STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 13891

VANGUARD PAI LUNG, LLC; and PAI LUNG MACHINERY MILL CO. LTD.,

Plaintiffs and Counterclaim Defendants,

v.

WILLIAM MOODY; NOVA TRADING USA, INC.; and NOVA WINGATE HOLDINGS, LLC,

Defendants and Counterclaim Plaintiffs,

ORDER AND OPINION ON DEFENDANTS' MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND A NEW TRIAL

1. After a six-day trial, a jury returned a verdict in favor of Plaintiffs Vanguard Pai Lung, LLC ("Vanguard") and Pai Lung Machinery Mill Co. LTD. ("Pai Lung") and awarded over $3 million in compensatory and punitive damages against Defendants William Moody, Nova Trading USA, Inc. ("Nova Trading"), and Nova Wingate Holdings, LLC ("Nova Wingate"). Following entry of final judgment, Defendants moved for judgment notwithstanding the verdict ("JNOV"), for a new trial, and to alter or amend the judgment. For the following reasons, the Court **GRANTS in part** and **DENIES in part** the motions.

Womble Bond Dickinson (US) LLP, by Matthew F. Tilley, Russ Ferguson, and Patrick G. Spaugh, and Perkins Coie LLP, by John P. Schnurer, John D. Esterhay, Yun (Louise) Lu, and Hayden M. Schottlaender, for Plaintiffs Vanguard Pai Lung, LLC and Pai Lung Machinery Mill Co. LTD.

James, McElroy & Diehl, P.A., by Preston O. Odom, for Defendants William Moody, Nova Trading USA, Inc., and Nova Wingate Holdings, LLC.

Conrad, Judge.

I.
BACKGROUND

2. This case arises out of disputes over Vanguard's management and operations. Vanguard makes and sells high-speed circular knitting machines. Its majority member is Pai Lung, and its minority member is Nova Trading. Moody is a manager of Vanguard and is its former president and CEO; he is also the sole owner of Nova Trading and Nova Wingate.

3. In 2018, Vanguard and Pai Lung filed suit against Moody, Nova Trading, and Nova Wingate.[1] The complaint alleged that Moody had used his position within Vanguard to carry out a long-running scheme of self-dealing and other misconduct designed to benefit himself, his family, and his friends. (*See* Compl., ECF No. 3.)

4. Defendants denied these allegations and counterclaimed, accusing Pai Lung of using its majority position to force Moody out of Vanguard and to frustrate Nova Trading's minority membership rights. They also alleged that Vanguard and Pai Lung improperly withheld profit-sharing and commission payments owed under two oral contracts. (*See* Am. Countercl., ECF No. 59.)

5. The Court elects not to summarize the lengthy pretrial procedural history, other than to note that several of the original twenty-eight claims and counterclaims were dismissed or resolved before trial. Readers may find a more complete discussion of the procedural history in previous opinions. *See Vanguard Pai Lung, LLC v.*

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[1] Vanguard and Pai Lung also asserted claims against several members of Moody's family but dismissed those claims before trial. (*See* ECF No. 164.)

Moody, 2022 NCBC LEXIS 100 (N.C. Super. Ct. Aug. 31, 2022); *Vanguard Pai Lung, LLC v. Moody*, 2020 NCBC LEXIS 92 (N.C. Super. Ct. Aug. 4, 2020); *Vanguard Pai Lung, LLC v. Moody*, 2019 NCBC LEXIS 39 (N.C. Super. Ct. June 19, 2019).

6. The parties tried the surviving claims and issues before a jury over six days. A great deal of the evidence at trial concerned the capital contribution that Nova Trading made to Vanguard in return for its minority membership interest. In lieu of cash, Nova Trading contributed knitting machines and parts. At the time, Moody represented that the machines were worth at least $500,000 and promised to have them appraised. Whether these representations were true was disputed. Plaintiffs offered testimony from several witnesses to show that the machines were old and mostly worthless. They also offered evidence to show that Moody stored the machines offsite in a warehouse owned by Nova Wingate while charging Vanguard roughly $10,000 per month in rent under a lease agreement that he signed on behalf of both entities. Eventually, following Moody's departure, Vanguard sold the machines for scrap value. (*See, e.g.*, Jt. Statement Stipulated Facts 2, ECF No. 143 ["Jt. Stip."]; Pls.' Ex. B at 18:9–17, 19:10–17, ECF No. 195.3; Pls.' Ex. C at 54:18–25, ECF No. 195.4; Pls.' Ex. F at 12–13, ECF No. 195.7.)

7. Other evidence concerned Moody's decisions to hire family and friends during his tenure as president and CEO. It is undisputed that Moody added his wife to the payroll even though she had no real job and performed no work for Vanguard. Moody also hired several of his children and paid them salaries that Plaintiffs believe were excessive. And Moody agreed to a dubious employment arrangement with his

friends Tony and Norma Alexander. Tony worked for Vanguard; Norma did not. Even so, Vanguard paid each of them $1,000 per week for many years. According to Plaintiffs, Moody agreed to cut Tony's salary and add Norma to the payroll to circumvent federal Social Security laws. (*See, e.g.*, Jt. Stip. 3–4; Pls.' Ex. F at 17–24, 29–32, 67–69.)

8. The parties also disputed whether Moody had misused Vanguard's money and property to benefit himself and his family. Plaintiffs presented evidence to show that Moody and his family charged personal expenses to company credit cards, used company money to pay for tickets to Carolina Panthers football games, and kept company equipment—laptops, cell phones, and a car—after their employment was terminated. In addition, Moody signed a series of checks from Vanguard to his own personal entities in 2017. He claimed, and Plaintiffs denied, that these were legitimate commissions. (*See, e.g.*, Pls.' Ex. F at 14–15; Pls.' Ex. G, ECF No. 195.8; Pls.' Ex. L, ECF No. 195.13.)

9. As to damages, Plaintiffs offered the expert testimony of John E. Gibson, Jr. They also introduced his report into evidence without objection. Gibson testified that Plaintiffs suffered up to $3.5 million in total damages. (*See* Pls.' Ex. F at 47.) Defendants cross-examined Gibson but presented no expert testimony of their own.

10. At the close of the evidence, each side moved for a directed verdict on some but not all issues, and the Court heard argument concerning the specific grounds raised. The Court partially granted both motions in limited respects not relevant here but otherwise denied them. Afterward, the Court held a charge conference and

gave counsel the chance to review and object to its proposed jury instructions and verdict sheet. Defendants raised no objections to either.

11. The Court submitted thirty-six issues to the jury. Having listened attentively to a lengthy charge and having deliberated over parts of two days, the jury rendered a verdict that favored Plaintiffs across the board. The jury awarded $498,500 against Moody and Nova Trading for fraud; $272,300 against Moody for conversion; $500,000 against Moody for embezzlement; $600,000 against Moody for constructive fraud; $50,000 against Moody and Nova Wingate for unfair or deceptive trade practices under N.C.G.S. § 75-1.1; and $1,340,300 against all Defendants for unjust enrichment. After finding all Defendants directly liable for compensatory damages, the jury also found them liable for punitive damages and awarded $50,000 against each. The jury also addressed Plaintiffs' alternative theory of alter-ego liability and found that Nova Trading and Nova Wingate were alter egos of Moody. Finally, on Defendants' counterclaims, the jury found that Plaintiffs were not liable. (*See* Verdict Sheet, ECF No. 167.)

12. Following the verdict, the parties submitted a few nonjury issues for resolution by the Court. These issues included Nova Trading's demand for judicial dissolution of Vanguard. The Court concluded that Nova Trading had not carried its burden and that dissolution would frustrate the jury's verdict. The Court then entered final judgment on the verdict. (ECF No. 187.)

13. Defendants have timely moved for JNOV on some issues, for a new trial on all issues, and to amend the judgment as to punitive damages. (ECF No. 189.) After

full briefing, the Court held a hearing on 20 January 2023. The motions are ripe for resolution.

II.
JNOV

14. Defendants have moved for JNOV on the fraud claim against Moody and Nova Trading; the conversion and embezzlement claims against Moody; and the section 75-1.1 claim against Moody and Nova Wingate. They have not challenged the jury's findings that Moody is liable for constructive fraud and that Moody, Nova Trading, and Nova Wingate are liable for unjust enrichment.

15. A motion for JNOV under Rule 50(b) "tests the legal sufficiency of the evidence to take the case to the jury and support a verdict for the nonmovant." *Scarborough v. Dillard's, Inc.*, 363 N.C. 715, 720 (2009) (citation and quotation marks omitted). The motion "is essentially a renewal of an earlier motion for directed verdict." *Id.* (citation and quotation marks omitted). Thus, "[t]o have standing after the verdict to move for JNOV, a party must have made a directed verdict motion at trial on the specific issue which is the basis of the JNOV." *Plasma Ctrs. of Am., LLC v. Talecris Plasma Res., Inc.*, 222 N.C. App. 83, 87 (2012) (citation and quotation marks omitted); *see also Shaw v. Gee*, 2018 NCBC LEXIS 109, at *11 (N.C. Super. Ct. Oct. 19, 2018) (citing N.C. R. Civ. P. 50(b)(1)).

16. The moving party "bears a heavy burden." *Taylor v. Walker*, 320 N.C. 729, 733 (1987). In deciding the motion, "the trial court must consider the evidence in the light most favorable to the nonmoving party, giving him the benefit of all reasonable inferences to be drawn therefrom and resolving all conflicts in the evidence in his

favor." *Id.* at 733–34. It is proper to grant JNOV only when "it appears, as a matter of law, that a recovery cannot be had by the plaintiff upon any view of the facts which the evidence reasonably tends to establish." *Scarborough*, 363 N.C. at 720 (citation and quotation marks omitted). If there is "more than a scintilla of evidence" to support the claim, the motion should be denied. *Morris v. Scenera Rsch., LLC*, 368 N.C. 857, 861 (2016) (citation and quotation marks omitted). For these reasons, courts "cautiously and sparingly" grant motions for JNOV. *Bryant v. Nationwide Mut. Fire Ins. Co.*, 313 N.C. 362, 369 (1985).

A. Fraud

17. The Court begins with the fraud claim. Fraud has five "essential elements": "(1) False 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." *Ragsdale v. Kennedy*, 286 N.C. 130, 138 (1974). The injured party's reliance on the false representation "must be reasonable." *Forbis v. Neal*, 361 N.C. 519, 527 (2007).

18. The premise of this claim is that Moody made false representations about Nova Trading's capital contribution at the time Vanguard was formed. (*See* Compl. ¶ 151.) It is undisputed that Nova Trading contributed knitting machines and related equipment—rather than a set sum of money—to Vanguard in return for a minority membership interest. According to Plaintiffs, Moody represented that the machines were worth $500,000 and promised to have them appraised. At trial, Plaintiffs offered evidence to show that Moody never obtained an appraisal, that he

mothballed the machines in an offsite warehouse owned by Nova Wingate, and that the machines were so old that they were worth no more than scrap value.

19. The jury, in rendering a verdict for Plaintiffs, presumably found that Moody misrepresented the value of the contributed machines. Moody and Nova Trading concede the point because they haven't challenged that presumed finding (along with many other presumed findings, including that Vanguard and Pai Lung reasonably relied on the misrepresentation and were harmed by it). They contend, instead, that there was insufficient evidence to show that Moody intended to deceive Vanguard and Pai Lung when he falsely represented that the machines were worth $500,000. (*See* Defs.' Br. in Supp. 5–6, ECF No. 190.)

20. But Moody and Nova Trading haven't preserved this issue because it was not part of their motion for a directed verdict at trial. There, all they argued was that Plaintiffs had not offered enough evidence of the "misrepresentation . . . of the intent to have the inventory appraised." (Defs.' Ex. A at 3, ECF No. 190.) Now, however, they are targeting Moody's representation that the machines were worth $500,000, not his promise to get an appraisal. And they are disputing whether Moody intended to deceive Vanguard and Pai Lung by inflating the machines' value, not whether he intended to abide by his appraisal promise. It is too late to raise this new ground for the first time in a motion for JNOV. *See, e.g.*, *Plasma Ctrs. of Am.*, 222 N.C. App. at 87–88.

21. Moody and Nova Trading have also failed to comply with this Court's briefing rules. The purpose of briefing "is to define clearly the issues presented to the

Court and to present the arguments and authorities upon which the parties rely in support of their respective positions." BCR 7.2. This means that a brief must identify supporting evidence and "must include a pinpoint citation to the relevant page of the supporting material whenever possible." BCR 7.5. Moody and Nova Trading cite nothing to back up their assertions about the content of the evidence related to fraudulent intent and what that evidence shows or does not show. Thus, even if they had preserved the issue in their motion for directed verdict, they have since forfeited it by failing to support their motion for JNOV with identifiable evidence.

22. In any event, the argument is meritless. Moody and Nova Trading fault Plaintiffs for relying on circumstantial as opposed to direct evidence of intent. But that is no fault; fraudulent intent "is usually proven by circumstantial evidence." *Sunset Beach Dev., LLC v. AMEC, Inc.*, 196 N.C. App. 202, 209 (2009) (citation and quotation marks omitted). And as Plaintiffs correctly observe, there was plenty of evidence of intent to deceive. Although Vanguard took title to the machines, Moody and Nova Trading kept possession by storing them offsite in a warehouse owned by Nova Wingate. The jury could have reasonably viewed this as an intentional effort to keep Vanguard and Pai Lung from discovering their dilapidated condition. In addition, while serving as Vanguard's chief executive, Moody never used these supposedly valuable machines for the company's benefit, had them appraised, or tried to recoup any value by selling them—all of which could suggest that Moody knew they were worthless. There was also evidence of a motive to deceive, given that Nova Trading's membership interest was tied to the value of its capital contribution. *See*

McLamb v. McLamb, 19 N.C. App. 605, 610 (1973) ("Oftentimes the intent can be shown by presenting evidence of some motive on the part of the perpetrator.").

23. The Court denies the motion for JNOV as to the fraud claim.

B. Conversion

24. Conversion is "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." *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523 (2012) (quoting *Peed v. Burleson's, Inc.*, 244 N.C. 437, 439 (1956)). "The essence of conversion is not the acquisition of property by the wrongdoer, but a wrongful deprivation of it to the owner." *Id.* at 530 (cleaned up). Money, if capable of being identified and described, may be the subject of an action for conversion. *See id.* at 528.

25. Vanguard claims that Moody routinely converted cash and other property over a period of many years. The Court instructed the jury, without objection, that the property at issue "includes money, cars, cell phones, laptops, and tickets to Carolina Panthers football games." (Jury Instrs. 14, ECF No. 166.) The jury found Moody liable and awarded $272,300. (*See* Verdict Sheet, Issue Nos. 3, 4.)

26. Moody infers that the jury's award has two underlying components: a $232,000 award for conversion of money and an additional $40,300 award for conversion of other property. On that basis, he contends that the evidence is insufficient to support the verdict because, first, Vanguard did not identify and

describe the converted money and, second, Vanguard did not show that Moody himself possessed any of the converted property other than his own company laptop.

27. Again, these arguments go far beyond what Moody raised at trial. Moody moved for a directed verdict on the conversion claim on a single, specific ground: that he did not participate in the "conversion related to the laptops of [his] children." (Defs.' Ex. A at 4:22−5:1.) That was all. He did not refer to the disputed money, cars, cell phones, and football tickets. Nor did he contend that there was insufficient evidence for the jury to find that he converted those items.

28. With the benefit of hindsight, Moody points to the argument that he made in his motion to direct a verdict on the *embezzlement* claim and argues that he intended that argument to apply to the *conversion* claim as well. If that was his intent, it was not apparent at the time, and it is not apparent from the transcript so many months after the fact. This was not a single-claim trial with one or two self-evident disputes. The Court tendered thirty-six issues to the jury, some of which Moody challenged and some of which he did not. "In complex civil cases such as this one, where the parties have argued multiple defenses and theories of liability, it is critical that the movant direct the trial court with specificity to the grounds for its motion for a directed verdict." *Plasma Ctrs. of Am.*, 222 N.C. App. at 88. Moody made a specific, narrow argument at trial and therefore waived the more expansive arguments that are the basis of his JNOV motion. *See Barnard v. Rowland*, 132 N.C. App. 416, 421–22 (1999) (concluding that a motion for directed verdict as to one claim did not preserve a challenge to another); *Lee v. Bir*, 116 N.C. App. 584, 587–88 (1994)

(concluding that a motion for directed verdict as to punitive damages did not preserve a challenge to actual damages).

29. Regardless, the evidence supports the verdict. Vanguard offered evidence tending to identify and describe money that Moody took for himself or directed his family to take, including without limitation specific expenditures made using company credit cards. (*See, e.g.*, Pls.' Ex. F at 14.) In addition, Vanguard offered evidence tending to show that Moody possessed and exercised control over personal property belonging to the company, including cars, electronics, and football tickets. (*See, e.g.*, Pls.' Ex. E at 177:21–22, ECF No. 195.6; Pls.' Ex. J, ECF No. 195.11; Pls.' Ex. K, ECF No. 195.12.) It was not an error to submit the issue to the jury. *See, e.g.*, *Zubaidi v. Earl L. Pickett Enters.*, 164 N.C. App. 107, 114 (2004) (affirming denial of a JNOV motion based on evidence of missing money and property); *Nelson v. Chang*, 78 N.C. App. 471, 476–77 (1985) (affirming denial of a JNOV motion based on evidence of property that the accused party ruined, sold to others, or allowed others to steal).

30. Accordingly, the Court denies the motion for JNOV as to the conversion claim.

C. Embezzlement

31. It is a crime for an officer or agent of a corporation to "[e]mbezzle or fraudulently or knowingly and willfully misapply or convert to his own use" the corporation's "money, goods or other chattels." N.C.G.S. § 14-90. Regardless of any

criminal prosecution, the corporation may pursue a civil action against the officer or agent for damages caused by the embezzlement. *See id.* § 1-538.2(a), (c).

32. Moody's argument concerning his liability for embezzlement is conclusory. It consists of just two sentences, neither of which includes a citation to law or evidence. In the first, he "relies on his arguments vis-à-vis the conversion claim . . . to show that he likewise should receive a JNOV on this claim." (Defs.' Br. in Supp. 9.)[2] In the second, he contends "that the evidence was insufficient for a jury to find the requisite scienter . . . to hold him liable for embezzlement." (Defs.' Br. in Supp. 9–10.) It takes more than skeletal assertions like these to satisfy this Court's briefing rules, *see* BCR 7.2, 7.5, not to mention the exacting standard for upsetting a verdict.

33. In addition to being procedurally defective, the argument is meritless. For the reasons stated above, Moody's "arguments vis-à-vis the conversion claim" are unpersuasive. (Defs.' Br. in Supp. 9.) As further support, Vanguard points to evidence that Moody took money that was entrusted to him by the company and funneled it to his wife, his children, and his friends Tony and Norma Alexander. (*See* Pls.' Br. in Opp'n 16–17, ECF No. 195.) Because Moody says nothing about this evidence, the Court considers it uncontested and concludes that it supports the verdict.

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[2] It appears that Moody means to refer to his argument that there was insufficient evidence to identify the converted money. This argument is based on the common-law rule that money may support a claim for conversion only if capable of being identified and described. But embezzlement is statutory, and the text of section 14-90 does not expressly require evidence identifying and describing allegedly embezzled funds. Moreover, Moody does not argue, or cite any authority to show, that courts have interpreted the statute to include that requirement. His wholesale failure to identify any legal basis for his argument violates procedural rules and amounts to a waiver.

34. As to intent, Vanguard points to a variety of evidence, all of which Moody fails to address in either his opening or reply brief. There is no need to discuss that evidence in detail. One example will serve well enough: it is undisputed that Moody put his wife on Vanguard's payroll with a phantom job title, paying her for years even though she had no real job and performed no services for the company. (*See* Pls.' Ex. E at 76:21–77:3.) This is sufficient evidence for the jury to conclude that Moody knowingly and willfully misapplied funds entrusted to him. *See State v. Parker*, 233 N.C. App. 577, 580–81 (2014) (collecting cases and concluding that verdict was supported by sufficient evidence of intent).

35. Accordingly, the Court denies the motion for JNOV as to the embezzlement claim.

D. Section 75-1.1

36. The final JNOV issue concerns the claim for unfair or deceptive trade practices. Section 75-1.1 states that "unfair or deceptive acts or practices in or affecting commerce" are "unlawful." N.C.G.S. § 75-1.1. As construed by our Supreme Court, this language is broad enough to "regulate a business's regular interactions with other market participants" but not so broad as to capture conduct "solely related to the internal operations" of a business. *White v. Thompson*, 364 N.C. 47, 51−52 (2010). Thus, "any unfair or deceptive conduct contained solely within a single business is not covered by" section 75-1.1. *Id.* at 53; *see also Nobel v. Foxmoor Grp.*, 380 N.C. 116, 121–22 (2022).

37. This claim concerns the lease agreement between Vanguard and Nova Wingate. Under the agreement, Vanguard paid Nova Wingate about $10,000 per month in rent for a warehouse used to store the old knitting machines that constituted Nova Trading's capital contribution. It is undisputed that Moody signed the lease agreement on behalf of both Vanguard, as its president, and Nova Wingate, as its sole member. At trial, Vanguard and Pai Lung offered evidence to show that Moody concealed the self-dealing lease agreement and argued that he and Nova Wingate had committed unfair or deceptive acts under section 75-1.1.

38. Moody and Nova Wingate moved for a directed verdict on the ground that any misconduct related to the lease agreement was internal to Vanguard and therefore not in or affecting commerce. They now seek JNOV on the same ground. In response, Vanguard and Pai Lung appear to concede—correctly—that no section 75-1.1 claim would lie if Moody had cut the rent checks directly to himself. *See Alexander v. Alexander*, 250 N.C. App. 511, 517 (2016) (concluding that shareholder's payment of "land rent" to himself was not in or affecting commerce). They contend, however, that the involvement of Nova Wingate as the nominal lessor brings the dispute within the statute.

39. The Court agrees with Moody and Nova Wingate. This dispute does not concern the regular interactions of separate market participants. Indeed, the premise of the claim is that Moody harmed his employer (Vanguard) and its majority member (Pai Lung) by channeling money to himself through a shell company and then concealing his misconduct from them. It is undisputed that Nova Wingate

conducts no real business, has no identity of its own, and does not exist apart from Moody in any meaningful sense. Moody used the entity to extract cash from Vanguard while concealing it from Pai Lung and his fellow managers. And the main purpose of the lease agreement was to store Nova Trading's suspect capital contribution. These are membership and management matters that concern "the internal operations of" Vanguard, not its day-to-day business interactions with others in the market. *Nobel*, 380 N.C. at 121–22; *see also White*, 364 N.C. at 53.

40. Vanguard and Pai Lung believe that the facts here are analogous to those in *Sara Lee Corp. v. Carter*, 351 N.C. 27 (1999). They are not. There, the claim involved an employee who "sold computer parts and services to his employer from companies owned by him," so that the employee and employer were "clearly engaged in buyer-seller relations in a business setting." *Id.* at 32–33. As our Supreme Court recently put it, "the unfair conduct of the defendant-employee" in *Sara Lee* was in or affecting commerce "because it occurred outside of the employer-employee relationship." *Nobel*, 380 N.C. at 121.

41. By contrast, the unfairness in this case "occurred in interaction among the" principals of Vanguard. *White*, 364 N.C. at 53. The evidence, taken in the light most favorable to Vanguard and Pai Lung, is that Moody used Nova Wingate as a front in his internal dealings with the company, its members, and its managers. The lease agreement, which was not the product of an arm's-length negotiation in a business setting, is "more properly classified as the misappropriation of corporate funds within

a single entity rather than commercial transactions between separate market participants 'in or affecting commerce.' " *Alexander*, 250 N.C. App. at 517.

42. Accordingly, the Court grants Defendants' motion for JNOV as to the claim for unfair or deceptive trade practices under section 75-1.1.

III.
MOTION FOR NEW TRIAL

43. Defendants also ask the Court to order a new trial. *See* N.C. R. Civ. P. 59(a). With few exceptions, "[w]hether to grant or deny a new trial is within the sound discretion of the trial court . . . ." *Chaney v. Young*, 122 N.C. App. 260, 265 (1996). Our Supreme Court has stressed, however, that the power to order a new trial "must be used with *great care and exceeding reluctance* . . . because the exercise of this discretion sets aside a jury verdict and, therefore, will always have some tendency to diminish the fundamental right to trial by jury in civil cases which is guaranteed by our Constitution." *In re Will of Buck*, 350 N.C. 621, 626 (1999).

44. Defendants press three arguments, none persuasive.

45. First, Defendants argue that the $1,340,300 damages award for unjust enrichment and the $50,000 award for unfair or deceptive trade practices are inconsistent. According to Defendants, both claims are based on the self-dealing lease agreement with Nova Wingate. It follows, they contend, that the jury's different damages awards for claims based on the same underlying conduct are contradictory and amount to a double recovery.

46. But the Court has set aside the section 75-1.1 verdict, mooting any potential inconsistency or double recovery. What's more, the two claims are not identical:

Plaintiffs based their claim for unjust enrichment on a range of misconduct that went beyond the Nova Wingate lease. There is no contradiction when a jury awards different amounts for claims of differing scope. Even if the claims were identical, the divergence in the damages awards does not require a new trial. Defendants have not argued or shown that the evidence is insufficient to support "the jury's overall damage award," and the jury's decision to apportion damages between the two claims does not render its verdict inconsistent. *Lacey v. Kirk*, 238 N.C. App. 376, 394 (2014); *see also Piazza v. Kirkbride*, 372 N.C. 137, 144 (2019) ("[J]ury verdicts should not be set aside for inconsistency lightly."); *Davis v. Ludlum*, 255 N.C. 663, 666 (1961) ("When a judgment has been entered on seemingly inconsistent findings of fact, it is the duty of the reviewing court to reconcile the findings and uphold the judgment if practicable.").

47. Second, Defendants argue that the jury's damages award for conversion is excessive because it includes amounts barred by the statute of limitations. Vanguard introduced into evidence, without objection, its expert's report on damages. In that report, the expert listed over 100 unauthorized uses of the company credit card and expenditures for football tickets, about half of which occurred outside the limitations period. (*See* Pls.' Ex. F at 62, 64.) Defendants speculate that the jury improperly awarded the whole amount.

48. As Defendants concede, though, "[j]urors are presumed to follow instructions given by the trial court," *State v. Williams*, 350 N.C. 1, 24 (1999), and the Court correctly instructed the jury to limit its award to damages incurred during

the limitations period, (*see* Jury Instrs. 16). It is not enough to show that the jury might have disregarded this instruction. Defendants must show "[m]anifest disregard." N.C. R. Civ. P. 59(a)(5). They have not done so because, as Vanguard correctly notes, the jury heard evidence related to conversion and resulting damages that went beyond the credit card transactions and football tickets. (*See* Pls.' Br. in Opp'n 14.) The jury could have calculated its damages award without including transactions barred by the statute of limitations—and Defendants have not argued otherwise.[3] Thus, the Court adheres to the usual rule that the "verdict should be liberally and favorably construed with a view of sustaining it, if possible." *Piazza*, 372 N.C. at 144 (citation and quotation marks omitted).

49. There is no other basis to set aside the conversion verdict. A trial court may grant a new trial when it appears that the jury awarded excessive damages "under the influence of passion or prejudice." N.C. R. Civ. P. 59(a)(6). Although Defendants

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[3] At most, Defendants' position is that the jury's $272,300 verdict looks suspiciously similar to the sums listed in the expert report. There is, of course, no way to know which evidence the jury credited and which it did not. What is clear, though, is that the jury did not adopt the testimony or report of Plaintiffs' expert in full. The jury awarded less in total damages than the expert advocated and allocated damages among the issues in ways that appear to account for the expert's opinions without bowing to them. That is all the more reason to construe the jury's careful verdict liberally and to presume that it followed the Court's instructions. *See, e.g.*, *Lawrence v. Wetherington*, 108 N.C. App. 543, 548 (1993) ("While a miscalculation may seem apparent to defendant, it was for the jury to determine defendant's damages and the jury was not bound to use defendant's exact figures. It is not for this court to speculate as to what weight the jury gave particular evidence when arriving at its verdict, but rather to determine whether there was evidence before the jury from which its verdict could reasonably be derived."); *see also Potts v. KEL, LLC*, 2021 NCBC LEXIS 100, at *61 (N.C. Super. Ct. Nov. 5, 2021) ("It may be unclear how the jury made that allocation, but the record supports the overall award, and it is not for this Court to second-guess the means by which the jury calculated it." (citation and quotation marks omitted)), *aff'd per curiam* 2023 N.C. LEXIS 427 (N.C. June 16, 2023).

cite this rule, they make no effort to show that the jury acted under the influence of passion or prejudice, and the Court sees no basis to draw that conclusion.

50. Defendants' third argument is that the verdict was against the greater weight of the evidence. This argument—consisting of a few conclusory sentences that cite no evidence—is wholly unpersuasive. Compelling (and often undisputed) evidence showed that Moody gave his wife a salary and a company car even though she had no job; put his friend's wife on the payroll as a sham employee to skirt Social Security laws; and pocketed over $1 million in rent under a lease agreement that no other member or manager approved. On other "fact-intensive" issues, the jury listened to the evidence carefully and made "reasonable" determinations. *Chalk v. Braakman*, 2019 N.C. App. LEXIS 263, at *16 (N.C. Ct. App. Mar. 19, 2019) (unpublished). Defendants haven't remotely shown that the verdict is so "exceptional" that it "will result in a miscarriage of justice." *In re Will of Buck*, 350 N.C. at 628; *see also Martin v. Pope*, 257 N.C. App. 641, 647 (2018) (affirming "reasoned decision to deny" motion for new trial that did not result in "a substantial miscarriage of justice").

51. The Court denies the motion for new trial.

IV.
MOTION TO ALTER OR AMEND THE JUDGMENT

52. The jury found Moody, Nova Trading, and Nova Wingate separately liable for punitive damages and awarded $50,000 against each. Defendants argue that it was error to submit separate issues of punitive damages to the jury. Their position is that Nova Trading and Nova Wingate cannot be separately liable for punitive

damages because the jury found, when answering a different issue, that they are alter egos of Moody with no independent identities. Defendants seek to alter or amend the judgment under Rule 59(e) to include a single $50,000 award, with joint and several liability.

53. This issue is waived. Defendants did not object to the Court's instructions on punitive damages, which asked the jury to determine whether to award punitive damages against Moody, Nova Trading, and Nova Wingate separately. Neither did they object to the verdict sheet. Having agreed to an instruction that authorized the jury to award punitive damages separately, Defendants cannot now contend, after the verdict, that it was error to submit the issues to the jury in that way. *See Greene v. Royster*, 187 N.C. App. 71, 81 (2007) (affirming denial of Rule 59 motion when defendant "did not object to the jury instructions on fraud when given opportunity by the trial court," "did not object to the issue as it was stated to the jury," and "did not request that a separate issue be submitted regarding his actions only"); *Hanna v. Brady*, 73 N.C. App. 521, 528 (1985) (holding that a Rule 59 motion is no "substitute for the obligation of counsel to timely object to the jury instructions").

54. Regardless, there was no error. Our Court of Appeals has held that it is improper to submit separate issues of punitive damages as to two defendants when one defendant's liability is based "solely" on a finding that it was an alter ego of the other. *See Muse v. Charter Hospital*, 117 N.C. App. 468, 472 (1995). Here, that is not the case. Plaintiffs asserted claims against Moody, Nova Trading, and Nova Wingate on a theory of direct liability as well as a theory of alter-ego liability. The jury found

all three Defendants liable on both theories. (*See* Verdict Sheet 1, 12.) Because Defendants' liability is not solely predicated on alter-ego liability, the jury was free to render an award of punitive damages against each individually.

55. Accordingly, the Court denies the motion to amend the judgment.

V.
CONCLUSION

56. For all these reasons, the Court **GRANTS** Defendants' motion for judgment notwithstanding the verdict as to the claim for unfair or deceptive trade practices under N.C.G.S. § 75-1.1. In all other respects, the Court **DENIES** the motions.

SO ORDERED, this the 27th day of June, 2023.

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