

STATE OF NORTH CAROLINA  
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 583

WESTON DAVIS,

Plaintiff,

v.

DAVIS FUNERAL SERVICE, INC.;  
ROBERT L. MORGAN, III, President  
(as an officer of Davis Funeral  
Service, Inc.); PHILLIP TILLMAN,  
Vice President (individually and as  
an officer of Davis Funeral Service,  
Inc.); and ROBIN H. MORGAN,  
Secretary (as an officer of Davis  
Funeral Service, Inc.),

Defendants/Third-  
Party Plaintiffs,

v.

DEIDRA TEDDER,

Third-Party  
Defendant.

**ORDER AND OPINION  
ON DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

1. In this case, Weston Davis has sued his former employer, Davis Funeral Service, Inc., and its officers. He seeks to recover unpaid wages as well as compensatory and punitive damages for alleged defamation. All four defendants have moved for summary judgment. (ECF No. 43.) For the following reasons, the Court **GRANTS in part** and **DENIES in part** their motion.

*Brown & Associates, PLLC, by Donald Mitchell Brown, for Plaintiff Weston Davis.*

*Burns, Gray & Gray, by John T. Burns and Christopher A. Gray, for Defendants Davis Funeral Service, Inc., Robert L. Morgan, III, Phillip Tillman, and Robin H. Morgan.*

*Villmer Caudill, PLLC, by Bo Caudill, for Third-Party Defendant Deidre Tedder.*

Conrad, Judge.

I.  
BACKGROUND

2. Davis joined Davis Funeral Service in January 2018 at the request of his cousin, Vann, who was the president and sole shareholder at that time. In September 2020, Vann died, and company ownership passed to his estate. The original administrator of the estate elevated Davis to replace Vann as president, but a year later, a new administrator sacked Davis and named Robert Morgan, Robin Morgan, and Phillip Tillman as officers. (See Davis Aff. ¶¶ 3, 17, 23, 31, ECF No. 47; see also Davis Dep. 25:16–26:10, 57:15–24, ECF No. 44.1.)

3. This lawsuit followed. In his complaint, Davis points to an oral employment agreement that he and Vann allegedly negotiated. The terms of that agreement are hazy: Davis does not say how much he was to be paid but alleges that he was given the title “Vice President,” that he was an at-will employee, and that his duties included managing the funeral home and training to become a licensed funeral director. Davis also alleges that Davis Funeral Service paid him just a small fraction of the wages that he earned from January 2018 until the COVID-19 pandemic began in early 2020 and that it did not pay him at all from the beginning of the pandemic through Vann’s death. Based on these allegations, Davis seeks to recover “wages unpaid” or, alternatively, “the reasonable value of services rendered.”<sup>1</sup> He asserts

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<sup>1</sup> After the close of discovery and after Davis Funeral Service filed its motion for summary judgment, Davis moved to amend his complaint to introduce new theories of liability. The proposed amendment described a radically different oral employment agreement in which

claims for breach of contract, breach of the implied covenant of good faith and fair dealing, quantum meruit, and unjust enrichment. (See Compl. ¶¶ 10–12, 20, 25, 68, 69, 86–88, 90, 97, 102, ECF No. 3.)

4. Davis also claims that he was defamed after his departure. As alleged, Tillman falsely stated to grieving patrons of Davis Funeral Service that Davis had performed funerals without a license and was fired for that reason. Davis seeks to hold Tillman individually liable for these statements and to hold the company vicariously liable. (See Compl. ¶¶ 53, 54, 56, 57, 78, 92–95.)

5. In response, Davis Funeral Service denies any wrongdoing and has counterclaimed for alleged misconduct by Davis during his time as president. It has also asserted third-party claims against another former employee. (See Ans. to Compl. & Countercl., ECF No. 4.) The counterclaims and the third-party claims, which the Court has addressed in earlier orders, are not at issue here. *See generally Davis v. Davis Funeral Serv., Inc.*, 2023 NCBC LEXIS 79 (N.C. Super. Ct. June 12, 2023); *Davis v. Davis Funeral Serv., Inc.*, 2022 NCBC LEXIS 79 (N.C. Super. Ct. July 20, 2022).

6. Discovery is now closed. Davis Funeral Service, the Morgans, and Tillman have jointly moved for summary judgment. The motion is fully briefed, and the Court held a hearing on 12 October 2023. The motion is ripe for determination.

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Vann supposedly promised Davis a five-year term of employment (rather than at-will employment) and compensation in the form of stock valued at \$125,000 per year. The Court denied the motion to amend on the grounds of undue delay and prejudice. (See ECF No. 60.)

## II. ANALYSIS

7. Summary judgment is appropriate “if 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 deciding a motion for summary judgment, the Court views the evidence in the light most favorable to the nonmoving party and draws all inferences in its favor. *See Vizant Techs., LLC v. YRC Worldwide, Inc.*, 373 N.C. 549, 556 (2020); *N.C. Farm Bureau Mut. Ins. Co. v. Sadler*, 365 N.C. 178, 182 (2011).

8. 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). The moving party meets its burden “by proving that an essential element of the opposing party’s claim is nonexistent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim.” *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681 (2002) (citations and quotation marks omitted). If the moving party makes that showing, “the burden shifts to the nonmoving party to produce a forecast of evidence demonstrating that the nonmoving party will be able to make out at least a prima facie case at trial.” *Cummings v. Carroll*, 379 N.C. 347, 358 (2021) (cleaned up). The nonmoving party “may not rest upon the mere allegations or denials of his pleading,” 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.

9. **The Morgans.** Robin and Robert Morgan move for summary judgment on all claims against them. As they correctly observe, the complaint does not allege that they committed any wrongful acts (or any lawful acts, for that matter). Davis concedes that the Morgans have no personal involvement in any alleged misconduct but argues that each may be sued in his or her capacity as an officer of Davis Funeral Service. That is not the law. An officer of a corporation is not liable for the corporation's acts "merely by virtue of his office." *Wolfe v. Wilmington Shipyard, Inc.*, 135 N.C. App. 661, 670 (1999) (citation and quotation marks omitted). The Morgans are entitled to summary judgment.

10. **Breach of Contract.** A claim for breach of contract must be brought within three years after the cause of action accrues. *See* N.C.G.S. § 1-52(1). When the contract requires payment "in installments, the statute of limitations runs against each installment independently as it becomes due." *Martin v. Ray Lackey Enters., Inc.*, 100 N.C. App. 349, 357 (1990). This is because each unpaid installment is its own breach.

11. Davis Funeral Service acknowledges that part of Davis's claim for breach of contract is timely. Davis filed this action in March 2022; any alleged breach based on a failure to pay wages that became due in March 2019 or later falls within the three-year limitations period. But Davis Funeral Service contends that the statute of limitations bars the claim to the extent that it is based on the failure to pay installments of wages that became due before March 2019.

12. Davis's response is baffling. He says nothing about the timeliness of the claim for unpaid wages as pleaded in his complaint, arguing instead that a different theory of liability in his proposed amended complaint is timely. Because the Court denied leave to amend, the proposed amendment is a nullity, and novel theories within it are entirely irrelevant.

13. Only the claim that is alleged in the complaint matters. That claim is based on allegations that Davis "worked full-time as Vice President from the beginning of January 2018" and did not receive his full wages "[d]uring *all this time*." (Compl. ¶ 20 (emphasis added).) Davis has offered no argument to show that his claim to recover wages that became due before March 2019 is timely. Accordingly, the Court grants partial summary judgment as to the claim for breach of contract to the extent that it is based on the failure to pay wages that became due before March 2019. *See Rowell v. N.C. Equip. Co.*, 146 N.C. App. 431, 434 (2001) (When "the statute of limitations is properly pled and the facts are not in conflict, the issue becomes a matter of law, and summary judgment is appropriate.").

14. **Unjust Enrichment/Quantum Meruit.** Although pleaded separately, the claims for quantum meruit and unjust enrichment are two sides of the same coin. Both are claims in "quasi contract or contract implied in law." *Booe v. Shadrick*, 322 N.C. 567, 570 (1988). When "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) (quoting *Atl. Coast Line R.R. Co. v. State Highway Comm'm*, 268 N.C.

92, 95–96 (1996)). 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).

15. Davis Funeral Service contends that Davis’s alleged oral employment agreement, if it exists, is an express contract and that, as a result, he cannot pursue claims based on a theory of implied contract. This is unpersuasive. A plaintiff may plead claims for breach of contract and unjust enrichment in the alternative. Only “when an express contract has been proved” is it “error to submit an alternative implied contract claim to the jury.” *Catoe v. Helms Constr. & Concrete Co.*, 91 N.C. App. 492, 498 (1988). No express contract has been proved here. Although Davis Funeral Service purports to concede in its opening brief that an express contract exists, it disputes Davis’s description of the terms of that contract and has not articulated its own position on what the terms were. Given these disputes and the uncertain status of the alleged oral contract, it would be premature to dismiss the alternative claims for unjust enrichment and quantum meruit. The Court therefore denies the motion for summary judgment as to these claims.

16. **Defamation.** At the hearing, Davis Funeral Service abandoned the arguments that it had made in support of summary judgment as to the claim for defamation. The Court therefore denies the motion as to that claim.

III.  
CONCLUSION

17. For all these reasons, the Court **GRANTS** the motion for summary judgment as to all claims asserted against Robin Morgan and Robert Morgan. These claims are **DISMISSED** with prejudice.

18. The Court also **GRANTS in part** the motion for summary judgment as to the claim for breach of contract against Davis Funeral Service to the extent that Davis seeks to recover unpaid wages that became due before 3 March 2019.

19. The Court **DENIES** the motion for summary judgment in all other respects. The claims for breach of contract (as narrowed), breach of the implied covenant of good faith and fair dealing, unjust enrichment, and quantum meruit against Davis Funeral Service and the claim for defamation against Davis Funeral Service and Tillman shall proceed to trial.

20. On or before 30 October 2023, counsel for all parties shall confer and jointly report via e-mail to the Court's law clerks their estimate of the length of trial for the remaining claims and counterclaims.

**SO ORDERED**, this the 25th day of October, 2023.

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