

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 14-CvS-3392

BEFORE THE NORTH CAROLINA BUSINESS COURT

RCJJ HOLDINGS, LLC; DO GOOD REAL)
ESTATE, LLC; DO GOOD REAL ESTATE OF)
WILMINGTON, LLC; and JOHNATHAN)
JACKSON, individually,)
)
Plaintiffs,)
)
vs.)
)
RCWIL ENTERPRISES, LLC d/b/a Nest Realty)
Wilmington; and RYAN CRECELIUS,)
)
Defendants.)
_____)

**PLAINTIFFS' MEMORANDUM IN OPPOSITION
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by and through undersigned counsel, hereby submit the following
Memorandum in Opposition to Defendants' Motion for Summary Judgment.

Ex. 94). For example, Jackson was forced to permit agents to take contracts with them because he was unable to service those clients alone. (Ex. 63). He then was required to turn all of his attention to sales, rather than recruiting agents and growing the business. Because Crecelius instructed the agents to download their complete Do Good email accounts, Jackson was forced to initiate litigation to prevent them from using leads and other Do Good property without compensating Do Good. (Ex. 63).

IV. Factual Issues Prohibit Dismissal of Unfair And Deceptive Trade Practices.

The facts support a claim for unfair and deceptive trade practices. “Proof of fraud in the inducement necessarily constitutes a violation of Chapter 75....” Media Network, Inc. v. Long Haymes Carr, Inc., 197 N.C. App. 433, 453, 678 S.E.2d 671, 684 (2009); see also Willen, 174 N.C. App. at 720, 622 S.E.2d at 191 (holding that proof of fraud necessarily constitutes a violation of Chapter 75). Additionally, “[a] violation of the Trade Secrets Protection Act constitutes an unfair act or practice under N.C. Gen. Stat. § 75-1.1.” Med. Staffing Network, Inc. v. Ridgway, 194 N.C. App. 649, 659, 670 S.E.2d 321, 329 (2009) (citing N.C. Gen. Stat. § 66-146).

The Defendants do not argue that the Chapter 75 claim against RCWIL should be dismissed. Furthermore, if Crecelius was acting as an agent of RCWIL/Nest when he concealed material facts and misappropriated Do Good’s trade secrets after having made promises he did not intend to keep, those unfair and deceptive acts were in or affecting commerce. The conduct in evidence supporting the fraud claims was not done by a mere partner; it was done by a competitor and its agent. Crecelius had formed a competing business, applied for a license for that business, and was operating on behalf of that business beginning on August 21.

None of those factors were at issue in the case relied upon by the Defendants, White v. Thompson. In that case, a jury decided that one party “breached his fiduciary duty to his partners through his conduct within” the partnership. White v. Thompson, 364 N.C. 47, 54, 691 S.E.2d 676, 680 (2010). The Court held that conduct was not in or affecting commerce. Id. Under White, the Plaintiffs’ breach of fiduciary duty claim cannot support a Chapter 75 claim. In contrast, because the facts support fraud arising from Crecelius’s conduct as an agent of RCWIL/Nest, that conduct was not solely within the partnership and therefore is subject to Chapter 75. Crecelius’s representations to outside parties that all the agents would follow him, which he told Kauffman, for example, to secure his Nest franchise, demonstrate that the conduct was not solely within the partnership. See McKee v. James, No. 09 CVS 3031, 2014 WL 7534078, at *16 (N.C. Super. Dec. 31, 2014) (alleged conduct involving staff and others outside the partnership was sufficient to state a Chapter 75 claim, though failure of proof warranted dismissal at summary judgment). Crecelius’s instruction to independent contractor agents to hide their intentions to leave also falls outside any partner relationship, as does his misappropriation of trade secrets and other data for his competing company. The Defendants are not entitled to judgment as a matter of law on the Chapter 75 claims.

V. The Defendants Are Not Entitled To Judgment As A Matter Of Law On The Claim For Breach Of Fiduciary Duties.

The Defendants misconstrue the Second Amended Complaint when asserting that the claim for breach of fiduciary duties should be dismissed on the grounds that Crecelius did not owe Jackson such duties after they became adversarial. First, the Defendants cite divorce cases in which the relationship of husband and wife creates a