STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21 CVS 18665
JACQUELINE S. MCFEE and SAVAGE MCFEE, INC., Plaintiffs, v. WILLIAM C. PRESLEY; BILL STACKS; SABR LEME, INC.; C. PRESLEY PROPERTIES, LLC; STACKS HOLDING, INC.; and CPP INTERNATIONAL, LLC, Defendants.	**ORDER AND OPINION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

1. For over a decade, Jacqueline McFee was CPP International, LLC's lead designer. CPP fired her in 2015. Shortly after, she sued it in federal court and then again in state court to reclaim and enforce intellectual property rights in artistic designs that she created while working for the company. The first suit ended in dismissal, but the second suit produced a $7 million default judgment after CPP had gone out of business.

2. This lawsuit is the third in the trilogy. Here, McFee has sued not only CPP but also some of its former officers and their personal holding companies. Among the defendants is William Presley, a past president of CPP. McFee alleges that Presley tricked her into assigning her intellectual property rights to CPP during her employment and that he fraudulently conveyed CPP's assets to avoid paying her judgment. Presley denies all of this and faults McFee for having waited years to bring claims that he contends are stale under governing statutes of limitations.

3. McFee and Presley have filed cross-motions for summary judgment.[1] For the following reasons, the Court **GRANTS** Presley's motion and **DENIES** McFee's motion.

Terpening Law P.L.L.C., by William R. Terpening and Tomi M. Suzuki, and Allan Law Firm, PLLC, by Albert P. Allan, for Plaintiffs Jacqueline S. McFee and Savage McFee, Inc.

Johnston, Allison & Hord, P.A., by Kimberly J. Kirk and Katie D. Burchette, for Defendants William C. Presley and C. Presley Properties, LLC.

No counsel appeared for Defendants Bill Stacks, Sabr Leme, Inc., Stacks Holding, Inc., and CPP International, LLC.

Conrad, Judge.

I.
BACKGROUND

4. The Court does not make findings of fact when ruling on motions for summary judgment. The following background, drawn from the evidence submitted by the parties, provides context for the Court's analysis and ruling only.

5. In its heyday, CPP manufactured and sold all sorts of stationery, office products, and school supplies. It is now dissolved and out of business.

6. Presley joined CPP in 2000 and soon became its president, CEO, and part owner (though he held his Class A membership interest indirectly through other entities). He recruited McFee, a friend and former colleague, to work for CPP. She

[1] Technically, McFee and her fellow plaintiff, Savage McFee, Inc., filed one motion, and Presley and his fellow defendant, C. Presley Properties, LLC, filed the other. Savage McFee and C. Presley Properties are holding companies wholly owned by McFee and Presley, respectively. In their briefs, both sides largely ignore these entities. For simplicity, the Court refers to McFee and her co-plaintiff Savage McFee as "McFee" and refers to Presley and his co-defendant C. Presley Properties as "Presley."

agreed to become CPP's lead designer. (*See* Presley Dep. 17:3–4, 22:1–23:17, 27:1–28:4, ECF No. 148.3.)

7. In 2008, McFee became a Class B member of CPP with a ten percent interest. Class B members could not vote on company matters. Nor did they receive regular distributions. But they had broad rights to inspect CPP's books and records and received annually a balance sheet, a statement of income or loss, and a statement of cash flow. McFee acknowledges that she never exercised her inspection rights and typically did not review the financial information received from the company. (*See* Presley Aff. Ex. 3 §§ 5.1, 6.1, 7.2, 7.3, ECF No. 147.4 ["Op. Agrmt."]; McFee Dep. 108:7–15, ECF No. 148.2.)

8. At the same time that McFee obtained her membership interest, she also entered into a written employment agreement. Most relevant here is section 12, which deals with intellectual property rights related to the designs that McFee created during her employment. She agreed that all intellectual property arising from her work would be the "sole and exclusive property" of CPP and assigned to the company the worldwide right to "license, sell or otherwise control" it. But she retained an option to reclaim rights to her designs either when CPP stopped selling or distributing them or two years after it stopped producing them. According to McFee, Presley falsely promised then and later that he would protect her rights and ensure that CPP reassigned them to her when the time came. (*See* Terpening Aff. Ex. E § 12, ECF No. 153.5; McFee 2d Aff. ¶¶ 10–13, ECF No. 166.1.)

9. Over the next few years, CPP considered selling its business, but those efforts fizzled by 2012. This seems to have been the turning point in McFee's relationship with Presley. In mid-2012, she agreed to amend her employment agreement and reduce her compensation. Then, at the start of 2013, she and the other Class B members abandoned their membership interests. According to McFee, Presley tricked her into doing so by falsely representing that CPP was performing so poorly that it had become worthless. Further salary reductions followed, and in 2015, CPP fired McFee. (*See* Terpening Aff. Exs. F–H, ECF Nos. 153.6–.8; McFee 2d Aff. ¶¶ 9, 18, 20; McFee Dep. 112:16–21, 118:11–13.)

10. After CPP let her go, McFee made a formal request for reassignment of the rights to her designs. Presley refused, so McFee sued CPP in federal court in April 2016. She claimed that CPP had breached her employment agreement by refusing to reassign her rights and that its continued use of her designs amounted to copyright infringement. At that point, Presley agreed to reassign the rights to some designs but not many others that McFee believed were rightfully hers. (*See* Terpening Aff. Exs. L, M, ECF Nos. 153.12, 153.13.) The federal court concluded that McFee did "not have ownership of the intellectual property rights" at issue, dismissed her copyright claim with prejudice, and dismissed her other claims without prejudice to her right to refile in state court. *McFee v. CPP Int'l*, 2017 U.S. Dist. LEXIS 21462, at *8, *10 (W.D.N.C. Feb. 15, 2017).

11. McFee sued CPP in state court in October 2017. This time, she claimed not only that CPP had breached her employment agreement but also that it had

defrauded her by promising to reassign the rights to her designs when it never truly intended to do so. In February 2020, McFee obtained a default judgment in the state action against CPP, which included an award of damages and an assignment of intellectual property to her as of the date of the judgment. (*See* Terpening Aff. Exs. O, P, ECF Nos. 153.15, 153.16.)

12. Several key events occurred while the state action was pending. On the day after McFee filed her complaint in that case, CPP sold assets from its arts and crafts division to a company called Pacon for roughly $11 million. CPP then paid some of the proceeds to its secured lender (Wells Fargo), distributed some to Presley, and kept the rest as capital. At the end of 2017, Presley stepped down as president and transferred his membership in CPP to Bill Stacks for a nominal sum. Business continued under Stacks's direction but began to decline rapidly, and within eighteen months or so, CPP was defunct. In 2019, it defaulted on a line of credit from Wells Fargo. After the default, Wells Fargo foreclosed on assets used as collateral and sold them to a company called Bay Sales. (*See* Terpening Aff. Ex. C, ECF No. 153.3; Presley Aff. Ex. 13, ECF Nos. 147.14, 181.3; Defs.' Exs. 4, 6, 7, ECF Nos. 148.5, 148.7, 148.8, 181.1; Stacks Dep. 24:15–18, ECF No. 153.25.)

13. In this action, McFee has sued Presley for fraud, unjust enrichment, breach of fiduciary duty, and constructive fraud. She also claims that the asset sale to Pacon and the foreclosure sale to Bay Sales were fraudulent transfers under N.C.G.S. §§ 39-23.4(a)(1) and 39-23.5(b), for which she seeks to pierce CPP's veil to hold Presley liable. (Am. Compl., ECF No. 98.)

14. Discovery has closed. Both McFee and Presley have moved for summary judgment on all claims. (*See* ECF Nos. 148, 154.) Their motions have been fully briefed, and the Court held a hearing on 11 October 2023. The motions are ripe for decision.

II.
LEGAL STANDARD

15. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must consider the evidence in the light most favorable to the nonmoving party, drawing all inferences in the nonmoving party's favor. *See, e.g., Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018).

16. The moving party "bears the initial burden of demonstrating the absence of a genuine issue of material fact." *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579 (2002). If the moving party carries this burden, the opposing party "may not rest upon the mere allegations or denials of his pleadings," N.C. R. Civ. P. 56(e), but must instead "come forward with specific facts establishing the presence of a genuine factual dispute for trial," *Liberty Mut. Ins. Co.*, 356 N.C. at 579. "An issue is 'genuine' if it can be proven by substantial evidence and a fact is 'material' if it would constitute or irrevocably establish any material element of a claim or defense." *Lowe v. Bradford*, 305 N.C. 366, 369 (1982) (quoting *Bone Int'l, Inc. v. Brooks*, 304 N.C. 371, 374–75 (1981)).

17. "When the party with the burden of proof moves for summary judgment, a greater burden must be met." *Almond Grading Co. v. Shaver*, 74 N.C. App. 576, 578 (1985). The moving party "must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by the jury." *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985); *see also Kidd v. Early*, 289 N.C. 343, 370 (1976). For that reason, it is "rarely . . . proper to enter summary judgment in favor of the party having the burden of proof." *Blackwell v. Massey*, 69 N.C. App. 240, 243 (1984).

III.
ANALYSIS

18. A hard truth in civil litigation is that those who sleep on their rights lose them. "Statutes of limitations are inflexible and unyielding," commanding "that litigation be initiated within the prescribed time or not at all." *Shearin v. Lloyd*, 246 N.C. 363, 370 (1957). The intent isn't to punish plaintiffs for procrastinating. It is to shield the accused "against stale demands." *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 5–6 (2017) (quoting *Shearin*, 246 N.C. at 371). Time, after all, is a thief and a vandal, stealing memories and destroying evidence.

19. Whether McFee slept on her rights is the main issue here. She filed this action in November 2021, based largely on alleged events that occurred at least four and as many as thirteen years earlier. Although she attributes the delay to a lack of awareness (that she didn't know about the misconduct until just before commencing this action and couldn't have discovered it sooner), Presley contends that her

deposition testimony and the written record show otherwise. His position is that the applicable statutes of limitations and repose bar nearly every claim.

20. Although timeliness concerns predominate, the parties saved room to argue the merits as well. For her part, McFee keys on Presley's role in CPP's 2017 sale of assets to Pacon, often to the neglect of her other allegations. Presley neglects nothing, arguing that McFee lacks evidence to establish essential elements of each claim.

21. All told, the parties' cross-motions for summary judgment cover every claim in the amended complaint. The Court considers each in turn.

A. Fraudulent Transfer

22. McFee bases her claims for fraudulent transfer on CPP's asset sale to Pacon in October 2017 and the foreclosure sale to Bay Sales in March 2019. She challenges each sale under sections 39-23.4(a)(1) and 39-23.5(b). (*See* Am. Compl. ¶¶ 125, 128, 129, 132, 133, 137–40.)

23. **Section 39-23.5(b) Claim.** At the hearing, McFee's counsel conceded that her claim under section 39-23.5(b) is untimely. The concession is well taken. A plaintiff must bring a claim under section 39-23.5(b) "not later than one year after the transfer was made." N.C.G.S. § 39-23.9(3). McFee brought her claim over four years after the sale to Pacon and over two years after the sale to Bay Sales, entitling Presley to summary judgment.

24. **Section 39-23.4(a)(1) Claim—Pacon Transaction.** The limitations period for claims under section 39-23.4(a)(1) is more generous: "not later than four years after the transfer was made . . . or, if later, not later than one year after the

transfer . . . was or could reasonably have been discovered." N.C.G.S. § 39-23.9(1). McFee's challenge to the Bay Sales foreclosure sale falls comfortably within the four-year window. Thus, although the parties tangle over the merits of that challenge (more on that later), they do not dispute its timeliness.

25. The Pacon asset sale, on the other hand, was more than four-years-old when McFee filed suit. McFee maintains that she became aware of that sale in 2021 and sued to challenge it soon after, making her claim timely. Presley asserts that McFee received actual notice of the sale in October 2019.

26. The undisputed evidence favors Presley. By October 2019, McFee's earlier state-court lawsuit against CPP had been pending for two years. CPP's counsel moved to withdraw at that time because the company was no longer doing business or replying to inquiries. In response to the motion to withdraw, McFee's counsel surmised that funds may have been "distributed to the owners" of CPP and that the company likely had not kept "reserves" to cover a potential judgment. (Hearing Tr., ECF No. 169.2.) To assuage those concerns, the presiding judge ordered CPP's counsel to give McFee information about the company's past and present owners before withdrawing. Within the information that CPP's counsel provided was a notation that the "[e]ffective date of sale to Pacon was 10/26/17." (Defs.' Ex. 3, ECF No. 148.4.)

27. McFee objects that this reference to the "sale to Pacon" was too vague to put her on notice of the transfer. But the key information is all there. She knew that a sale had occurred, that the date of the sale was October 2017, and that the buyer was

Pacon. She also knew, from the stated reasons for the motion to withdraw, that CPP was moribund. At a minimum, CPP's disclosure was enough to put McFee on inquiry notice, especially given her counsel's suspicions that the company's principals had absconded with its assets. Yet she performed no diligence at all. She did not ask CPP's counsel for a more detailed description of the sale. Nor did she investigate publicly available information, which included a press release touting Pacon's acquisition of "assets of CPP International, LLC's Arts and Crafts Division." (McFee Dep. Ex. 3.)

28. As a result, McFee's challenge to the Pacon sale under section 39-23.4(a)(1) is untimely. No reasonable jury could conclude otherwise. *See, e.g.*, *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 493 (1985) (concluding that claim was barred by statute of limitations when plaintiff "was put on inquiry as to the nature and extent of the problem" but "failed to inform itself"); *KB Aircraft Acquisition, LLC v. Berry*, 249 N.C. App. 74, 89 (2016) (concluding that claim for fraudulent transfer was time-barred when information available to plaintiff "was enough to cause a reasonable person" to investigate).

29. **Section 39-23.4(a)(1) Claim—Bay Sales Transaction.** The only part of McFee's claim for fraudulent transfer that isn't time-barred is her challenge to the Bay Sales foreclosure sale under section 39-23.4(a)(1). That section provides as follows:

> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

> (1) With intent to hinder, delay, or defraud any creditor of the debtor;
>
> . . . .

See also Fischer Inv. Cap., Inc. v. Catawba Dev. Corp., 200 N.C. App. 644, 658–59 (2009).

30. Presley seeks summary judgment on two grounds. The first is that he was not affiliated with CPP at the time of the foreclosure sale and received none of the proceeds from it. (*See* Presley Aff. ¶ 12, ECF No. 147; Presley Dep. 119:2–19; *see also* McFee Dep. 159:3–6 ("Q. Do you have any evidence to support your allegation that [Presley] shared in the proceeds and benefits of the Bay Sales transaction? A. No.").) McFee offers no response to this argument and appears to concede the point in her brief in support of her own motion for summary judgment. (*See* McFee Br. in Supp. Summ. J. 15, ECF No. 155.)

31. The second ground is that a foreclosure sale is not a "transfer made . . . by a debtor" within the meaning of section 39-23.4(a)(1). The statute defines "transfer" to mean disposal of an "asset" and goes on to define "asset" to exclude property "encumbered by a valid lien." N.C.G.S. § 39-23.1(2)(a), (12). Presley's evidence shows that the property sold to Bay Sales was collateral that CPP used to secure a line of credit from Wells Fargo and was therefore encumbered by a valid lien. And it was Wells Fargo that foreclosed on the collateral and sold it to Bay Sales. (*See* Defs.' Exs. 4, 5.) Once more, McFee offers no response.

32. McFee had the burden "to rebut these arguments by identifying the evidence that supports [her] claim and articulating how that evidence creates a genuine issue

of material fact for trial." *Brewster v. Powell Bail Bonding, Inc.*, 2020 NCBC LEXIS 27, at *9 (N.C. Super. Ct. Mar. 11, 2020). She did not carry that burden. The Court therefore concludes that there are no genuine issues of material fact regarding her challenge to the Bay Sales foreclosure sale under section 39-23.4(a)(1) and grants summary judgment to Presley on that claim.

B. Fraud

33. McFee claims that Presley defrauded her while she was employed by CPP. She alleges that he promised, at unspecified times between 2008 and 2015, to protect her intellectual property rights and to ensure that CPP would reassign them to her in keeping with the terms of her employment agreement. She also alleges that Presley induced her to abandon her membership interest in CPP in 2013 by falsely representing that the company was worthless. (*See* Am. Compl. ¶¶ 35, 39, 117.)

34. Presley begins by arguing that the claim is time-barred. The statute of limitations for fraud is three years, *see* N.C.G.S. § 1-52(9), and the limitations period "begins to run from the discovery of the fraud or from the time it should have been discovered in the exercise of reasonable diligence," *Carlisle v. Keith*, 169 N.C. App. 674, 685 (2005) (citation and quotation marks omitted). Presley's position, which McFee denies, is that she knew or should have known of any fraud by the time she sued CPP in 2016 and 2017.

35. The Court agrees with Presley. Soon after CPP fired McFee, she made a demand to reclaim her intellectual property rights under the terms of her employment agreement. In McFee's words, Presley refused that demand and instead

"attempted to cajole [her] into relinquishing her design rights" through a formal separation agreement. (McFee Br. in Supp. Summ. J. 6; *see also* Terpening Aff. Ex. K, ECF No. 153.11.) Presley's refusal is what led her to sue CPP for breach of her employment agreement in federal court in 2016. (*See* Am. Compl. ¶¶ 46, 50.) While that lawsuit was pending, Presley agreed to have CPP reassign some rights to McFee, (*see* Terpening Aff. Ex. M), yet she maintains that he "improperly withheld" other rights, (McFee Br. in Supp. Summ. J. 7). These undisputed facts—which come from McFee's own account of what happened—show that she knew or should have known at that point that Presley had reneged on any alleged promise to ensure the reassignment of her rights.

36. There's more. When the federal court dismissed McFee's claims, she refiled in state court in 2017, again alleging that CPP had refused to reassign rights as required by her employment agreement and that it had pushed her to sign a separation agreement that would have let it keep her rights. She also added allegations that CPP had defrauded her by making promises about her membership interest and intellectual property rights that it never intended to keep. (*See* Terpening Aff. Ex. O.) In her deposition, McFee testified that she viewed CPP and Presley to be "all one in the same" at the time she brought the 2016 and 2017 lawsuits and confirmed that her earlier allegations of fraud against it were the same as her allegations of fraud against him in this case. (McFee Dep. 149:8–17, 167:1–12.) Thus, by her own admission, McFee knew about Presley's alleged fraud when she sued CPP in state court in 2017. Her unequivocal testimony leaves no doubt about that.

37. It is striking that McFee's opposition brief never directly addresses the timeliness of her fraud claim. At most, she alludes to it in a footnote, urging the Court to look past her testimony that she is suing Presley now for the same reasons that she sued CPP in 2017. (*See* McFee Opp'n Br. 12 n.2, ECF No. 165.) But her admissions are what they are: candid answers to fair questions. And her testimony simply confirms what the written record already shows.

38. In short, McFee has not offered evidence that would create a genuine issue of material fact concerning when her fraud claim accrued. The undisputed evidence shows that she knew or should have known about the alleged fraud before filing her 2017 lawsuit, and the three-year limitations period therefore expired long before she filed this action in late 2021.[2]

39. Presley also contends that the claim lacks merit. 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 plaintiff must show not only that she actually relied on the misrepresentation but also that her reliance was reasonable. *See Forbis v. Neal*, 361 N.C. 519, 527 (2007). In addition, "mere unfulfilled promises cannot be made the basis for an action of fraud"; a promise is fraudulent only when made "with no intention to carry it out." *Williams v. Williams*, 220 N.C. 806, 810 (1942).

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[2] Arguably, McFee should have known of any alleged fraud even earlier. She admits that she made no effort in 2012 to investigate Presley's alleged representation that CPP was worthless even though she held broad rights to inspect CPP's financial records at the time. (*See* McFee Dep. 109:17–19.)

40. Presley denies having made any false representations about CPP's financial state or false promises regarding McFee's intellectual property rights. The evidence, he contends, shows that McFee negotiated her intellectual property rights at arm's-length with the advice of counsel. (*See* McFee Dep. 184:12–15.) It also shows that he and other officers were openly bullish about CPP's performance in 2012. (*See* McFee Dep. Exs. 11, 12 (company-wide e-mails stating that CPP "will be more balanced, profitable" in 2013 and that Presley was "very excited" about its prospects).) Asked to reconcile her allegations with these communications, McFee conceded that she couldn't and was unable to recall when or where Presley had supposedly told her that CPP was worthless. (*See* McFee Dep. 106:9–12, 149:18–150:16.)

41. These arguments stand unrebutted. McFee's one-paragraph response ignores Presley's evidence and makes no attempt to substantiate either the alleged misrepresentation about CPP's value or the promise to guard her intellectual property rights. She has not carried her burden "to come forward with specific facts establishing the presence of a genuine factual dispute for trial." *Liberty Mut. Ins.*, 356 N.C. at 579.

42. Worse yet, McFee attempts to resurrect an obsolete theory from her original complaint: that Presley induced her to abandon her membership interest by falsely representing that "others were surrendering their interests" as well. (McFee Opp'n Br. 21.) Having scrapped that theory when she amended her complaint, McFee cannot rely on it to avoid summary judgment. *See, e.g.*, *Fund 19-Miller, LLC v. Isbill*, 2021 N.C. App. LEXIS 624, at *11–12 (N.C. Ct. App. Nov. 16, 2021) (unpublished).

43. The Court grants Presley's motion for summary judgment on the claim for fraud and denies McFee's motion.

C. Unjust Enrichment

44. As best the Court can tell, McFee bases her claim for unjust enrichment on allegations that she conferred her intellectual property rights and her shares of the proceeds from the Pacon and Bay Sales transactions on Presley without receiving commensurate value in return. (*See* Am. Compl. ¶ 144.) Her briefs, however, ignore everything other than the Pacon transaction.

45. Once again, Presley argues that McFee's claim is untimely. The statute of limitations for unjust enrichment is three years. *See* N.C.G.S. § 1-52(1). Our Court of Appeals has held that the clock begins to tick when the wrongful act occurs, not when it is discovered. *See Stratton v. Royal Bank of Can.*, 211 N.C. App. 78, 83 (2011) (concluding that "the discovery rule [did] not apply to [plaintiff's] conversion and unjust enrichment claims"); *Lau v. Constable*, 2017 NCBC LEXIS 10, at *13 (N.C. Super. Ct. Feb. 7, 2017) ("The discovery rule does not apply to an unjust enrichment claim.").

46. The Court concludes that the statute of limitations bars McFee's claim except to the extent that it is based on the Bay Sales foreclosure sale, which occurred less than three years before McFee filed her complaint. The Pacon asset sale occurred in 2017, and Presley denied McFee's demand for the reassignment of her intellectual property rights in 2016. The limitations period had expired for purposes of those allegations by the time McFee filed her complaint in 2021.

47. Turning to the merits, Presley contends that the evidence does not support McFee's claim assuming any part of it is timely. He is correct.

48. "The general rule of unjust enrichment is that where services are rendered and expenditures made by one party to or for the benefit of another, without an express contract to pay, the law will imply a promise to pay a fair compensation therefor." *Krawiec v. Manly*, 370 N.C. 602, 615 (2018) (citation and quotation marks omitted). But when the parties have made an express contract, the law will not imply one "with reference to the same matter." *Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 713 (1962). As Presley observes, McFee's employment agreement governs her intellectual property rights. McFee does not challenge the agreement's validity or otherwise respond to Presley's argument. Having failed to respond, she has abandoned any claim for unjust enrichment based on her intellectual property rights.

49. In addition, McFee must show that she conferred a benefit on Presley with the "expectation of compensation or other benefit in return." *Butler v. Butler*, 239 N.C. App. 1, 12 (2015); *see also JPMorgan Chase Bank, N.A. v. Browning*, 230 N.C. App. 537, 541–42 (2013). Her claim is the opposite. She denies having conferred any benefit on Presley and contends instead that he "transferred $5,050,000 to himself," (McFee Opp'n Br. 22)—that is, he took proceeds that she believes she was entitled to receive from the Pacon and Bay Sales transactions. Even if true, evidence that Presley took for himself "some benefit to which [McFee] believes [she] is rightfully entitled" is insufficient to support a claim for unjust enrichment. *KNC Techs., LLC v. Tutton*, 2019 NCBC LEXIS 72, at *36 (N.C. Super. Ct. Oct. 9, 2019); *see also Barrett*

v. Coston, 261 N.C. App. 311, 315 (2018) (affirming order granting motion to dismiss when "the benefit was allegedly conferred upon Defendant by" someone other than the plaintiff); *Caliber Packaging & Equip., LLC v. Swaringen*, 2023 NCBC LEXIS 74, at *14 (N.C. Super. Ct. May 31, 2023) (granting motion to dismiss claim for unjust enrichment).

50. The Court grants Presley's motion for summary judgment as to the claim for unjust enrichment and denies McFee's motion.

D. Breach of Fiduciary Duty & Constructive Fraud

51. McFee alleges that Presley breached fiduciary duties that he owed to her in two ways. One was by duping her into assigning her intellectual property rights to CPP and then failing to guard those rights against encroachment by Pacon and Bay Sales. The other was that he took proceeds from the Pacon and Bay Sales transactions that should have been applied toward the judgment that she obtained in her earlier state-court litigation. The same allegations underlie her claim for constructive fraud. (*See* Am. Compl. ¶¶ 103, 104, 112, 113.)

52. Breach of fiduciary duty and constructive fraud are related, though distinct, causes of action. An essential element of each is the existence of a fiduciary relationship. To establish a breach of fiduciary duty, McFee must show the existence of a fiduciary duty, a breach of that duty, and injury proximately caused by the breach. *See Green v. Freeman*, 367 N.C. 136, 141 (2013). To establish constructive fraud, she must show an additional element: that Presley sought to benefit himself through the breach. *See White v. Consol. Plan., Inc.*, 166 N.C. App. 283, 294 (2004).

53. A fiduciary relationship exists when a person places special confidence in a party who "is bound to act in good faith and in the best interest of the" person reposing the confidence. *Lynn v. Fannie Mae*, 235 N.C. App. 77, 81 (2014). North Carolina courts recognizes both de jure and de facto fiduciary relationships. A de jure relationship "arise[s] from legal relations"—attorney–client, principal–agent, and similar relationships. *S.N.R. Mgmt. Corp. v. Danube Partners 141, LLC*, 189 N.C. App. 601, 613 (2008) (citation and quotation marks omitted). A de facto relationship is one that exists "as a fact, in which there is confidence reposed on one side, and the resulting superiority and influence on the other." *Id.* (citation and quotation marks omitted).

54. Constructive fraud is one of the few claims untouched by timeliness concerns, and that is because it is subject to a ten-year statute of limitations. N.C.G.S. § 1-56(a). This is not so for breach of fiduciary duty, which is subject to a three-year statute of limitations, and Presley argues that the claim for breach of fiduciary duty is time-barred for many of the same reasons as the claims for fraud and unjust enrichment. But because the claim for constructive fraud is unquestionably timely and virtually identical to the claim for breach of fiduciary duty, the efficiencies weigh in favor of addressing the parties' substantive arguments.

55. The dispositive issue is whether Presley owed McFee a fiduciary duty. The amended complaint alleges three theories to support the existence of a fiduciary relationship. After careful review, the Court concludes that none of the three presents a triable issue.

56. McFee's first theory is that Presley, as an officer of CPP, owed her a fiduciary duty during the years in which she held a minority membership interest in the company. (*See* Am. Compl. ¶ 96.) This is wrong as a matter of law. Our appellate courts have made clear that officers of an LLC owe a fiduciary duty to the company, not to its members, former members, or employees. *See Kaplan v. O.K. Techs., L.L.C.*, 196 N.C. App. 469, 474 (2009). McFee does not dispute that issue.

57. Next, McFee alleges that she was one of CPP's creditors at the time of the asset sale to Pacon and the foreclosure sale to Bay Sales. She further alleges that CPP's managers, including Presley, owed her a fiduciary duty as a result.

58. "When an LLC finds itself in circumstances amounting to a winding-up or dissolution, the managers of the LLC owe a fiduciary duty to the LLC's creditors to treat members of the same creditor class fairly and equally." *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2017 NCBC LEXIS 91, at *7 (N.C. Super. Ct. Oct. 3, 2017). The manager "is generally prohibited from taking advantage of his intimate knowledge of the corporate affairs and his position of trust for his own benefit and to the detriment of the creditors to whom he owes the duty." *Keener Lumber Co. v. Perry*, 149 N.C. App. 19, 33 (2002).

59. The undisputed evidence shows that Presley was not a manager at the time of the Bay Sales foreclosure sale. (*See* Presley Aff. ¶ 12; Defs.' Ex. 3; *see also* Terpening Aff. Ex. C.) Thus, he could not have owed a fiduciary duty to CPP's creditors in connection with that transaction.

60. The undisputed evidence also shows that CPP was not "in circumstances amounting to a winding-up" at the time of the asset sale to Pacon. *Insight Health*, 2017 NCBC LEXIS 91, at *7. McFee insists that CPP was insolvent after the sale, but our Court of Appeals has held that "more than balance sheet insolvency is required in order to impose on directors a fiduciary duty to creditors." *Whitley v. Carolina Clinic, Inc.*, 118 N.C. App. 523, 527 (1995) (cleaned up). The circumstances must be akin to liquidation—such as when a company sells nearly all its property "with a view of going out of business." *Bassett v. Pamlico Cooperage Co.*, 188 N.C. 511, 512 (1924).

61. CPP's sale of its arts and crafts division to Pacon was a significant transaction, but it was not a liquidation. Indeed, CPP conducted the sale with the approval of its secured lender, Wells Fargo, on condition that the company would retain over $1 million of the proceeds for future operations. Moreover, CPP continued to employ workers, to market products, and to maintain a sizeable line of credit well into 2018. (*See, e.g.*, McFee Dep. Ex. 2; Presley Dep. 162:15–17; Terpening Aff. Exs. I, S, ECF Nos. 153.9, 153.18.) Because CPP continued to conduct business after the asset sale to Pacon, Presley did not owe a fiduciary duty to the company's creditors. *See Whitley*, 118 N.C. App. at 527–28 (holding that no fiduciary duty existed as to payments that "occurred some eight months before the corporation ceased doing business"); *see also Gen. Fid. Ins. Co. v. WFT, Inc.* 269 N.C. App. 181, 187 (2002) (finding that a fiduciary duty arose once company "laid off its last employees and ceased operations").

62. McFee's third and final theory is that a de facto fiduciary relationship existed. The standard for showing a de facto fiduciary relationship "is a demanding one." *Lockerman v. S. River Elec. Membership Corp.,* 250 N.C. App. 631, 636 (2016). "Only when one party figuratively holds all the cards—all the financial power or technical information, for example—have North Carolina courts found that the special circumstance of a fiduciary relationship has arisen." *Id.* at 637 (citation and quotation marks omitted).

63. No reasonable jury could conclude that a de facto fiduciary relationship existed. Yes, Presley was McFee's boss, co-owner, and friend for many years. But those relationships are not fiduciary in nature. In all but extraordinary circumstances, "the relation of employer and employee is not one of those regarded as confidential." *Dalton v. Camp*, 353 N.C. 647, 652 (2001). And "even an intimate friendship" does not give rise to a fiduciary relationship. *rFactr, Inc. v. McDowell*, 2020 NCBC LEXIS 144, at *30–31 (N.C. Super. Ct. Dec. 8, 2020). Even if true that McFee was not a financial whiz and that she trusted Presley as a close friend, she has not offered evidence tending to show that he had dominion and control over her. *See Kingsdown, Inc. v. Hinshaw*, 2015 NCBC LEXIS 30, at *25–26 (N.C. Super. Ct. Mar. 25, 2015) (dismissing claim for constructive fraud).

64. The Court concludes that there is no genuine issue of material fact regarding the existence of a fiduciary relationship. In the absence of a fiduciary duty, there can be no claim for breach. The Court grants summary judgment in favor of Presley on

the claims for breach of fiduciary duty and constructive fraud and denies McFee's motion.[3]

E. Veil Piercing

65. The entry of summary judgment in favor of Presley on every claim for relief necessitates the entry of summary judgment on McFee's request to pierce CPP's corporate veil to hold Presley accountable for CPP's acts. *See Nicks v. Nicks*, 241 N.C. App. 487, 497 (2015) ("There must also be an underlying legal claim to which [veil-piercing] liability may attach.").

IV.
CONCLUSION

66. For all these reasons, the Court **GRANTS** Presley and C. Presley Properties' motion for summary judgment and **DENIES** McFee and Savage McFee's cross-motion. The claims against Presley and C. Presley Properties are **DISMISSED** with prejudice.

SO ORDERED, this the 28th day of December, 2023.

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

[3] One other point bears mention. McFee alleges that the Bay Sales foreclosure sale harmed her because Bay Sales began to sell products using her designs directly and through a company called Carolina Pad, LLC. She brought a parallel lawsuit against Carolina Pad in federal court for copyright infringement. Just a few weeks ago, though, the federal court granted summary judgment in favor of Carolina Pad, holding that its designs were not "substantially similar" to McFee's, and that McFee did not hold copyright registrations for the designs at the time she filed the complaint. *See McFee v. Carolina Pad, LLC*, 2023 U.S. Dist. LEXIS 20573, at *8–14 (W.D.N.C. Nov. 16, 2023).