McCarron v. Howell, 2025 NCBC Order 82.

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| STATE OF NORTH CAROLINA | IN THE GENERAL COURT OF JUSTICE<br>SUPERIOR COURT DIVISION |
| UNION COUNTY | 24CVS001900-890 |
| SHAUN MCCARRON,<br>Plaintiff,<br>v.<br>HAROLD HOWELL,<br>Defendant. | **ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT AND TO ADD NECESSARY PARTIES** |

**THIS MATTER** is before the Court on Plaintiff Shuan McCarron's First Motion for Leave to Amend Complaint and to Add Necessary Parties ("Motion to Amend" or the "Motion," ECF No. 34).

**THE COURT**, having considered the Motion, the parties' briefs, the arguments of counsel, the applicable law, and all appropriate matters of record, **CONCLUDES** that the Motion to Amend should be **GRANTED** for the reasons set forth below.

## FACTUAL AND PROCEDURAL BACKGROUND

1. A more thorough recitation of the factual and procedural background in this case can be found in this Court's prior orders.

2. In a nutshell, McCarron has brought this lawsuit alleging that in 2022 he obtained a valid civil judgment against Risk Solutions, Inc. ("Risk Solutions")—a North Carolina corporation under the ownership, management, and control of Defendant Harold Howell. McCarron contends that prior to—and shortly after—obtaining the judgment, Howell began engaging in a scheme of fraudulent transfers

designed to conceal Risk Solutions's assets, which has prevented McCarron from being able to execute on the judgment he obtained.

3. McCarron initiated this lawsuit by filing a Complaint against Howell and three of his business entities—Spartan Corporate Advisors, Inc. ("SCA"), US Captive Group, LLC, and Risk Solutions (together with Howell, "Defendants")—in Union County Superior Court on 14 June 2024. (ECF No. 3.)

4. In the Complaint, McCarron asserted claims against Howell and Risk Solutions for breach of fiduciary duty and constructive fraud and claims against all Defendants for fraudulent transfer, unfair and deceptive trade practices ("UDTP"), and facilitation of fraud and civil conspiracy.

5. On 22 August 2024, Defendants filed a Motion to Dismiss seeking dismissal of each of the claims asserted against them pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. (ECF No. 10)

6. After full briefing and a hearing, the Court entered an Order and Opinion on Defendants' Motion to Dismiss Plaintiff's Complaint (ECF No. 27) on 19 November 2024 and dismissed (1) McCarron's claims against Risk Solutions for breach of fiduciary duty and constructive fraud with prejudice and (2) McCarron's claims for fraudulent transfer, UDTP, and facilitation of fraud and civil conspiracy against each of the Defendants without prejudice. *See McCarron v. Howell*, 2024 NCBC LEXIS 144 (N.C. Super. Ct. Nov. 19, 2024).

7. Since that time, McCarron's only surviving claims have been for breach of fiduciary duty and constructive fraud against Howell.

8. On 29 August 2025, McCarron filed the present Motion to Amend and a copy of his Proposed Amended Complaint (ECF No. 35 [sealed]).

9. In the Proposed Amended Complaint, McCarron seeks to (1) add new factual allegations to support his existing claims for breach of fiduciary duty and constructive fraud against Howell; (2) re-plead his claims for fraudulent transfer, UDTP, and facilitation of fraud and civil conspiracy against Howell, SCA, and Risk Solutions (supported by more detailed factual allegations);[1] and (3) assert new claims against Howell's wife—Heather Howell—for fraudulent transfer, UDTP, and facilitation of fraud and civil conspiracy.

10. The Motion to Amend came on for a hearing before the Court on 30 October 2025 via Webex, at which McCarron and Howell were represented by counsel.

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

## LEGAL STANDARD

12. Rule 15 of the North Carolina Rules of Civil Procedure states in pertinent part as follows:

> A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not yet been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

N.C. R. Civ. P. 15(a).

[1] As noted above, these specific claims were previously dismissed by the Court without prejudice.

13. Our Supreme Court has held that "[t]here is no more liberal canon in the [R]ules than that leave to amend shall be freely given when justice so requires." *Vaughan v. Mashburn*, 371 N.C. 428, 434 (2018) (cleaned up). "This liberal amendment process under Rule 15 complements the concept of notice pleading embodied in Rule 8 and reflects the legislature's intent that decisions be had on the merits and not avoided on the basis of mere technicalities." *Id.* (cleaned up).

14. Nevertheless, "the [R]ules still provide some protection for parties who may be prejudiced by liberal amendment." *Henry ex rel. Estate of Henry v. Deen*, 310 N.C. 75, 82 (1984) (cleaned up). "Reasons justifying denial of an amendment include: (1) undue delay, (2) bad faith, (3) undue prejudice, (4) futility of amendment, and (5) repeated failure to cure defects by previous amendments." *Howard v. IOMAXIS, LLC*, 2021 NCBC LEXIS 116, at *17 (N.C. Super. Ct. Dec. 22, 2021) (cleaned up). "The burden is upon the opposing party to establish that [it] would be prejudiced by the amendment." *Vitaform, Inc. v. Aeroflow, Inc.*, 2021 NCBC LEXIS 79, at *11 (N.C. Super. Ct. Sept. 16, 2021) (cleaned up).

15. Motions to amend are "addressed to the discretion of the trial court." *Vaughan*, 371 N.C. at 433 (cleaned up).

## ANALYSIS

16. As noted above, McCarron has sought leave to amend his Complaint to include additional factual allegations in support of his existing claims, to re-plead claims that this Court has previously dismissed without prejudice, and to assert claims against a new Defendant—Howell's wife.

17. Howell opposes the Motion to Amend on two grounds—undue delay and undue prejudice. The Court will address each of these arguments in turn.

## I. Undue Delay

18. "[A] trial court may appropriately deny a motion for leave to amend on the basis of undue delay where a party seeks to amend its pleading after a significant period of time has passed since filing the pleading and where the record or party offers no explanation for the delay." *Rabon v. Hopkins*, 208 N.C. App. 351, 354 (2010) (cleaned up). "In deciding if there was undue delay, the trial court may consider the relative timing of the proposed amendment in relation to the progress of the lawsuit." *Draughon ex rel. Estate of Draughon v. Harnett Cnty. Bd. of Educ.*, 166 N.C. App. 464, 467 (2004) (cleaned up).

19. Howell asserts that the Motion should be denied because McCarron has unduly delayed in seeking to amend the Complaint. In support of this argument, Howell points to the fact that the Complaint was filed on 14 June 2024, yet McCarron did not file the present Motion until 29 August 2025—more than fourteen months after the original Complaint was filed.

20. On a number of occasions, North Carolina courts have denied motions to amend that were filed late in the course of the litigation. *See Wilkerson v. Duke University*, 229 N.C. App. 670, 679 (2013) (affirming denial of a motion for leave to amend brought "thirteen months after [plaintiff] filed the initial complaint and only five days before the hearing on defendants' motion for summary judgment"); *Wright v. Com. Union Ins. Co.*, 63 N.C. App. 465, 469 (affirming denial of a motion to amend

when "the plaintiffs sought to amend their complaint fourteen months after the complaint was filed, a year after defendant's answer was filed, and a month after defendant's motion for summary judgment"); *see also Alkemal Sing. PTE Ltd. v. DEW Glob. Fin., LLC*, 2017 NCBC LEXIS 112, at *31–32 (N.C. Super. Ct. Dec. 12, 2017) (collecting additional cases).

21. "When considering whether to disallow an amendment because of undue delay, the Court focuses on the moving party's reason for not bringing the claim earlier." *Aspen Specialty Ins. v. Nucor Corp.*, 2022 NCBC LEXIS 134, at *25 (N.C. Super. Ct. Nov. 8, 2022) (cleaned up).

22. Here, McCarron asserts that he is only now seeking leave to amend the Complaint because the information that forms the basis of his proposed amendments was only recently obtained through discovery. Specifically, McCarron contends that the new allegations in the Proposed Amended Complaint are based on financial documents that were first produced in response to third-party subpoenas between May and June 2025 along with Howell's testimony at his deposition—which was taken on 10 July 2025.

23. In response, Howell contends that McCarron's failure to conduct a diligent inquiry to identify key financial documents prior to this late stage of the litigation does not excuse his delay in seeking leave to amend.

24. Having thoroughly reviewed the record and the parties' arguments, the Court cannot say that the month-long gap between McCarron receiving new information in discovery and his filing of the Motion constitutes an undue delay. *See*

*Implus Footcare, LLC v. Vore*, 2025 NCBC LEXIS 121, at *25 (N.C. Super. Ct. Sept. 11, 2025) (granting leave to amend based on information "only discovered recently—through a review of rolling document productions" two months prior to the motion to amend being filed).

## II. Undue Prejudice

25. "[I]t is not uncommon for a proposed amendment to impact the status quo in a way that the nonmovant opposes. But not every impact constitutes undue prejudice." *Howard v. IOMAXIS, LLC*, 2023 NCBC LEXIS 159, at *14 (N.C. Super. Ct. Nov. 29, 2023). A motion for leave to amend "should be freely allowed unless some *material prejudice* to the other party is demonstrated." *Vaughan*, 371 N.C. at 433 (emphasis added) (cleaned up). "[U]ndue prejudice is not presumed, even when the proposed amendments are extensive." *Howard*, 2023 NCBC LEXIS 159, at *14.

26. Howell also asserts that permitting McCarron to amend the Complaint would subject him to undue prejudice because it would prolong the litigation and require Howell to engage in additional discovery. Indeed, at the Court's 30 October hearing on the Motion, Howell's counsel asserted that the parties would be forced to "restart[]" written discovery, depositions, and mediation if the Motion to Amend is granted.

27. North Carolina courts have consistently held that "[t]he fact that additional discovery may be required or that additional counsel may be required to represent [a] new defendant does not amount to prejudice[.]" *Coffey v. Coffey*, 94 N.C. App. 717, 723 (1989); *see also Vitaform, Inc.*, 2021 NCBC LEXIS 79, at *17 (noting

that "permit[ting] additional fact discovery . . . [will] alleviate any potential prejudice caused by the timing of [d]efendants' amendment").

28. Therefore, the mere fact that additional discovery may be required if the Motion is granted does not constitute *material* prejudice sufficient to warrant a denial of the Motion. *See Vaugh*, 371 N.C. at 433 (noting that "amendments should be freely allowed unless some material prejudice to the other party is demonstrated" (cleaned up)).

29. Moreover, counsel acknowledged at the 30 October hearing that the discovery that has occurred to date has encompassed many of the issues raised by the proposed amendments.

**III. Judicial Economy**

30. Finally, the Court believes that the interests of judicial economy would be furthered by allowing McCarron to bring his claims against SCA, Risk Solutions, and Heather Howell in the present case as opposed to requiring him to assert them in a separate action.

31. "Where the essence of a Rule 15(a) motion to amend a pleading is to add a party to the lawsuit, consideration of North Carolina Rules of Civil Procedure 20 and 21 is required." *Coffey*, 94 N.C. App. at 721 (cleaned up). Rule 20(a) states in pertinent part as follows:

> All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all parties will arise in the action.

N.C. R. Civ. P. 20(a).

32. Here, McCarron asserts—and Howell does not dispute—that the claims in the Proposed Amended Complaint against SCA, Risk Solutions, and Heather Howell arise out of the same series of transactions and occurrences and involve common questions of law and fact as McCarron's existing claims against Howell. Such a close connection between the parties and claims weighs in favor of allowing all of McCarron's claims to be heard in a single case. *See Mauney v. Morris*, 316 N.C. 67, 72 (1986) (reversing the trial court's denial of a motion to amend and holding that allowing the amendment would "promote[] judicial economy by avoiding the necessity for separate trials or for plaintiff to file first a separate complaint and then a motion to join the two actions").

33. Given the overwhelming overlap in background facts, witnesses, evidence, subject matter, and counsel, the Court sees little advantage to trying McCarron's claims in the Proposed Amended Complaint separately from his existing claims. *See Rfactr, Inc. v. McDowell*, 2024 NCBC LEXIS 94, at *12 (N.C. Super. Ct. July 18, 2024) (granting a motion to amend and noting that "permitting the two defamation claims—each arising from the same fire—to be tried in the same action would promote judicial economy" (cleaned up)); *see also Webster Enters., Inc. v. Selective Ins. Co. of the Se.*, 125 N.C. App. 36, 46 (1997) (holding that requiring separate trials for claims "aris[ing] from an interrelated nucleus of facts" is "irreconcilable with the overriding interests of judicial economy").

34. Accordingly, the Court determines that the Motion to Amend should be **GRANTED**.

## CONCLUSION

**THEREFORE**, in the exercise of its discretion, the Court concludes that Plaintiff's Motion for Leave to Amend Complaint and to Add Necessary Parties should be **GRANTED** and **ORDERS** as follows:

1. McCarron is **DIRECTED** to file the Amended Complaint on or before **11 November 2025** in a mutually agreed-upon form (after consultation with counsel for Howell) that is substantively identical to ECF No. 35 [sealed].

2. The parties are **DIRECTED** to confer and **jointly** file a proposed amended Case Management Order no later than **twenty-one (21) days** following service of the Amended Complaint on each of the new Defendants.[2]

**SO ORDERED**, this the 4th day of November 2025.

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

[2] For clarity, the parties' proposed amended Case Management Order should reflect consultation among counsel for *all* parties, including SCA, Risk Solutions, and Heather Howell.