad information as to King's alleged misconduct, but it is not pleaded with the

requisite particularity. *Trull*, 117 N.C. App. at 224 (citing *Coley,* 41 N.C. App. at 125); *Alamance Family Practice*, 2018 NCBC LEXIS 83, at *31–32.

100. As with RSS, however, it appears reasonably likely that Humphrey may be able to more specifically plead at least some of the circumstances at issue if the cause of action is dismissed without prejudice.

101. Accordingly, the Court **GRANTS IN PART** King's motion to dismiss and **DISMISSES WITHOUT PREJUDICE** Humphrey's fraud cause of action against King.

III. CONCLUSION

102. Thus, the Court **GRANTS IN PART** and **DENIES IN PART** King's motions to dismiss as set forth in this Order and Opinion, with the dismissals being without prejudice in the exercise of the Court's discretion.

SO ORDERED, this 23rd day of November 2026.

/s/ Matthew T. Houston
Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases