STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22CVS009465-590
AIRTRON, INC., Plaintiff, v. BRADLEY ALLEN HEINRICH, Defendant.	**ORDER AND OPINION ON MOTION FOR SANCTIONS**

1. For the second time, Plaintiff Airtron, Inc. has moved to sanction Defendant Bradley Allen Heinrich for disobeying the Court's discovery orders and related litigation misconduct. (Pl.'s Mot. Sanctions, ECF No. 73.) As discussed below, the Court **GRANTS** the motion.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., by Paul S. Holscher and Charlotte C. Smith, for Plaintiff Airtron, Inc.

Defendant Bradley Allen Heinrich appeared pro se.

Conrad, Judge.

I.
FINDINGS OF FACT

2. Airtron sued Heinrich in June 2022, along with several others who have since settled or otherwise been dismissed. The amended complaint asserts claims against Heinrich for misappropriation of trade secrets and unfair or deceptive trade practices under N.C.G.S. § 75-1.1.

3. Discovery quickly went off track. Airtron served interrogatories and requests for production of documents in October 2022. Heinrich, who was represented by counsel at the time, responded to one of the requests for production

but not the other twenty-seven or the interrogatories. Shortly afterward, Heinrich's counsel withdrew. Heinrich did not retain new counsel. Nor did he serve responses to the rest of Airtron's discovery requests.

4. This prompted Airtron to submit a Business Court Rule ("BCR") 10.9 discovery dispute summary in January 2023. Heinrich did not respond to that submission. The Court convened a conference, which Airtron's counsel attended and which Heinrich attended without counsel. Because Heinrich conceded that he had responded to just one of Airtron's discovery requests, the Court ordered him to "serve full and complete responses." (Order Following BCR 10.9 Conference, ECF No. 52.)

5. Following that order, Heinrich sent a document containing his interrogatory responses to Airtron's counsel. The document was unsigned and included no responses to the requests for production. (*See* Pl.'s Ex. 6, ECF No. 59.6.) Citing these and other deficiencies, Airtron submitted a second BCR 10.9 discovery dispute. Again, Heinrich did not respond to the submission. Rather than hold another conference, the Court authorized Airtron "to file a discovery motion as permitted by BCR 10.9(c)." (Order on Airtron's BCR 10.9 Submission, ECF No. 54.)

6. Airtron did so. Its motion, though styled as a motion to compel, was chiefly a motion for sanctions. Airtron sought not only complete discovery responses but also an order shifting some of its attorney's fees to Heinrich, striking his answer, and entering a default judgment against him. (*See* Pl.'s Mot. Compel, ECF No. 59.) Having earlier chosen not to respond to either of Airtron's BCR 10.9 submissions, Heinrich also chose not to file a brief opposing its motion.

7. Following a hearing attended by Heinrich and counsel for Airtron, the Court granted the motion to compel in part. It was plain that Heinrich had not fully and completely responded to the discovery requests as ordered. Indeed, he had not responded to the requests for production at all. And his responses to interrogatories 1–4, 7–11, 14, 16, 18, 24, and 27 were deficient. But the Court stopped short of striking Heinrich's answer and entering a default judgment, instead giving him a second chance to complete his responses and requiring him to pay some of the attorney's fees that Airtron incurred in pursuing its motion. The Court also warned Heinrich that he would face more severe sanctions for future violations. (*See* Order on Motion to Compel, ECF No. 69.)

8. In response to that order, Heinrich filed his amended responses on the Court's electronic docket (rather than serving them on Airtron). He partially supplemented the responses to Airtron's interrogatories but once more neglected to respond to the unanswered requests for production in any way. (*See* Responses to Pl.'s Interrogatories and Requests for Production, ECF No. 72.)

9. Dissatisfied, Airtron moved for sanctions under North Carolina Rule of Civil Procedure 37(b)(2), repeating its earlier request to strike Heinrich's answer and enter a default judgment. (*See* Pl.'s Mot. Sanctions.) Heinrich did not respond to the motion for sanctions, which means it is deemed uncontested. *See* BCR 7.6. The Court held a hearing on 14 February 2024, at which Heinrich and counsel for Airtron appeared.

10. In the weeks after the hearing, the Court ordered Heinrich to pay $3,974.40 to Airtron in connection with the earlier motion to compel and to certify compliance

on or before 1 March 2024. (*See* Order on Pl.'s Fee Pet., ECF No. 78.) Heinrich did not certify compliance, and Airtron's counsel has represented (via e-mail to the Court's law clerk and copying Heinrich) that it has not received payment.

II.
CONCLUSIONS OF LAW

11. It is undisputed that Heinrich has not complied with the Court's order on Airtron's motion to compel. The Court directed Heinrich to respond fully and completely to Airtron's requests for production, to produce responsive documents in his possession, and to identify any requests for which no responsive documents exist. But he has not responded to the requests for production at all.

12. Many of his interrogatory responses also remain deficient. As examples, he has given only generalities in response to interrogatories 1 and 3 (which ask for information related to communications involving Airtron, its confidential information, its customers, and similar matters), interrogatory 14 (which asks for information concerning his separation from a past employer), and interrogatory 16 (which asks for information related to communications involving two of Airtron's confidential documents). In addition, Heinrich's response to interrogatory 27 is nearly identical to the response the Court found deficient in the order on the motion to compel.

13. When a party fails to comply with a discovery order, the Court "may make such orders in regard to the failure as are just." N.C. R. Civ. P. 37(b)(2). "The sanction imposed should be proportionate to the gravity of the offense." *Kixsports, LLC v. Munn*, 2019 NCBC LEXIS 62, at *26 (N.C. Super. Ct. Sept. 30, 2019) (quoting

Montaño v. City of Chicago, 535 F.3d 558, 563 (7th Cir. 2008)). Thus, the Court should impose severe sanctions—such as "striking out pleadings" and "rendering a judgment by default against the disobedient party," N.C. R. Civ. P. 37(b)(2)(c)—only after considering lesser sanctions and finding them inadequate. *See Few v. Hammack Enters., Inc.*, 132 N.C. App. 291, 299 (1999). The choice of sanctions is a decision lying within the sound discretion of the trial judge. *See Feeassco, LLC v. Steel Network, Inc.*, 264 N.C. App. 327, 337 (2019).

14. Here, Heinrich's repeated failures to comply with the Court's discovery orders merit severe sanctions, including striking his answer and entering default judgment against him.

15. The Court has considered lesser sanctions and finds them to be insufficient. This is Heinrich's second failure to obey a discovery order, and the relatively light sanctions imposed after the first failure seem to have had no effect. That Heinrich is representing himself is no excuse. In its previous order, the Court gave him the benefit of the doubt that his incomplete responses had more to do with his lack of familiarity with civil litigation than a willful disregard for the judicial process. The same cannot be said now. Heinrich defaulted on his discovery obligations even after receiving clear instructions to cure the deficient responses and a clear warning that severe sanctions could follow if he did not.[*] His utter indifference to the requests for production goes beyond noncompliance. It is dereliction. And there is little reason to believe that he would fulfill his obligations if given yet another chance.

[*] It bears noting, too, that the Court took pains to explain the discovery process and the consequences of noncompliance at several in-person hearings and conferences.

16. Moreover, the prejudice to Airtron is undeniable. Its discovery requests have been pending well over a year. By not responding or responding with generalities, Heinrich has stymied Airtron's efforts to investigate its claims. Likewise, his failure to meet his discovery obligations has frozen this litigation in place, forced Airtron to waste time and money to compel responses, and foreclosed a resolution on the merits.

17. A few aggravating factors also favor severe sanctions. First, Heinrich has disobeyed other orders, including the recent order to reimburse Airtron for nearly $4,000 in attorney's fees incurred in connection with its motion to compel. (*See* Order on Pl.'s Fee Pet.) Second, Airtron has offered unrebutted evidence that Heinrich made false statements in his interrogatory responses. (*See* Bentley Dep. 109:12–112:17, ECF No. 73.3; Poccia Aff. ¶¶ 12, 31, ECF No. 73.1.) Third, Airtron has also offered unrebutted evidence that Heinrich mistreated the court reporter during his deposition. (*See* Ruiz-Uribe Aff. ¶¶ 2–3, ECF No. 67.1; Holscher Aff. ¶¶ 4–5, ECF No. 67.2.)

18. In summary, Heinrich has stalled the progress of this case, prejudiced Airtron, and wasted judicial resources. The Court concludes that severe sanctions are warranted and will therefore strike his answer and enter default judgment against him.

19. A default judgment is appropriate only if the allegations of the amended complaint are adequate to state a claim. The Court has carefully reviewed Airtron's allegations and concludes that they suffice to support a default judgment on its claims

for misappropriation of trade secrets and unfair or deceptive trade practices under section 75-1.1, which are the only claims pleaded against Heinrich. *See Brown v. Cavit Scis., Inc.*, 230 N.C. App. 460, 467 (2013) (holding that, for purposes of default judgment, "if any portion of the complaint presents facts sufficient to constitute a cause of action, or if facts sufficient for that purpose fairly can be gathered from it, the pleading will stand" (cleaned up)).

20. A trade secret is "business or technical information" that "[d]erives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering" and "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." N.C.G.S. § 66-152(3). Misappropriation means the "acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret." *Id.* § 66-152(1). To plead a claim for misappropriation of trade secrets, a plaintiff must identify with particularity the trade secrets allegedly misappropriated. *Krawiec v. Manly*, 370 N.C. 602, 609–10 (2018).

21. Here, Airtron alleges that it took precautions to maintain the secrecy of specific information that it produced and that derived commercial value from not being known to Airtron's competitors, including heating and cooling load calculations for customers' residences, a template used to prepare load calculations, HVAC design layouts based on those calculations, and price information. Further, it alleges that

Heinrich acquired this information from one of Airtron's employees and then used it, all without Airtron's consent. (*See, e.g.*, Am. Compl. ¶¶ 41–68, 100–11, 145–50, 179–84, 241–48, ECF No. 18.) These allegations adequately state a claim for misappropriation of trade secrets.

22. It follows that Airtron has also stated a claim under section 75-1.1. To plead a claim under this section, a plaintiff must allege that the defendant engaged in an unfair or deceptive act or practice in or affecting commerce that injured the plaintiff. *See GE Betz, Inc. v. Conrad*, 231 N.C. App. 214, 236 (2013). These elements are satisfied by Airtron's allegations of misappropriation of trade secrets. *See id.*

23. Accordingly, the Court concludes that Airtron has stated claims for misappropriation of trade secrets and unfair or deceptive trade practices under section 75-1.1. The Court will therefore enter a default judgment as to liability, leaving a determination of Airtron's damages—including whether it is entitled to the punitive damages and attorney's fees that it seeks—to a future proceeding.

III.
CONCLUSION

24. For all these reasons, the Court **GRANTS** Airtron's motion and **ORDERS** as follows:

a. Heinrich's answer, including all affirmative defenses asserted therein, is **STRICKEN**.

b. Default judgment is **ENTERED** as to liability on Airtron's claims against Heinrich, and this matter shall proceed to a determination of Airtron's damages.

SO ORDERED, this the 12th day of March, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases