STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22CVS009465-590
AIRTRON, INC., Plaintiff, v. BRADLEY ALLEN HEINRICH, Defendant.	**FINAL JUDGMENT**

1. In March 2024, the Court sanctioned Defendant Bradley Allen Heinrich by striking his answer and entering a default judgment against him as to liability on Plaintiff Airtron, Inc.'s claims for misappropriation of trade secrets and unfair or deceptive trade practices under N.C.G.S. § 75-1.1. *See Airtron, Inc. v. Heinrich*, 2024 NCBC LEXIS 45, at *10 (N.C. Super. Ct. Mar. 12, 2024) (located at ECF No. 80). Following that decision, the Court held an evidentiary hearing on 6 August 2024 to determine Airtron's damages. Heinrich represented himself at the hearing; Airtron was represented by counsel. Having considered all the evidence, the Court now enters judgment as follows.

2. **Background.** Heinrich's liability is established, and in connection with the entry of a default judgment, he is deemed to have admitted the allegations of Airtron's amended complaint. *See Hunter v. Spaulding*, 97 N.C. App. 372, 377 (1990) ("A default judgment admits . . . the allegations contained within the complaint . . . ."). This short background, describing the nature of the case, will help set the table for a discussion of Airtron's remedies.

3. Airtron provides heating and air conditioning services. Many of its customers are home construction companies in the Charlotte, North Carolina region. In serving its customers, Airtron's employees often need to calculate the heating and cooling loads and corresponding volumetric flow rates for the rooms of a residence. To do so, they use a proprietary software template (the "Charlotte Template") that shortens the process by about an hour. Then, using the load calculations, they select appropriate equipment and prepare design layouts to guide the installation. The Charlotte Template, load calculations, and design layouts are Airtron's trade secrets. (*See* Am. Compl. ¶¶ 35, 40, 46, 51, 53, 57–59, ECF No. 18.)

4. Heinrich was once the head of American Builder Services, Inc.'s HVAC division. In that capacity, he hired Logan Bentley, one of Airtron's employees, to provide load calculations for American Builder Services starting in January 2022. Bentley continued to work for Airtron while also working for American Builder Services. Airtron was unaware of this. To prepare load calculations for American Builder Services, Bentley used Airtron's laptop, software, and Charlotte Template. Airtron was unaware of this as well. Bentley then sent the load calculations to Heinrich, who used them to perform work for American Builder Services' customers, some of which were also customers of Airtron. Bentley quit his employment with Airtron in May 2022, and American Builder Services fired both Heinrich and Bentley in July 2022. (*See, e.g.*, Poccia Aff. ¶¶ 9, 26, 27, 33–36, 45, 47, 100, 103, 107, ECF No. 87.1; Bentley Dep. 68:4–69:1, 88:6–8, 103:13–104:1, 125:1–127:7, ECF No. 87.1; Heinrich Dep. 63:4–15, 84:20–85:12, ECF No. 87.1.)

5. Airtron's trade-secret and section 75-1.1 claims are both based on Heinrich's misappropriation of its trade secrets. Airtron seeks to recover actual damages caused by Heinrich's misconduct and to treble those damages under N.C.G.S. § 75-16. It also seeks punitive damages, attorney's fees, and injunctive relief.

6. **Actual Damages.** The owner of a trade secret may recover "actual damages" as "measured by the economic loss or the unjust enrichment caused by misappropriation of a trade secret, whichever is greater." N.C.G.S. § 66-154(b). Airtron argues that it suffered damages in the form of lost profits.

7. As always, "[t]he burden of proving damages is on the party seeking them." *Olivetti Corp. v. Ames Bus. Sys., Inc.*, 319 N.C. 534, 547 (1987). "Although absolute certainty is not required, damages for lost profits will not be awarded based on hypothetical or speculative forecasts." *Supplee v. Miller-Motte Bus. Coll., Inc.*, 239 N.C. App. 208, 223 (2015) (citation and quotation marks omitted). Airtron had to prove "with reasonable certainty" that it would have made profits but for Heinrich's misappropriation and what the amount of those profits would have been. *Olivetti*, 319 N.C. at 547; *see also Kitchen Lumber Co. v. Tallassee Power Co.*, 206 N.C. 515, 522 (1934) ("Where the profits lost by defendant's tortious conduct, proximately and naturally flow from his act and are reasonably definite and certain, they are recoverable; those which are speculative and contingent, are not."); *Iron Steamer, Ltd. v. Trinity Rest., Inc.*, 110 N.C. App. 843, 847 (1993) (holding that plaintiff must "prove that except for the [wrong], profits would have been realized").

8. Airtron has not carried this burden. At best, Airtron's evidence shows that some of its customers (large homebuilders called Century, Meritage, and JP Orleans) retained American Builder Services for projects in certain residential communities and that Heinrich used its trade secrets to carry out that work. At no point, though, has Airtron argued or offered evidence to show that Century, Meritage, or JP Orleans would have retained it to handle these projects but for Heinrich's bad acts. Conspicuously missing, for example, is any evidence that Airtron attempted to bid for the projects or that American Builder Services underbid it for any project. Nor has Airtron shown that it was the default or exclusive provider for any of the homebuilders; rather, it concedes that all three regularly used the services of several companies. (*See also* Bentley Dep. 189:18–24.)

9. What's more, there is substantial evidence that Century, Meritage, and JP Orleans would *not* have retained Airtron because Airtron had already turned down many or all of the projects that American Builder Services eventually won. Bentley testified as much. So did Heinrich. And their testimony went unrebutted. Airtron's corporate representative, Stephen Gruneisen, acknowledged that Airtron sometimes turns away work when its workload is too heavy and that 2022 was an exceptionally busy year for HVAC companies. But he was not familiar with the communities or projects at issue and could not say whether Airtron had or had not turned down any project that went to American Builder Services.

10. Airtron is not entitled to lost profits simply because it and American Builder Services did work for the same customers. It had the burden to show that Heinrich's

misappropriation caused it to lose profits. No evidence supports that conclusion. And quite a bit of evidence tends to show that Airtron either did not pursue or affirmatively turned away the very projects that it now says are the source of its lost profits. Accordingly, the Court concludes that Airtron has not shown by a preponderance of the evidence that it would have realized profits but for Heinrich's misappropriation of its trade secrets. *See, e.g.*, *Olivetti*, 319 N.C. at 546–49 (overturning award of lost profits because claimant did not carry "its burden of showing that it was damaged"); *Glover Constr. Co. v. Sequoia Servs., LLC*, 2022 NCBC LEXIS 21, at *22 (N.C. Super. Ct. Mar. 15, 2022) (concluding that plaintiff could not "recover lost profits relating" to a certain project because it "withdrew its bid before the contract was awarded").

11. Having "prevail[ed] on its claim for misappropriation of trade secrets," Airtron is "entitled to an award of nominal damages even absent evidence of actual damages." *Am. Air Filter Co. v. Price*, 2018 NCBC LEXIS 73, at *33 (N.C. Super. Ct. July 10, 2018). The Court therefore awards Airtron one dollar.

12. **Punitive Damages & Treble Damages.** In addition to actual damages, Airtron seeks punitive damages under section 66-154(c) and treble damages under section 75-16. "A plaintiff is not precluded from seeking both punitive and treble damages" but must make "an election between the two" for any "actual recovery." *Holloway v. Wachovia Bank & Tr. Co., N.A.*, 339 N.C. 338, 349 (1994).

13. To be eligible to receive punitive damages, Airtron had to prove "by clear and convincing evidence" that "willful and malicious misappropriation exists."

N.C.G.S. §§ 1D-15(b), 66-154(c). It has not done so. No evidence suggests that Heinrich asked Bentley to obtain Airtron's trade secrets or directed him to use Airtron's equipment and the Charlotte Template to prepare load calculations. Bentley made that choice on his own. Moreover, Heinrich credibly testified that he told Bentley to stop using Airtron's information once he learned about it. Bentley did not deny this. (*See* Bentley Dep. 125:1–18, 126:2–8; Heinrich Dep. 84:15–85:7.) To be sure, Heinrich continued to use the load calculations that Bentley sent, and he could have and should have done more to put an end to the misappropriation. But Airtron has not shown by clear and convincing evidence that his conduct amounts to willful and malicious misappropriation.

14. Regardless, the Court would exercise its discretion to deny punitive damages even if Airtron were eligible to receive them. *See* N.C.G.S. § 66-154(c) (allowing "the trier of fact" to "award punitive damages in its discretion"); *see also, e.g.*, *Watson v. Dixon*, 132 N.C. App. 329, 333 (1999) (stating that whether to award punitive damages "rests within the sound discretion" of the factfinder). This is so for several related reasons. First, one of the purposes of punitive damages is "to punish a defendant for egregiously wrongful acts." N.C.G.S. § 1D-1. This is not that sort of case. Heinrich's conduct was inappropriate but not egregiously wrongful. Second, Airtron has not carried its burden to show that it suffered actual economic loss. *See id.* § 1D-35 (allowing trier of fact to consider "actual damages suffered by the claimant"). Third, no evidence suggests that Heinrich profited in any meaningful way from his misconduct. American Builder Services fired him soon after this lawsuit

began. And Heinrich testified without rebuttal that he is currently unemployed, has virtually no savings, and has no assets of real value. *See id.* (allowing trier of fact to consider "[w]hether the defendant profited from the conduct" and "[t]he defendant's ability to pay punitive damages").

15. It is true, as Airtron points out, that Heinrich failed to comply with court orders and his discovery obligations in this case. But Airtron has already received its remedies for those matters: the Court sanctioned Heinrich, and severely at that. Punitive damages exist to punish egregiously wrongful conduct outside of court, not litigation misconduct that can be, and has been, remedied through other means.

16. Because Airtron is not entitled to punitive damages, it need not make an election between punitive damages and treble damages. And because Airtron prevailed on its section 75-1.1 claim, "judgment shall be rendered" in its favor "for treble the amount" of its damages. N.C.G.S. § 75-16. The Court therefore trebles its award of nominal damages and awards Airtron three dollars.

17. **Attorney's Fees.** Airtron seeks to recover nearly $300,000 that it paid to its attorneys to pursue its claims against Heinrich. Only when a defendant's misappropriation of trade secrets was "willful and malicious" may a court "award reasonable attorneys' fees." N.C.G.S. § 66-154(d). Similarly, only when the defendant "willfully engaged in" an unfair or deceptive act or practice and then made "an unwarranted refusal" to "resolve the matter" may a court "allow a reasonable attorney fee." *Id.* § 75-16.1. Having concluded that Heinrich's conduct was not

willful, the Court denies the request for attorney's fees under sections 66-154(d) and 75-16.1.

18. In addition, the Court concludes that there was no unwarranted refusal by Heinrich to resolve this matter. Over a year ago, Airtron offered to settle its claims for $50,000. Heinrich accepted that offer but failed to make the first lump-sum payment and to sign a required confession of judgment. The settlement agreement then became null and void by its own terms. Airtron views this as an unwarranted refusal to settle. At the hearing, though, Heinrich testified that he needed to obtain a loan to pay the settlement amount but was unsuccessful in that effort. Heinrich also testified, without rebuttal, that Airtron refused his request to let him pay the settlement amount in smaller installments over time. It is hard to see how Heinrich's refusal to pay money that he didn't have was unwarranted—especially given that Airtron's settlement demand exceeds the judgment that it has obtained. For this reason as well, the Court denies the request for attorney's fees under section 75-16.1.

19. **Injunctive Relief.** Finally, Airtron requests injunctive relief. By statute, "actual or threatened misappropriation of a trade secret . . . shall be permanently enjoined upon judgment finding misappropriation for the period that the trade secret exists plus an additional period as the court may deem necessary under the circumstances to eliminate any inequitable or unjust advantage arising from the misappropriation." N.C.G.S. § 66-154(a). Having entered a default judgment as to Airtron's claim for misappropriation of trade secrets, the Court will grant injunctive relief enjoining Heinrich from using those trade secrets so long as they exist. The

Court sees no reason to extend the injunction for an additional period or to enjoin the use of any undefined confidential or proprietary information not amounting to a trade secret.

20. **Conclusion.** For all these reasons, the Court **ENTERS JUDGMENT** for Airtron on its claims against Heinrich in the amount of $1.00, which shall be trebled for an award in the total amount of $3.00. Of this total amount, interest on the nominal damages award of $1.00 shall accrue at the legal rate from the date this action was commenced until the judgment is satisfied, as calculated by the Clerk of Superior Court. Interest on the remaining $2.00 shall accrue at the legal rate from the date of entry of judgment until the judgment is satisfied, as calculated by the Clerk of Superior Court.

21. In addition, the Court **DENIES** Airtron's requests for punitive damages and attorney's fees.

22. Finally, the Court **GRANTS** Airtron's request for injunctive relief; **ENJOINS** Heinrich from using or misappropriating Airtron's trade secrets, as identified in its amended complaint, (ECF No. 18), for as long as they exist and remain trade secrets; and **ORDERS** Heinrich to delete or destroy any copies of the trade secrets that remain in his possession, custody, or control.

23. No claims or issues remain. Accordingly, this is a final order disposing of all issues in this action.

SO ORDERED, this the 22nd day of August, 2024.

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