STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 19 CVS 5659
EMRICH ENTERPRISES, LLC, individually and derivatively on behalf of TRIANGLE AUTOMOTIVE COMPONENTS, LLC, Plaintiff, v. HORNWOOD, INC., Defendant, v. TRIANGLE AUTOMOTIVE COMPONENTS, LLC, Defendant and Nominal Defendant.	**ORDER AND OPINION ON HORNWOOD'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL**

1. **THIS MATTER** is before the Court following the 24 April 2023 filing of Defendant Hornwood, Inc.'s Rule 50(b) Motion for Judgment Notwithstanding the Verdict (the "JNOV Motion"), (ECF No. 310), and Defendant Hornwood, Inc.'s Rule 59 Motion for a New Trial (the "Motion for New Trial"), (ECF No. 309).

2. After a seven-day trial beginning on 3 October 2022 and concluding on 11 October 2022, the jury found, in relevant part, that Defendant Hornwood, Inc. ("Hornwood") breached fiduciary duties it owed to Emrich Enterprises, LLC ("Emrich") and Triangle Automotive Components, LLC ("Triangle") by threatening to cease manufacturing fabric for Triangle, breaching Section 4.4 of the Triangle Operating Agreement, breaching Section 3(a) of the Triangle Joint Venture Agreement, and engaging in self-interested transactions with Triangle. Upon the

jury's findings, and after further briefing from the parties regarding the form of judgment, the Court entered its Order on Pre-Judgment Motion and Final Judgment (the "Final Judgment Order") on 14 April 2023. (*See* ECF No. 307 ["Final J."].) Pursuant to Rules 50 and 59 of the North Carolina Rules of Civil Procedure (the "Rule(s)"), Hornwood now seeks judgment notwithstanding the jury's verdict and a new trial.

3. For the reasons set forth below, the Court **GRANTS** in part and **DENIES** in part the JNOV Motion, and **DENIES** the Motion for New Trial.

> *Ellis & Winters LLP, by Andrew P. Carter, Michelle A. Liguori, Jonathan D. Sasser, Thomas H. Segars, and Jeffrey S. Warren, for Plaintiff Emrich Enterprises, LLC.*
>
> *Moore & Van Allen PLLC, by Mark A. Nebrig, Raquel Macgregor Pearkes, and Kaitlin M. Price, for Defendant Hornwood, Inc. and Defendant and Nominal Defendant Triangle Automotive Components, LLC.*

Robinson, Judge.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

4. Emrich and Hornwood are the only members of Triangle. (Second Am. Verified Compl. ¶ 1, ECF No. 116 ["Second Am. Compl."].)[2]

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[1] The factual background of this litigation is set forth in greater detail in the Court's Order and Opinion on Emrich's Motion for Summary Judgment and Defendants' Motion for Summary Judgment entered by the Court on 15 February 2022. (ECF No. 202.)

[2] Emrich's Second Amended Complaint is verified and therefore was received and treated by the Court as an affidavit. *Page v. Sloan*, 281 N.C. 697, 705 (1972) ("A verified complaint may be treated as an affidavit if it (1) is made on personal knowledge, (2) sets forth such facts as would be admissible in evidence, and (3) shows affirmatively that the affiant is competent to testify to the matters stated therein.").

5. Emrich is a North Carolina limited liability company and is the minority member of Triangle. (Second Am. Compl. ¶ 14.) Emrich's members are John Emrich and Martha Miller. (Second Am. Compl. ¶ 105.)

6. Hornwood is a North Carolina corporation and is the majority member of Triangle. (Second Am. Compl. ¶ 16.) Hornwood manufactures fabric for a wide variety of applications, including the automotive headliner Triangle uses in its products. (Second Am. Compl. ¶¶ 5, 20.) Hornwood's principals are its CEO, Chuck Horne, and its President, Wesley Horne. (Second Am. Compl. ¶ 7.)

7. Emrich, Hornwood, and nonparty Bondtex, Inc. ("Bondtex") formed Triangle in 2006 in order to supply headliner fabric to automobile companies. (Second Am. Compl. ¶ 15.) At its inception, Triangle was established as a vertically integrated company: Hornwood produced the fabrics, Bondtex laminated those fabrics onto foam backing, and Emrich was tasked with obtaining business for Triangle. (*See generally* Joint Venture Agreement, ECF No. 323.12 ["Joint Venture Agt."].)

8. In February 2006, Emrich, Hornwood, and Bondtex entered into an operating agreement (the "Operating Agreement") that governed Triangle's operations. (Operating Agreement, ECF No. 323.11 ["Op. Agt."].)

9. Section 3.4 of Triangle's Operating Agreement provides, in relevant part,

> 3.4 *Limitation on Liability*. No Member of the Company shall be liable to the Company for monetary damages for an act or omission in such Member's capacity as a Manager, except as provided in the [LLC] Act for (i) acts or omissions which a Member knew at the time of the acts or omissions were clearly in conflict with the interests of the Company; (ii) any transaction from which a Member derived an improper personal

> benefit; or (iii) acts or omissions occurring prior to the date this provision becomes effective. If the [LLC] Act is amended to authorize further elimination of or limitations on the liability of Members as Mangers, then the liability of Members of the Company shall be eliminated or limited to the fullest extent permitted by the Act so Amended.

(Op. Agt. § 3.4.)

10. Further, Section 4.4 of Triangle's Operating Agreement provides, in relevant part,

> 4.4 *Other Activities of Members and Managers*. No Member may engage in or possess an interest in other business ventures of any nature or description, independently or with others, which are competitive with the activities of the Company, without first offering an interest in such activities to the Company and each other Member.

(Op. Agt. § 4.4.)

11. In September 2017, unbeknownst to the rest of Triangle's members, Hornwood engaged in discussions with Borgstena, a foreign manufacturer of automotive textile products, including of the kind made by Triangle. (Second Am. Compl. ¶ 77.) Over the following months, Hornwood and Borgstena executed a nondisclosure agreement in order to proceed with joint product development. (Second Am. Compl. ¶ 78.) Hornwood's principals, Chuck and Wesley Horne, visited Borgstena's manufacturing facility in Portugal, and Borgstena's principals likewise visited Hornwood's North Carolina facility. (Second Am. Compl. ¶¶ 81, 83.) Hornwood and Borgstena discussed the possibility of Hornwood manufacturing automotive textile products for automobile companies with whom Borgstena had a relationship, including the same types of products Triangle produced. (Second Am. Compl. ¶ 84.)

12. In 2018, Bondtex withdrew from Triangle with the consent of the members, leaving Triangle with two members: the majority member, Hornwood, and the minority member, Emrich. (Second Am. Compl. ¶¶ 43, 45, 50.)

13. On 10 June 2019, Hornwood informed Emrich by letter that it was losing money in its work with Triangle, and that Hornwood was going to increase the amount it charges Triangle for fabric manufacturing. (Second Am. Compl. ¶ 139.) Hornwood also added general and administrative expenses ("G&A") to the amount it charged Triangle. (Second Am. Compl. ¶ 145.)

14. This action commenced on 29 April 2019 with the filing of Emrich's Verified Complaint. (Verified Compl., ECF No. 3 ["Compl."].) A trial by jury was held in Wake County from 3 October to 13 October 2022 (the "Trial"). (*See* ECF No. 207.) Hornwood filed both its Rule 50(b) JNOV Motion and its Rule 59 New Trial Motion on 24 April 2023. Following the briefing period, a hearing on the motions was held on 16 August 2023 (the "Hearing"). (*See* ECF No. 348.)

15. Following the Hearing, the Court entered a scheduling order which instructed counsel to file supplemental briefs on issues raised at the Hearing. (*See* ECF No. 349.) In accordance with the scheduling order, the parties timely filed opening and response briefs.

16. The motions are ripe for determination.

II. ANALYSIS

17. The Court first addresses Hornwood's JNOV Motion, including the arguments provided in the supplemental briefing, and then turns to Hornwood's Motion for New Trial.

A. The JNOV Motion

18. A motion for JNOV

> provides the trial court with an opportunity to reconsider the question of the sufficiency of the evidence after the jury has returned a verdict and permits the court to enter judgment in accordance with the movant's earlier motion for a directed verdict and notwithstanding the contrary verdict actually returned by the jury.

Primerica Life Ins. Co. v. James Massengill & Sons Constr. Co., 211 N.C. App. 252, 256–57 (2011) (quotation marks omitted). A motion for judgment notwithstanding the verdict tests the sufficiency of the evidence to take the case to the jury and support a verdict for the non-movant. *Id.* at 257. "The party moving for judgment notwithstanding the verdict, like the party seeking a directed verdict, bears a heavy burden under North Carolina law." *S. Shores Realty Servs. v. Miller*, 251 N.C. App. 571, 578 (2017) (quoting *Taylor v. Walker*, 320 N.C. 729, 733 (1987)).

19. A JNOV motion should be denied "if there is more than a scintilla of evidence supporting each element of the non-movant's claim." *Hewitt v. Hewitt*, 252 N.C. App. 437, 442 (2017). "A scintilla of evidence is defined as very slight evidence[,]" *S. Shores Realty Servs.*, 251 N.C. App. at 578, and "[t]he trial court must construe the evidence in the light most favorable to the non-movant and resolve all

evidentiary conflicts in the non-movant's favor[,]" *Morris v. Scenera Research, LLC*, 368 N.C. 857, 861 (2016).

1. Triangle's Fiduciary Duty Claims Against Hornwood

20. At trial, the jury found that Hornwood breached fiduciary duties it owed to Triangle under Triangle's Operating Agreement by (1) working with Borgstena, (2) threatening to cease manufacturing for Triangle, and (3) concealing its work with Borgstena. (Verdict (Phase One), Issue Nos. 1B, 1D–1E, ECF No. 269 ["Verdict 1"].) For each of the three breaches, the jury awarded Triangle nominal damages of $1.00. (Verdict 1, Issue Nos. 2B, 2D–2E.) Hornwood now seeks JNOV on all of Triangle's breaches of fiduciary claims on the basis that Section 3.4 of Triangle's Operating Agreement eliminates Hornwood's liability for such duties.

21. Hornwood contends that Section 3.4 eliminates its liability to Triangle for a violation of the duty of care, and following the 2014 amendment to the LLC Act, that it also eliminates Hornwood's liability to Triangle for a violation of the duty of loyalty. (Br. Supp. Mot. JNOV 8–9, ECF No. 320 ["JNOV Br. Supp."].)

22. As a preliminary matter, Emrich argues that Hornwood failed to raise Section 3.4 as an affirmative defense in either the pleadings or at summary judgment, and therefore Hornwood forfeited the right to now raise that issue. (Resp. Opp. Mot. JNOV 3, ECF No. 334 ["JNOV Br. Opp."].)

23. Rule 8(c) provides that a party must affirmatively set forth any matter constituting an avoidance or affirmative defense. N.C.G.S. § 1A-1, Rule 8(c). "An affirmative defense is a defense that introduces a new matter in an attempt to avoid

a claim, regardless of whether the allegations of the claim are true." *Williams v. Pee Dee Elec. Mbrshp. Corp.*, 130 N.C. App. 298, 301–02 (1998). "Failure to raise an affirmative defense in the pleadings generally results in a waiver thereof." *Robinson v. Powell*, 348 N.C. 562, 566 (1998) (noting that, under certain circumstances, a party may raise an affirmative defense for the first time at summary judgment). Rule 8(c) requires only a "short and plain statement of any matter constituting an avoidance or affirmative defense sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved." N.C.G.S. § 1A-1, Rule 8(c).

24. Hornwood responds that Section 3.4 is not an affirmative defense, but rather part of the inquiry into whether Hornwood owed fiduciary duties to Triangle in the first place. (JNOV Br. Supp. 8.) Hornwood further contends that, even if Hornwood's Section 3.4 argument is considered an affirmative defense, it was timely raised. (Reply Mem. Supp. Mot. JNOV 12, ECF No. 345 ["Reply"].) In its affirmative defenses contained in its Answer to Second Amended Complaint, Affirmative Defenses, and Restated Counterclaim, Hornwood alleged that Plaintiff's claims are "barred, in part, because Hornwood did not owe Plaintiff any fiduciary duties . . . [and] because the express terms of the parties' agreements contradict Plaintiff's assertions . . . [and] because Plaintiff's claims . . . violate the North Carolina Limited-Liability Company Act and the [Triangle] Operating Agreement." (Answer Sec. Am. Compl. 30–31, ECF No. 127.) Further, Hornwood raised this issue at the directed verdict stage. (*See generally* Trial Tr. Vol. 6, ECF No. 351.1 ["Trial Tr."].)

25. In so doing, all parties were put on sufficient notice of Hornwood's intended arguments. Accordingly, Hornwood has not waived its argument regarding Section 3.4 of Triangle's Operating Agreement.

26. The Court now addresses the merits. Emrich asserts that the evidence, and specifically Section 4.4 of Triangle's Operating Agreement, supports the jury's finding that Hornwood owed fiduciary duties to Triangle in spite of Section 3.4.

27. Specifically, Emrich argues that the jury could have reasonably concluded based on the evidence at trial that the parties intended, through Section 4.4, to carve out an exception to Section 3.4. (JNOV Br. Opp. 8.) The Court disagrees.

28. "An operating agreement is a contract[,]" and should be interpreted under North Carolina's established rules of contract construction. *Klos Constr., Inc. v. Premier Homes & Props., LLC*, 2020 NCBC LEXIS 85, at *25 (N.C. Super. Ct. July 21, 2020) (quoting *N.C. State Bar v. Merrell*, 243 N.C. App. 356, 370 (2015)). When a court interprets a contract, "its primary purpose is to ascertain the intention of the parties at the moment of its execution." *Land v. Scarborough*, 284 N.C. 407, 409–410 (1973). It is well-settled that "[w]here the language of a contract is plain and unambiguous, the construction of the agreement is a matter of law; and the court . . . must construe the contract as written[.]" *Happ v. Creep Pointe Homeowner's Ass'n*, 215 N.C. App. 96, 103 (2011).

29. In *Klos Construction*, this Court analyzed a similar limitation of liability provision. 2020 NCBC LEXIS 85, at *23. The Court determined that the language of that limitation of liability provision was "unambiguous on its face" and reflected

the parties' intent to "automatically extend the limitation of liability to the extent the Act permits such limitation." *Id.* at *27. The Court also analyzed the impact of the 2014 amendment to the LLC Act. *Id.* at *28. The 2014 amendment replaced Chapter 57C with Chapter 57D, which states in relevant part that an LLC manager's duty of loyalty is "subject to the operating agreement." *Id.* (citing N.C.G.S. § 57D-3-21(b)(iii)). Therefore, Chapter 57D "permits parties to an operating agreement to waive a manager's duty of loyalty." *Id.* (quoting *Pender Farm Dev. v. NDCO, LLC*, 2018 NCBC LEXIS 189, at *38 (N.C. Super. Ct. Mar. 12, 2018).

30. The Court in *Klos Construction* found that since the execution of the operating agreement at issue, the Act was "amended to authorize action further eliminating or limiting the liability of Managers by way of allowing an operating agreement to waive an LLC manager's duty of loyalty." *Id.* (internal marks omitted). As such, the Court concluded that the limitation of liability provision in the operating agreement was "automatically amended" and the duty of loyalty for the LLC's managers was waived. *Id.* at *29.

31. Here, Section 4.4 imposes a contractual duty upon Triangle's members to offer a right of first refusal to Triangle prior to engaging in competitive activities. This duty is far narrower than the fiduciary duties typically owed by managers of an LLC, which were waived in Section 3.4. Due to the applicability of Section 3.4, the Court concludes that no evidence presented at Trial, however slight, supports the jury's finding that Hornwood owed, and breached, fiduciary duties to Triangle.

32. The record is clear that Hornwood properly preserved its defense that, by contract, the parties waived any claim that Hornwood was bound by any fiduciary duty of loyalty. As such, the Court concludes that the evidence presented, even when viewed in the light most favorable to the non-moving party, does not support the jury's award on this issue.

33. Because the jury's determination on this point was legally unsubstantiated, the judgment as it relates to this issue is unsupportable. Therefore, the Court **GRANTS** in part Hornwood's JNOV Motion in this regard, and **AMENDS** the Final Judgment accordingly.

2. Hornwood's Self-Interested Transactions

34. The jury found that Hornwood was engaged in self-interested transactions that were not inherently fair to Triangle. (Verdict 1, Issue No. 5.) For that conduct, the jury awarded Triangle compensatory damages of $165,605.00. (Verdict 1, Issue No. 6.) Hornwood seeks JNOV on these issues.

35. As discussed earlier, the Court concludes that, due to the applicability of Section 3.4, there was no evidence presented at trial, however slight, supporting the jury's finding that Hornwood owed, and breached, fiduciary duties to Triangle, including those found by the jury in Issue No. 5. (*See supra* ¶ 33.) Therefore, the Court **GRANTS** in part Hornwood's JNOV Motion in this regard, and **AMENDS** the Final Judgment accordingly.

36. In making its decision, the jury answered Issue 10 in the affirmative, concluding that Hornwood breached Section 3(a) of the Joint Venture Agreement by

charging Triangle for general and administrative expenses. (Verdict 1, Issue No. 10.) Immediately following Issue 10, the jury was directed to consider Issue 11 if they answered "Yes" to Issue 10. As such, the jury answered Issue 11, which asked the jury "[w]hat amount of damages, if any, is Triangle entitled to recover from Hornwood for breach of the Joint Venture Agreement." (Verdict 1, Issue No. 11.) In its answer to Issue No. 11, the jury awarded damages totaling $165,605.00. (Verdict 1, Issue No. 11.) Following the conclusion of trial and review of the verdict form, the Court concluded that Issues 6 and 11 awarded duplicative damages in the amount of $165,605.00. (Final J. ¶ 30.) As a result, the amount of damages awarded under Issue 11 was stricken in the Final Judgment Order.

37. As the Court now grants Hornwood's JNOV Motion on Issues 5 and 6, the damages awarded under Issue 11 that were initially stricken as duplicative should be reinstated. For that reason, the Court **AMENDS** the Final Judgment to reinstate Issue 11. (Verdict 1, Issue Nos. 10–11.)

38. The Court now turns to whether JNOV should be granted in Hornwood's favor on Issue 11, given that Hornwood had no legitimate reason to move for JNOV on Issue 11 following the entry of the Final Judgment Order. The threshold question becomes whether Hornwood properly preserved its right to seek JNOV on Issue 11 by moving for a directed verdict on this issue at trial.

39. A party may seek a directed verdict at the close of the opposing party's evidence. *See* N.C.G.S. § 1A-1, Rule 50(a). The motion for a directed verdict must "state the specific grounds therefor" a way of giving notice to the other party of

possible defects and an opportunity to cure. *Id.*; *see also Garrison v. Garrison*, 87 N.C. App. 591, 595–96 (1987). If the trial court does not grant a directed verdict, the party may renew its motion after the jury returns its verdict but may not assert new grounds, which, if permitted, would defeat the notice function of the "specific grounds" requirement. *See* N.C.G.S. § 1A-1, Rule 50(b)(1). 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 omitted).

40. Upon review of the record, the Court concludes that Hornwood properly moved for directed verdict as to *each* of the claims against it which preserved its ability to seek JNOV on Issue 11. *See* Trial Tr. Vol. 6 at 40:2–4 (stating that "[Hornwood is] moving on all claims for directed verdict").) The Court notes that, at the close of Emrich's evidence, and again at the close of all the evidence, there were no specific "issues" before the Court, such as Issue 11 as to damages. As such, while not specifically referring to Issue 11, Hornwood's directed verdict motions as to each of Emrich's claims sufficiently preserved its ability to move for JNOV.

41. Having concluded that Hornwood preserved its right to seek JNOV regarding Issue 11, the Court now turns to whether JNOV should be granted for it as to that Issue.

42. After review of the supplemental briefing by all parties on this issue, the Court finds that the jury's conclusion that Hornwood owed Triangle $165,605.00 for its breach of the Triangle Joint Venture Agreement by charging Triangle for general

and administrative expenses is well-supported based on the evidence presented at trial. Most of the arguments presented by Hornwood in its supplemental briefing center on arguments that are best left to be argued in a motion for new trial, and as such, the Court refrains from addressing those here.[3]

43. Accordingly, Hornwood's JNOV Motion is **DENIED** in part as to Issue 11. Given that Issue 11 was originally ruled duplicative and stricken in the Final Judgment Order, and later reinstated after the deadline for post-trial motions had passed, Hornwood had no legitimate reason to include Issue 11 in its Motion for New Trial. As a result, the Court will allow Hornwood leave to move for new trial as to Issue 11 within thirty days after entry of this Order.

3. Emrich's Direct Claims Against Hornwood

44. At Trial, the jury found that Hornwood, as majority member of Triangle, breached fiduciary duties it owed to Emrich by working with Borgstena and threatening to cease manufacturing for Triangle. (Verdict 1, Issue Nos. 3C, 3E.) The jury awarded nominal damages of $1.00 for Hornwood's work with Borgstena, and compensatory damages of $5,000.00 for Hornwood's threat to cease manufacturing. (Verdict 1, Issue Nos. 4C, 4E.) Hornwood seeks judgment notwithstanding the verdict on all Emrich's direct claims against Hornwood.

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[3] The Court ordered supplemental briefing on four issues, the last of which being "[i]f Defendants are entitled to pursue a motion for judgment notwithstanding the verdict as to issue number 11, should the Court grant the motion?" (ECF No. 349.) However, in the briefing, Defendants specifically titled their argument as "[t]he Court should grant a new trial for Hornwood on Issue 11." (Hornwood's Suppl. Br. 6, ECF No. 350.)

i. Standing to Bring Direct Claims

45. Members of an LLC, like shareholders of a corporation, "generally may not bring individual actions to recover what they consider their share of the damages suffered by the corporation.' " *Green v. Freeman*, 367 N.C. 136, 142 (2013) (quoting *Barger v. McCoy Hillard & Parks*, 346 N.C. 650, 660 (1997). However, a member can bring a direct claim for a breach of fiduciary duty if "(1) 'the wrongdoer owed [them] a special duty' or (2) they suffered a personal injury 'distinct from the injury sustained by . . . the corporation itself.' " *Id.* (quoting *Barger*, 346 N.C. at 660).

46. Hornwood first argues that any duty it owes to Emrich is indistinguishable from the duty Hornwood owes to Triangle. (JNOV Br. Supp. 13.) The Court disagrees. The issues are separate and distinct and must be separately considered.

47. Second, Hornwood relies on this Court's decision in *Timbercreek Land & Timber Co., LLC v. Robbins*, to argue that no special duty was owed to Emrich, and as a result, Emrich cannot bring this claim against Hornwood. 2017 NCBC LEXIS 64 (N.C. Super. Ct. July 28, 2017). Hornwood contends that based on *Timbercreek*, the only duty Hornwood owed to Emrich was with respect to Triangle's business, and thus, no special duty was owed to Emrich. (JNOV Br. Supp. 11.)

48. Emrich pointedly disagrees with Hornwood's interpretation of *Timbercreek*, arguing that *Timbercreek* does not address whether fiduciary duties that the controlling member of an LLC owed to the minority members of the LLC support a direct claim under the special duty exception. (JNOV Br. Opp. 11.) Instead, Emrich

argues that *Timbercreek* focuses on whether the sole member of an LLC could bring a direct claim against a third-party manager of the LLC. (JNOV Br. Opp. 11.)

49. The Court agrees with Emrich that Hornwood's reliance on *Timbercreek* is misplaced. Our courts have held that "minority shareholders in a closely held corporation who allege wrongful conduct and corruption against the majority shareholders in the corporation may bring an individual action against those shareholders, in addition to maintaining a derivative action on behalf of the corporation[.]" *Norman v. Nash Johnson & Sons' Farms, Inc.,* 140 N.C. App. 390, 405 (2000). As such, Emrich can bring a direct claim against Hornwood for wrongful conduct while maintaining a derivative action on behalf of Triangle.

50. Finally, Hornwood also contends that there is no evidence that Emrich suffered a distinct injury that was personal to Emrich. (JNOV Br. Supp. 13.) Hornwood argues that the only damages alleged by Emrich are its own share of lost profits as an owner of Triangle, and lost profits to the company are not evidence of a personal injury to Emrich, separate and distinct from the injury to Triangle. (JNOV Br. Supp. 13–14.)

51. Emrich disagrees, arguing that it suffered distinct injuries for Hornwood's concealment of its work with Borgstena and breach of Section 4.4, and the jury agreed by awarding damages in differing amounts to Emrich and Triangle for the same conduct. (JNOV Br. Opp. 12, 14.) The Court agrees.

52. Accordingly, the Court concludes that Emrich, as a minority member of Triangle, had standing to bring direct claims against Hornwood, the majority member.

ii. Hornwood's Threat to Stop Manufacturing

53. The jury found that Hornwood breached fiduciary duties to both Triangle and Emrich by threatening to stop manufacturing fabric for Triangle. (Verdict 1, Issue Nos. 1D, 3E.) For those breaches, the jury awarded Triangle nominal damages of $1.00, and awarded Emrich compensatory damages of $5,000.00. (Verdict 1, Issue Nos. 2D, 4E.) The Court has already concluded that, by operation of Section 3.4, Hornwood does not owe fiduciary duties to Triangle. As a result, the Court need only address Emrich's direct claim in this regard.

54. The Joint Venture Agreement states, in relevant part, that "Hornwood primarily assumes the responsibilities for the manufacturing of fabric and invoicing, factoring and internal accounting." (Joint Venture Agt. ¶ 5(d.)(1).) Further, the Joint Venture Agreement provides that "[t]he relationships between the parties *shall be limited* to the performance and completion of the work in accordance with the terms of this Agreement." (Joint Venture Agt. ¶ 10(a.).)

55. Hornwood contends that the obligation to manufacture for Triangle is derived from contract, not fiduciary duties. (JNOV Br. Supp. 14.) Hornwood argues that there is "no legal support that a contractual obligation of an LLC member automatically becomes a fiduciary obligation," and as such, there is no evidence to

support that Hornwood had any duty to Emrich regarding manufacturing for Triangle. (JNOV Br. Supp. 14, 15 n.8.)

56. Emrich's response to this contention focuses on the duty Hornwood owed to Triangle under the Joint Venture Agreement, not the duty owed to Emrich. (JNOV Br. Opp. 14–15.)

57. Therefore, the Court determines that there was no fiduciary relationship formed by the enactment of the Joint Venture Agreement, and as such, there was no fiduciary duty owed to Emrich through the performance, or lack thereof, of the Joint Venture Agreement.

58. Accordingly, Hornwood's JNOV Motion is **GRANTED** in part as to Emrich's direct claim in this regard.

4. Breach of Contract by Hornwood's Work with Borgstena

59. The jury found that Hornwood breached Section 4.4 of the Triangle Operating Agreement, (Verdict 1, Issue No. 7A), and for that breach, the jury found that Emrich was entitled to $145,542.06 in damages, and Triangle was entitled to $309,006.50 in damages, (Verdict 1, Issue Nos. 8A, 9A).

60. Hornwood seeks judgment notwithstanding the verdict on these issues, contending that Hornwood had no duty to disclose its business dealings with Borgstena, and even if Hornwood did have such a duty, it argues there was not sufficient evidence at trial that Hornwood's involvement with Borgstena amounted to competition with Triangle. (JNOV Br. Supp. 15–16.) Hornwood also contends that Section 4.4 of the Operating Agreement "does not prohibit planning or taking steps

in anticipation of engaging in business with another company." (JNOV Br. Supp. 17.) Hornwood argues that the trial evidence disclosed that it had no obligation to communicate everything regarding Triangle's own fabric development to Emrich, and therefore there was insufficient evidence to support the jury's finding that Hornwood had a duty to inform Triangle about its dealing with Borgstena. (JNOV Br. Supp. 16.)

61. Emrich rebuts these arguments, contending there was ample evidence presented at Trial that Hornwood engaged in activities in furtherance of competition with Triangle. (JNOV Br. Opp. 18.)

62. The Court determines that Hornwood breached its contractual duty to offer a right of first refusal to Triangle through its dealings with Borgstena. When Hornwood entered into a non-disclosure agreement with Borgstena, it concealed the opportunity to work with Borgstena from Triangle, and by continuing to work and offer business advantages to Borgstena, it engaged in competitive activities.

63. The Court determines that there was ample evidence at Trial of Hornwood's breach of Section 4.4 to support the jury's finding of breach.

64. Accordingly, Hornwood's JNOV Motion is **DENIED** in part as to Emrich's direct and derivative claim for breach of Section 4.4 of the Operating Agreement.

5. Triangle's Punitive Damages

65. Based on the jury's findings and awards in the first phase of Trial,[4] a second phase commenced in which the jury was directed to consider the issue of punitive damages. Following arguments and instruction by the Court regarding the standards

[4] The punitive damages phase of trial as to Triangle proceeded as a result of the jury's answers to Issues 1B, 1D, 1E, and 5.

applicable to consideration of the issues submitted regarding Emrich's claims both directly and derivatively for punitive damages, the jury answered Issue Number 20 in the affirmative finding that Triangle was entitled to recover from Hornwood for its misconduct. (Verdict (Phase Two) Issue No. 21, ECF No. 271 ["Verdict 2"].) The jury answered Issue Number 21 finding that Triangle was entitled to recover $236,294.90 from Hornwood for punitive damages. (Verdict 2, Issue No. 21.)

66. Based on the Court's determination regarding Hornwood's JNOV Motion, Triangle's only surviving claims are breach of contract claims. Punitive damages may not be awarded for breach of contract in the absence of an identifiable tort. *See Cash v. State Farm Mut. Auto. Ins. Co.*, 137 N.C. App. 192, 200 (2000) (stating that, "in order to sustain a claim for punitive damages, there must be an identifiable tort which is accompanied by or partakes of some element of aggravation"); N.C.G.S. § 1D-15(d) ("Punitive damages shall not be awarded against a person solely for breach of contract."). The Court has herein determined that the jury's findings in Issues 1B, 1D, 1E, and 5, the only ones that would properly support a judgment for punitive damages, are not supported by the evidence.

67. Therefore, there is no proper legal basis for the punitive damages awarded to Triangle. Accordingly, the Court **GRANTS** in part Hornwood's JNOV Motion to the extent it seeks judgment notwithstanding the verdict on Issue Numbers 20 and 21.

B. Motion for New Trial

68. Hornwood has alternatively brought a Rule 59 Motion for New Trial. (*See* ECF No. 309.) Hornwood raises four awards of damages that it believes the Court should vacate, or alternatively, order a new trial to reevaluate, which are: (1) Emrich's derivative claim for breach of Section 4.4; (2) Emrich's direct claim for breach of Section 4.4; (3) Emrich's direct claim for damages based on Hornwood's threat to cease manufacturing for Triangle; and (4) Triangle's claim based on Hornwood's price increase. (Br. Supp. Mot. New Trial 1, ECF No. 321 ["New Trial Br. Supp."].)

69. Rule 59(a) provides that "[a] new trial may be granted to all or any of the parties on all or part of the issues" on several different grounds; however, the Court should only do so where upholding the verdict would result in a miscarriage of justice. *See In re Will of Buck*, 350 N.C. 621, 628 (1999); *see also Strum v. Greenville Timberline, LLC*, 186 N.C. App. 662, 666 (2007) (finding that denying a Rule 59 motion for new trial was not an abuse of discretion even where the jury's verdict was inconsistent because the inconsistencies were surplusage).

70. The decision to grant a new trial is entirely within the trial court's discretion. However, this "discretion [] 'must be used with great care and exceeding reluctance.' " *Shaw v. Gee*, 2018 NCBC LEXIS 109, at *15 (N.C. Super. Ct. Oct. 19, 2018) (quoting *Buck*, 350 N.C. at 626). "It is well settled that a verdict should be liberally and favorably construed with a view of sustaining it, if possible . . . ." *Strum,* at 665 (quoting *Guy v. Gould*, 202 N.C. 727, 729 (1932)). The Court has discretionary

power to set aside a verdict when it would be unjust to let it stand; and, if no question of law or legal inference is involved in the motion, his action in so doing is not subject to review on appeal in the absence of a clear abuse of discretion. *Chisum v. Campagna*, 2019 NCBC LEXIS 28, at *50 (N.C. Super. Ct. Apr. 25, 2019) (quoting *Seaman v. McQueen*, 51 N.C. App. 500, 505 (1981)).

71. Rule 59(a)(7) permits a new trial to be granted for "[i]nsufficiency of the evidence to justify the verdict." The term "insufficiency of the evidence" means that the verdict is against the greater weight of the evidence. *Buck*, 350 N.C. at 624 (citation omitted). "It is the jury's function to weigh the evidence and to determine the credibility of witnesses." *Anderson v. Hollifield*, 345 N.C. 480, 483 (1997). A new trial is improper if the jury's determination of a "fact-intensive question" was "reasonable" and did not "amount to a 'substantial miscarriage of justice.' " *Chalk v. Braakman*, 2019 N.C. App. LEXIS 263, at *16 (2019) (quoting *Justus v. Rosner*, 371 N.C. 818, 825 (2018)).

72. As stated above, the Court found that Hornwood's JNOV Motion should be granted for Emrich's claim based on Hornwood's self-interested transactions, and Emrich's non-contract based direct claims. (*See supra* §§ II.A.2, II.A.3.) As a result, the damages awarded in Issues 4E and 6 are improper. Therefore, the Court will address the remaining claims raised in this Motion for New Trial.

73. Hornwood moves to amend the final judgment award of $309,006.50 awarded to Triangle and $145,542.06 awarded to Emrich and Triangle for Hornwood's breach of Section 4.4 of the Operating Agreement, (*see* Verdict 1, Issue

Nos. 8A, 9A), arguing that this award (1) is inconsistent with the jury's award of nominal damages to Triangle for similar conduct, (2) is unsupported by the greater weight of the evidence, and (3) excessive, (New Trial Br. Supp. 7–17).

74. Emrich disagrees, contending that the award is consistent and reasonably supported by the evidence presented at trial. (Resp. Opp. Mot. New Trial 7, 10, ECF No. 333 ["New Trial Br. Opp."].)

75. First, the Court agrees with Emrich that the award is not inconsistent, given that Hornwood bases its argument of inconsistency on two separate claims: a claim for breach of fiduciary duty and a breach of a contractual duty within the Operating Agreement. As a result, the verdict and final judgment award is not inconsistent given that the jury could have relied on different evidence when awarding damages for the separate claims.

76. Additionally, the Court does not need to understand "exactly how the jury reached its overall figure." *Blakeley v. Town of Taylortown*, 233 N.C. App. 441, 449 (2014). As such, the Court agrees that the jury could have reasonably concluded, based on the evidence presented, that awards of $309,006.50 to Triangle and $145,542.06 to Emrich were appropriate. As a result, the Court concludes that the verdict is not against the greater weight of the evidence.

77. Therefore, the Motion for New Trial, or Alternatively to Amend Final Judgment, is **DENIED**.

III. CONCLUSION

78. For the foregoing reasons, the Court hereby **GRANTS** in part and **DENIES** in part the JNOV Motion as follows:

a. The JNOV Motion is **GRANTED** as it relates to Triangle's Fiduciary Duty Claims Against Hornwood;

b. The JNOV Motion is **GRANTED** as it relates to Emrich's claims for self-interested transactions;

c. The JNOV Motion is **GRANTED** as it relates to Emrich's Direct Claim based on Hornwood's Threat to Stop Manufacturing;

d. The JNOV Motion is **GRANTED** as it relates to Triangle's Punitive Damages Claim; and

e. Except as herein stated, the JNOV Motion is **DENIED**.

79. The Court will allow Hornwood leave, if it so chooses, to file a Motion for New Trial as it relates solely to Issue 11 within thirty days of entry of this Order. (*See supra* ¶ 43.)

80. With the exception of its ruling as to Issue 11, (*see supra* ¶¶ 68–77), the Court hereby **DENIES** the Motion for New Trial, or Alternatively, to Amend Final Judgment.

81. As a result of its rulings herein, the Final Judgment previously entered herein is modified and amended to award Triangle and Emrich the following damages:

a. $165,605.00 awarded to Triangle, pursuant to Issue 11, (*see supra* ¶ 37);

b. $309,006.50 awarded to Triangle, pursuant to Issue 9A; and

c. $145,542.06 awarded to Emrich, pursuant to Issue 8A.

82. As a further result of the Court's ruling herein, the Court **DEFERS** ruling on the following pending motions: (1) Plaintiff Emrich Enterprises, LLC's Motion for Determination of Substantial Benefit, (ECF No. 277), (2) Plaintiff Emrich Enterprises, LLC's Motion for Costs, (ECF No. 311), and (3) Defendants' Motion for Costs, (ECF No. 317).

IT IS SO ORDERED, this the 14th day of December, 2023.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases