STATE OF NORTH CAROLINA IREDELL COUNTY GREENTOUCH USA, INC., Plaintiff, v. LOWE'S COMPANIES INC. and L G SOURCING, INC., Defendants.	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24 CVS 543 **ORDER AND OPINION ON DEFENDANTS' PARTIAL MOTION TO DISMISS**

THIS MATTER is before the Court on Defendants Lowe's Companies Inc. ("Lowe's") and L G Sourcing, Inc's ("LGSI") (collectively, "Defendants") Partial Motion to Dismiss Plaintiff's Complaint ("Motion to Dismiss," ECF No. 12).

THE COURT, having considered the Motion to Dismiss, the parties' briefs, the arguments of counsel, the applicable law, and all appropriate matters of record, **CONCLUDES** that the Motion to Dismiss should be **GRANTED** in part and **DENIED** in part as set forth below.

Mauney PLLC, by Gary V. Mauney, and Rachlis Duff & Peel, LLC, by Drew Peel and Kevin Duff, for Plaintiff Greentouch USA, Inc.

Winston & Strawn, LLP, by Jeffrey Scott Wilkerson and Amanda L. Groves, for Defendants Lowe's Companies Inc. and L G Sourcing, Inc.

Davis, Judge.

INTRODUCTION

1. This case involves a dispute between a retailer and its former vendors in the home improvement industry. For several years, the parties engaged in what

appears to have been a harmonious business relationship. Ultimately, however, the relationship took a cattywampus turn. The present lawsuit resulted.

FACTUAL AND PROCEDURAL BACKGROUND

2. The Court does not make findings of fact in connection with a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and instead recites those facts contained in the complaint (and in documents attached to, referred to, or incorporated by reference in the complaint) that are relevant to the Court's determination of the motion. *See, e.g., Window World of Baton Rouge, LLC v. Window World, Inc.*, 2017 NCBC LEXIS 60, at *11 (N.C. Super. Ct. July 12, 2017).

3. Plaintiff Greentouch USA, Inc. ("Greentouch") is incorporated under the laws of the state of Florida and has a place of business in Mooresville, North Carolina. (Compl. ¶ 7, ECF No. 3.) Greentouch is in the business of designing, supplying, and selling bathroom vanities, fireplaces, and related fixtures and furniture. (Compl. ¶ 8.)

4. A related entity, Greentouch Home Ltd.–Hong Kong ("HK Greentouch") was—at all relevant times—also in the business of designing, supplying, and selling bathroom vanities, fireplaces, and related fixtures and furniture.[1] (Compl. ¶ 9.)

5. Defendant Lowe's is incorporated under the laws of North Carolina and has its principal place of business in Mooresville, North Carolina. (Compl. ¶ 10.)

[1] However, the Complaint alleges that HK Greentouch has been forced to suspend its operations and has assigned its legal claims in this action to Greentouch. (Compl. ¶ 9.) For ease of reading, this Opinion will hereafter refer to both entities collectively as "Greentouch."

Lowe's is the world's second largest home improvement retailer, operating more than 1,700 stores in the United States. (Compl. ¶ 13.)

6. Defendant LGSI is a wholly owned subsidiary of Lowe's, is incorporated under the laws of North Carolina, and has its principal place of business in Mooresville, North Carolina. (Compl. ¶ 11.)

7. Prior to the dispute giving rise to this lawsuit, Lowe's was Greentouch's largest customer. (Compl. ¶¶ 8–9.) Greentouch's combined sales to Lowe's totaled $73 million in 2018; $88 million in 2019; $97 million in 2020; $86 million in 2021; $90 million in 2022; and $12.2 million in 2023. (Compl. ¶¶ 17–22.)

8. In October 2020, through a series of email exchanges between a Lowe's representative, Elizabeth Bryant, and two Greentouch executives, Jonathan Nussbaum and Jody Binkley, Lowe's entered into a three-year supplier contract with Greentouch for the period covering 1 January 2021 through 31 December 2023.[2] (Compl. ¶ 26.)

9. Under the terms of the contract, Lowe's was required to:

> [M]aintain current number of stock vanity combo sku's . . . with the intent of not falling below the current level of purchases [e.g., approximately $77 million in 2020], which is encompassing of stock, SOE [i.e., special order express], and SOS; [and]
>
> [Make an] [a]dditional $8.56M in annual purchases of SOE items to be housed in the Lowe's distribution network over and above the business already awarded as part of the Phase 1 Vanity Reset in April of 2021.

(Compl. ¶ 27) (alterations in the original).

[2] The Complaint is unclear as to whether there were any preexisting written contracts governing the business relationship between Greentouch and Defendants.

10. In exchange, Greentouch promised to: (1) supply Lowe's with thousands of additional product SKUs; (2) spend a defined percentage of sales on marketing and other support costs; (3) add a "Brand Advocate"[3]; (4) maintain promotional funding at a percentage "consistent with [the] 2019 fiscal promotional funding percentage"; (5) spend "$100K in co-marketing [] each year of the agreement"; and (6) provide a "0.75% infrastructure allowance." (Compl. ¶ 28.)

11. The contract further provided that, with respect to any non-performing goods, Greentouch would retain a right of first refusal—permitting it to retake possession of the "defective" merchandise for correction, or to re-sell or re-use it. (Compl. ¶ 34.)

12. Accordingly, Greentouch paid for a "Brand Advocate" in 2021 and 2022; hired additional staff to manage design, production, shipping, and management of thousands of new SKUs; and began funding promotions, marketing, and research and development for the new SKUs. (Compl. ¶ 30.)

13. However, with the onset of the COVID-19 pandemic, Lowe's allegedly began "squeezing" Greentouch as it sought new ways to "bolster [its] bottom-line in a time of crisis." (Compl. ¶ 42.) Greentouch asserts that Lowe's sought to undermine and "destroy" it financially so that Greentouch would be unable to perform under its contract with Lowe's. (Compl. ¶¶ 42, 82.) Greentouch further alleges that the ultimate goal of these efforts was to enable Lowe's to take over product

[3] The "Brand Advocate" would be a Lowe's employee responsible for covering Greentouch's additional product SKUs, related marketing, and support. (Compl. ¶ 28.)

manufacturing itself or enter into lower-cost agreements with other vendors. (Compl. ¶¶ 42, 82.)

14. To that end, Greentouch alleges that Lowe's unilaterally adopted and implemented new shipping, handling, and other vendor-related policies. (Compl. ¶ 32.)

15. At the same time, Lowe's allegedly began falsely and arbitrarily claiming that an excessive number of Greentouch's products were defective upon delivery. (Compl. ¶ 32.) Greentouch asserts that under the guise of claimed defects, Lowe's began disposing of the products at issue without paying Greentouch for them. (Compl. ¶ 32.) Despite these products being labelled as defective and unfit for sale, Lowe's began reselling substantial numbers of Greentouch's products to third parties and "pocketing" the revenue from those sales for itself. (Compl. ¶¶ 33, 37.)

16. In its Complaint, Greentouch contends that Lowe's began offsetting the "full landed" costs, including shipping costs, for the defective products against the amounts due and owed to Greentouch under the terms of the contract. (Compl. ¶ 34.)

17. Greentouch asserts that although the parties' contract did not give Lowe's the unilateral and unfettered discretion to declare products defective, Lowe's refused to provide substantiation, documentation, or details to Greentouch regarding this issue. (Compl. ¶¶ 33, 36.) Despite repeated requests, Greentouch's inquiries were routinely ignored, and it was not provided the opportunity to verify the product defect claims for itself. (Compl. ¶ 36.)

18. During this time period, Greentouch contends, Lowe's was "condon[ing], accept[ing], direct[ing] and/or ratif[ying]" LGSI to disparage Greentouch to its other business partners in order to discourage them from doing business with Greentouch. (Compl. ¶¶ 38, 81.)

19. As an example, LGSI allegedly directed Home Insights, LLC ("Home Insights") and its affiliate, Starwood Furniture (MFG) Vietnam Corporation, to refuse to honor an existing services agreement with Greentouch. (Compl. ¶¶ 39, 65–66.)

20. Greentouch asserts that in or around May 2023, an LGSI executive contacted Philip Hood of Home Insights in High Point, North Carolina. (Compl. ¶ 86.) While speaking with Hood, the LGSI executive falsely claimed that Greentouch was in bankruptcy and could not fulfill its financial commitments to Lowe's. (Compl. ¶¶ 40, 86.)

21. Around this same time, one of Greentouch's managers, Danny Chen, reported that LGSI's Director of Asia Sourcing, Angela Wang, "made false statements to Hood about the financial condition" of Greentouch. (Compl. ¶ 87.)

22. Greentouch contends that as a result of these false statements, Home Insights curtailed the scope of its business with Greentouch. (Compl. ¶ 86.)

23. The Complaint further asserts that Defendants were aware that Greentouch was working to enter into a supplier agreement with a company called RONA. (Compl. ¶ 68.) In or around May 2023, LGSI executives allegedly contacted two of RONA's global service managers, Patricia Armstrong and Melyssa Lapierre. (Compl. ¶¶ 67, 84.) According to Greentouch, LGSI executives—while speaking with

Armstrong and Lapierre— falsely claimed that Greentouch was in bankruptcy and could not fulfill its financial commitments to Lowe's, thereby causing RONA to exclude Greentouch from its upcoming "Vanities and Fireplaces Product Line Reviews." (Compl. ¶ 84.)

24. In May of 2023, Greentouch shipped more than a dozen freight containers of products to Lowe's. (Compl. ¶¶ 23, 90.) The Complaint asserts that although Lowe's accepted the shipment, it neither paid Greentouch for the products nor provided any explanation for its refusal to do so. (Compl. ¶¶ 23, 90–91.)

25. Ultimately, after taking possession of the shipping containers, Lowe's ceased all business dealings with Greentouch. (Compl. ¶¶ 24, 51.)

26. Greentouch initiated this action by filing a Complaint in Iredell County Superior Court on 20 February 2024. In the Complaint, Greentouch asserted claims against Lowe's for breach of contract, unjust enrichment, quasi contract/contract implied by law, conversion, unfair and deceptive trade practices ("UDTP"), and constructive trust and accounting. (Compl. ¶¶ 15–28.) In addition, Greentouch pled claims against both Lowe's and LGSI for tortious interference with existing contract, tortious interference with prospective economic advantage, defamation, and punitive damages. (Compl. ¶¶ 19, 21–24, 27–28.)

27. This matter was designated as a mandatory complex business case and assigned to the undersigned on 28 March 2024. (ECF Nos. 1–2.)

28. Defendants filed the present Motion to Dismiss on 27 May 2024.

29. The Court held a hearing on the Motion to Dismiss on 17 September 2024 at which all parties were represented by counsel.

30. The Motion to Dismiss has been fully briefed and is ripe for resolution.

LEGAL STANDARD

31. In ruling on a motion to dismiss under Rule 12(b)(6), the Court may only consider the complaint and "any exhibits attached to the complaint," *Krawiec v. Manly*, 370 N.C. 602, 606 (2018), in order to determine whether "as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief can be granted under some recognized legal theory," *Forsyth Mem'l Hosp., Inc. v. Armstrong World Indus., Inc.*, 336 N.C. 438, 442 (1994) (cleaned up). The Court must view the allegations in the complaint "in the light most favorable to the non-moving party." *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 5 (2017) (cleaned up).

32. "It is well established that dismissal pursuant to Rule 12(b)(6) is proper when '(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.'" *Corwin v. British Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (quoting *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)).

ANALYSIS

33. In its Motion to Dismiss, Defendants seek dismissal of Greentouch's claims for conversion, defamation, tortious interference with existing contract,

tortious interference with prospective economic advantage, UDTP, and punitive damages. Greentouch's remaining claims are unaffected by the Motion to Dismiss.

A. Conversion

34. "There are, in effect, two essential elements of a conversion claim: ownership in the plaintiff and wrongful possession or conversion by the defendant." *Variety Wholesalers, Inc. v. Sale Logistics Traffic Servs., LLC*, 365 N.C. 520, 523 (2012) (citation omitted). "In cases where the defendant comes into possession of the plaintiff's property lawfully, the plaintiff must show that it made a demand for the return of the property that was refused by the defendant." *Morris Int'l v. Packer*, 2021 NCBC LEXIS 99, at *27 (N.C. Super. Ct. Nov. 2, 2021) (citing *Hoch v. Young*, 63 N.C. App. 480, 483 (1983)).

35. Greentouch's conversion claim concerns two different categories of property: (1) property that was wrongfully declared defective and then re-sold to third parties; and (2) the dozen or more containers of products that were shipped to Lowe's in May 2023. (Compl. ¶ 90.)

36. As to the first category, Greentouch alleges that "Lowe's falsely claim[ed] that an arbitrary and excessive number of Greentouch['s] . . . products were 'defective' and us[ed] those arbitrary and unfounded assertions to dispose of and avoid paying Greentouch . . . for products delivered to Lowe's." (Compl. ¶ 32.) Greentouch further asserts that Lowe's resold Greentouch's products to third parties after taking a full credit for them and declaring them "defective."

37. Greentouch contends that because the parties never agreed that "Lowe's had unfettered discretion to declare non-defective goods defective," (Compl. ¶ 36), Greentouch has "an immediate and superior right to possess such goods." (Compl. ¶ 91.)

38. As to the second category of property, Greentouch alleges that "more than a dozen ship freight containers of products were sent to Lowe's in May 2023 in expectation of receiving a large six-figure sum in payments, but, instead of Lowe's paying for these goods, Lowe's accepted them, never paid Greentouch . . . anything for them, and never even explained why Lowe's was refusing to pay anything for these goods." (Compl. ¶ 23.)

39. In their Motion to Dismiss, Defendants argue that—based on Greentouch's allegations in the Complaint—the conversion claim is based entirely upon matters within the scope of the parties' contract—that is, the failure of Lowe's to pay Greentouch for products provided under the contract and to honor Greentouch's contractual right of first refusal. For this reason, Defendants contend, the conversion claim must be dismissed under North Carolina's economic loss rule.

40. "The economic loss rule, as it has developed in North Carolina, generally bars recovery in tort for damages arising out of a breach of contract[.]" *Rountree v. Chowan Cnty.*, 252 N.C. App. 155, 159 (2017). This Court has summarized the rule as follows:

> The economic loss rule "denote[s] limitations on the recovery in tort when a contract exists between the parties that defines the standard of conduct and which the courts believe should set the measure of recovery." *Akzo Nobel Coatings, Inc. v. Rogers*, 2011 NCBC LEXIS 42,

> at *47–48 (N.C. Super. Ct. Nov. 3, 2011). This rule exists because "the open-ended nature of tort damages should not distort bargained-for contractual terms." *Artistic S., Inc. v. Lund*, 2015 NCBC LEXIS 113, at *25 (N.C. Super. Ct. Dec. 9, 2015).

USConnect, LLC v. Sprout Retail, Inc., 2017 NCBC LEXIS 37, *13–14 (N.C. Super. Ct. Apr. 21, 2017).

41. This Court has recognized that "[w]hen one party to a contract claims that another party to the contract has wrongfully taken possession of property that is the subject of the contract, the appropriate claim is for breach of contract, not conversion." *Howard v. IOMAXIS, LLC*, 2023 NCBC LEXIS 159, at *74 (N.C. Super. Ct. Nov. 29, 2023); *see also Window Gang Ventures, Corps. v. Salinas*, 2019 NCBC LEXIS 24, at *53–54 (N.C. Super. Ct. Apr. 2, 2019) (dismissing claim for conversion where plaintiff failed to plead a duty independent of the contract); *Planet Earth TV, LLC v. Level 3 Commc'ns, LLC*, No. 1:17-cv-00090-MR-DLH, 2018 U.S. Dist. LEXIS 129920, at *5–6 (W.D.N.C. Aug. 2, 2018) (dismissing a claim for conversion under the economic loss rule); *Legacy Data Access, Inc. v. Cadrillion, LLC*, 889 F.3d 158, 167 (4th Cir. 2018) (reversing a jury verdict for the plaintiff on a claim of conversion based on the economic loss rule).

42. However, we have also held that the economic loss rule does not apply where the plaintiff "identif[ies] a duty separate and distinct from [the] contractual obligations." *Forest2Market, Inc. v. Arcogent, Inc.*, 2016 NCBC LEXIS 3, at *8 (N.C. Super. Ct. Jan. 5, 2016); *see also Artistic S., Inc.*, 2015 NCBC LEXIS 113, at *23; *Akzo Nobel Coatings, Inc.*, 2011 NCBC LEXIS 42, at *48.

43. Here, although the bulk of Greentouch's allegations in the Complaint are premised on the notion that a legally effective contract existed between the parties, Greentouch has also pled in the alternative a claim for quasi-contract and for equitable relief under a theory of unjust enrichment. (Compl. ¶¶ 17–18, 20–21).

44. Moreover, because the contract is not attached to the Complaint, the Court is unable to resolve at the pleadings stage the parties' competing arguments regarding the extent to which the allegations supporting Greentouch's conversion claim are—or are not—fully capable of being redressed through its breach of contract claim.

45. Given the limited information before the Court at this early stage of the action, the Court concludes that the dismissal of Greentouch's conversion claim under the economic loss doctrine would be premature. *See, e.g., Club Car, Inc. v. Dow Chem. Co.*, 2007 NCBC LEXIS 10, at *28–31 (N.C. Super. Ct. May 3, 2007) (deferring application of the economic loss rule where it was "unclear whether [plaintiff] ha[d] a contractual remedy" because "[defendant] ha[d] yet to answer the allegations of the [c]omplaint, and its brief in support of its motion to dismiss [was] cryptic as to the scope of" the purported contract); *see also McManus v. GMRI, Inc.*, No. 3:12-CV-009-DCK, 2012 U.S. Dist. LEXIS 92094, at *22–24 (W.D.N.C. July 3, 2012) (denying a motion to dismiss a conversion claim under the economic loss rule as "premature" even though "it appear[ed] the property that was allegedly converted was the subject of the contract").

46. Therefore, Defendants' Motion to Dismiss is **DENIED** as to Greentouch's conversion claim without prejudice to Defendants' ability to reassert its argument under the economic loss rule at a later stage of this case.

B. Defamation

47. "In order to recover for defamation, a plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation." *Taube v. Hooper*, 270 N.C. App. 604, 608 (2020) (citations omitted).

48. Defamation claims must be pled "'substantially' in *haec verba*, or with sufficient particularity to enable the court to determine whether the statement was defamatory." *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 84 (1980). This heightened pleading standard generally requires the plaintiff to allege "who said what to whom, as well as when and where the defamatory statements were made." *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 111, at *15 (quoting *Gosnell v. Reid*, No. 5:14CV179-RLV, 2015 U.S. Dist. LEXIS 96878, at *21 (W.D.N.C. July 24, 2015), *aff'd by Gosnell v. Catawba Cnty.*, 646 F. App'x 318 (4th Cir. 2016)); *see also Izydore v. Alade*, 242 N.C. App. 434, 446 (2015) (affirming dismissal of a defamation claim as lacking any "degree of specificity . . . either specifically or in substance" when the only allegation provided that "[the defendant] made false and defamatory statements concerning [the plaintiff] . . . thereby depriving [him] of his good name and reputation").

49. Here, the bulk of Greentouch's allegations fail to specifically identify the person making the allegedly defamatory statement. For example, Greentouch's allegations relating to the May 2023 communication to Armstrong and Lapierre at RONA and the May 2023 communication to Hood at LGSI are merely attributed to unnamed "LGSI executives." (Compl. ¶¶ 84–86.)

50. Such allegations fail to satisfy North Carolina's heightened pleading standards for defamation claims. *See, e.g., Higgins v. Synergy Coverage Sols., LLC.* 2020 NCBC LEXIS 6, at *74–78 (N.C. Super. Ct. Jan. 15, 2020) (concluding that a plaintiff's allegations that their former "supervisor" made the defamatory statements "lack[ed] [] specificity" because they failed to particularly "identif[y] the maker . . . of the allegedly defamatory statements"); *Addison Whitney, LLC*, 2017 NCBC LEXIS 111, at *33–34 (concluding that allegations of defamatory conduct by the defendant's "agents or employees" was "facially inadequate . . . [and] lack[ed] meaningful particularity"); *Wynn v. Tyrrell Cnty. Bd. of Educ.*, No. COA16-1130, 2017 N.C. App. LEXIS 358, at *8–9, (May 16, 2017) (unpublished) (affirming dismissal where the complaint failed to particularly "identify which members of the [county board of education] made the allegedly defamatory statements").

51. Only one of Greentouch's allegations identifies the speaker with sufficient particularity. Greentouch alleges that "Danny Chen, a[n] HK Greentouch manager, reported that Angela Wang, the Director of Asia Sourcing for LGSI in Shanghai, made false statements to Hood about the financial condition of HK Greentouch and Greentouch USA." (Compl. ¶ 86.)

52. Although this allegation specifically identifies the speaker (Angela Wang), it is nevertheless deficient because it fails to describe the allegedly false statements themselves with sufficient particularity. Instead, it merely asserts that Wang made false statements regarding Greentouch's "financial condition"—a broad topic that could conceivably encompass both defamatory and non-defamatory statements. *See, e.g., Jackson v. Mecklenburg Cnty.*, No. 3:07-cv-218, 2008 U.S. Dist. LEXIS 104410, at *17 (W.D.N.C. July 30, 2008) (dismissing a claim for defamation where the plaintiff simply alleged broad categories of conduct including "allegations . . . regarding [p]laintiff's supposed disloyalty and/or violations of [c]ounty policy"); *Wynn*, 2017 N.C. App. LEXIS 358, at *8 (affirming dismissal of a defamation claim where the complaint only alleged "the gist of the statements" and was "devoid of further relevant factual enhancement"); *McKee v. James*, 2013 NCBC LEXIS 33, at *29 (N.C. Super. Ct. July 24, 2013) (dismissing a claim for defamation as insufficiently particular where the plaintiff asserted that "[defendants] made oral and written statements to persons in the [plaintiff's] industry that were false and derogatory").

53. In its response brief, Greentouch argues that a contextual reading of paragraph 86 of the Complaint shows that the allegations as to Wang were, in fact, sufficiently specific as to the nature of the statement made about Greentouch's financial condition. The Court disagrees.

54. Paragraph 86 reads as follows:

> On another occasion that occurred in or about May of 2023, an LGSI executive made false statements to Philip Hood [] of Home Insights, in

> High Point, North Carolina, that the Greentouch entities were in bankruptcy and could not fulfill their financial commitments. Lowe's negative statements caused Home Insights to curtail the scope of its business with Greentouch USA and HK Greentouch, which deprived those entities of millions of dollars' worth of sales of Greentouch USA's and HK Greentouch products to Home Insights. *At about the same time*, Danny Chen, a[n] HK Greentouch manager, reported that Angela Wang, the Director of Asia Sourcing for LGSI in Shanghai, made false statements to Hood about the financial condition of HK Greentouch and Greentouch USA.

(Compl. ¶ 86.) (emphasis added)

55. Contrary to Greentouch's argument, the only logical reading of this paragraph is that the speaker of the statement in the first sentence of paragraph 86 about Greentouch being in bankruptcy and unable to fulfill its financial commitments was someone other than Wang. If Greentouch had intended to identify Wang as the person who made that specific statement, the Complaint would not have instead attributed the statement to an unidentified "LGSI executive." Moreover, the inclusion of the phrase "[a]t about the same time," which separates the specific statement attributed to the unidentified LGSI executive and the general statements attributed to Wang, likewise indicates that two separate speakers are being referenced in paragraph 86.

56. Therefore, the Motion to Dismiss is **GRANTED** as to Greentouch's defamation claim,[4] and that claim is **DISMISSED** without prejudice.[5]

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[4] Because the Court concludes that Greentouch's defamation claim fails to satisfy North Carolina's heightened pleading standards, the Court need not—and does not—address Defendants' argument that Lowe's cannot be held vicariously liable for defamatory statements made by LGSI executives or employees.

[5] "The decision to dismiss an action with or without prejudice is in the discretion of the trial court[.]" *First Fed. Bank v. Alridge*, 230 N.C. App. 187, 191 (2013).

C. Tortious Interference with Existing Contract

57. Our Supreme Court has articulated the following elements of a tortious interference with existing contract claim:

> (1) a valid contract between the plaintiff and a third person which confers upon the plaintiff a contractual right against a third person; (2) the defendant knows of the contract; (3) the defendant intentionally induces the third person not to perform the contract; (4) and in doing so acts without justification; (5) resulting in actual damage to plaintiff.

United Labs., Inc. v. Kuykendall, 322 N.C. 643, 661 (1988).

58. In support of this claim, Greentouch alleges that "Greentouch USA had a valid services contract with Home Insights. Lowe's and LGSI were aware of this contract and intentionally induced and caused Home Insights to repudiate the agreement with the specific intent of injuring Greentouch USA." (Compl. ¶ 65.) Specifically, Greentouch contends that "LGSI, acting on behalf of Lowe's, directed Home Insights, LLC [] and its affiliate, Starwood Furniture (MFG) Vietnam Corporation, to not honor a services agreement with Greentouch USA, thereby depriving Greentouch USA of substantial fees it would have earned pursuant to that agreement." (Compl. ¶ 39.) Additionally, the Complaint alleges that "Lowe's, through its agents at LGSI, repeatedly ma[de] statements to Home Insights, its affiliates, and RONA, outrageously claiming that Greentouch USA was no longer a viable business, was bankrupt, had ceased operations, and/or was incapable of supplying its products at sufficient volumes or providing honest and trustworthy services." (Compl. ¶ 40.)

59. Defendants first argue that Greentouch's tortious interference with existing contract claim fails because it lacks specificity. Defendants note that the

Complaint does not describe the services agreement with Home Insights, how Home Insights breached its agreement with Greentouch, or how Defendants could have "directed" Home Insights to do so.

60. Although admittedly the allegations in the Complaint are not a model of specificity, claims of tortious interference with existing contract are not held to a heightened pleading standard but rather must only satisfy the relatively low bar of notice pleading. *See Embree Constr. Grp., Inc. v. Rafcor, Inc.*, 330 N.C. 487, 550 (1992) (holding that "under the liberal concept of notice pleading" a plaintiff only need "give sufficient notice of the events on which the claim is based to enable defendants to respond and prepare for trial and are sufficient to satisfy the substantive elements of the claim of tortious interference with contract").

61. Read in the light most favorable to Greentouch, the Complaint alleges that Greentouch had an existing contract with Home Insights, Defendants knew about the contract, and Defendants made disparaging comments about Greentouch to Home Insights for the purpose of inducing Home Insights to terminate its contract with Greentouch. These allegations contain the necessary elements of a tortious interference with existing contract claim.

62. Defendants' second argument is that Greentouch has failed to allege a lack of justification on the part of Defendants with regard to the conduct at issue.

63. This Court has previously stated the following regarding the justification element of a tortious interference with existing contract claim:

> "A motion to dismiss a claim of tortious interference is properly granted where the complaint shows the interference was justified[.]" *Pinewood*

> *Homes, Inc. v. Harris*, 184 N.C. App. 597, 605 (2007) (citing *Peoples Sec. Life Ins. Co. v. Hooks*, 322 N.C. 216, 220 (1988)). "The interference is 'without justification' if the defendants' motives . . . were 'not reasonably related to the protection of a legitimate business interest' of the defendant." *Privette v. Univ. of N.C. at Chapel Hill*, 96 N.C. App. 124, 134 (1989) (quoting *Smith v. Ford Motor Co.*, 289 N.C. 71, 94 (1976)).

Avadim Health, Inc. v. Harkey, 2021 NCBC LEXIS 104, at *18 (N.C. Super. Ct. Nov. 30, 2021).

64. In order for a tortious interference claim to survive, "a plaintiff must plead legal malice, which is just another way of saying the intentional doing of the harmful act without justification." *Lunsford v. ViaOne Servs., LLC*, 2020 NCBC LEXIS 111, at *14 (N.C. Super. Ct. Sept. 28, 2020) (cleaned up).

65. Defendants assert that Greentouch's own allegations in the Complaint show a facially legitimate business justification—that is, the desire of Lowe's to replace Greentouch with lower-cost vendors.

66. However, Defendants' argument ignores the following additional allegations in the Complaint:

> Lowe's motive for interfering with Greentouch USA's contracts and prospective contracts with third-parties and for defaming Greentouch USA and HK Greentouch in the marketplace was clear. Through its contractual relationship with the Greentouch entities, Lowe's had gained access to Greentouch USA's and HK Greentouch's designs, manufacturing processes, supply contacts and suppliers, and know-how (all of which Lowe's lauded as best-in-class in terms of design and packaging), and, having gained that access and obtained that knowledge, Lowe's intended to eliminate HK Greentouch and Greentouch USA and replace them with lower-cost vendors who would charge Lowe's less and who paid nothing to develop the know-how and expertise Lowe's had accessed and obtained by means of its business relationships with the Greentouch entities.
>
> . . .

> By the time these statements were made, Lowe's and LGSI had access to Greentouch USA's and HK Greentouch's design and manufacturing know-how. Lowe's and LGSI's objective in undermining Greentouch (i.e., its motive) was to impair these entities' ability to perform on its contract with Lowe's, so that Lowe's could then take over the manufacture and sale of such products (or source them from lower-cost vendors by giving them the know-how Lowe's obtained from the Greentouch entities) without having to compensate Greentouch.

(Compl. ¶¶ 41, 82.)

67. Greentouch further alleges that "Defendants' intentional and malicious business practices were designed and intended to destroy HK Greentouch and Greentouch USA[.]" (Compl. ¶ 44.) In furtherance of their "evident and malicious effort to destroy Greentouch USA's and HK Greentouch's businesses and reputations[,]" Defendants began "deliberately and intentionally disparaging Greentouch USA and HK Greentouch in the marketplace, and interfering with Greentouch USA's existing and expected contractual relationships with third parties[.]" (Compl. ¶ 38.)

68. The Court notes that similar allegations have been deemed by this Court to be sufficient to overcome a motion to dismiss a tortious interference claim. *See, e.g., Sandhills Home Care, L.L.C. v. Companion Home Care – Unimed, Inc.*, 2016 NCBC LEXIS 61, at *56–57 (N.C. Super. Ct. Aug. 1, 2016) (denying a motion to dismiss where the plaintiff alleged that the defendants' interference was "'without justification' in a 'malicious and blatant attempt to destroy plaintiff's business'"; stating that "[p]laintiff's allegation of a specific plan or scheme to destroy [p]laintiff's business goes beyond reasonable competitive behavior"); *Vanfleet v. City of Hickory*, 2020 NCBC LEXIS 40, at *4–5, 11–12 (N.C. Super. Ct. Mar. 30, 2020) (denying a

motion to dismiss based on the plaintiff's allegation that the defendants "conspire[ed] to destroy [its] business" and "damage [its] reputation").

69. Although it remains to be seen whether Greentouch's theory will be borne out by discovery, the Court is satisfied that these allegations are legally adequate at the pleadings stage.

70. Therefore, Defendants' Motion to Dismiss is **DENIED** as to Greentouch's tortious interference with existing contract claim.

D. Tortious Interference with Prospective Economic Advantage

71. "An action for tortious interference with prospective economic advantage is based on conduct by the defendant[] which prevents the plaintiff[] from entering into a contract with a third party." *Walker v. Sloan*, 137 N.C. App. 387, 392–93 (2000) (citing *Owens v. Pepsi Cola Bottling Co.*, 330 N.C. 666, 680 (1992)). In order to state such a claim, "the plaintiff must allege facts to show that the defendant acted without justification in inducing a third party to refrain from entering into a contract with them which contract would have ensued but for the interference." *Radcliffe v. Avenel Homeowners Ass'n*, 248 N.C. App. 541, 567 (2016) (cleaned up). Our Supreme Court has made clear that a plaintiff "must produce evidence that a contract would have resulted but for a defendant's malicious intervention;" the mere expectation of an ongoing business relationship is insufficient. *Beverage Sys. of the Carolinas, LLC v. Associated Bev. Repair, LLC*, 368 N.C. 693, 701 (2016) (citing *Dalton v. Camp*, 353 N.C. 647, 655 (2001)).

72. In support of its claim, Greentouch alleges that: "Lowe's and LGSI were aware of Greentouch USA's efforts to enter into a supplier relationship with RONA and maliciously induced and caused RONA not to enter into a supplier agreement with Greentouch USA." (Compl. ¶ 68.) The Complaint further states that "[b]ut for Lowe's and LGSI's wrongful disparagement of Greentouch USA to RONA, RONA would have entered into a supplier relationship with Greentouch USA for the supply of millions of dollars of bathroom vanities and/or fireplaces that would have substantially benefitted Greentouch USA." (Compl. ¶ 67.)

73. Defendants argue that other allegations in the Complaint suggest that Greentouch was merely excluded from a process that *could* (but not necessarily *would*) have resulted in a contract with RONA, which is insufficient to state a valid claim for tortious interference with prospective economic advantage. However, the concludes that Greentouch's allegations on this issue are enough to overcome Defendants' Rule 12(b)(6) motion.

74. Therefore, the Motion to Dismiss is **DENIED** as to Greentouch's tortious interference with prospective economic advantage claim.

E. UDTP

75. "To prevail on a claim of unfair and deceptive trade practices a plaintiff must show (1) an unfair or deceptive act or practice, or an unfair method of competition, (2) in or affecting commerce, (3) which proximately caused actual injury to the plaintiff or to his business." *Spartan Leasing Inc. v. Pollard*, 101 N.C. App. 450, 460–61 (1991).

76. Defendants make two arguments as to why Greentouch's UDTP claim should be dismissed. First, Defendants assert that Greentouch's allegations in support of its UDTP claim are merely duplicative of the allegations pled in support of its breach of contract claim and therefore do not rise to the level of a UDTP claim. Second, Defendants argue that to the extent that the UDTP claim is based on deceptive conduct, it is necessarily grounded in fraud but fails to satisfy the heightened pleading standard for fraud claims under Rule 9(b) of the North Carolina Rules of Civil Procedure.

77. However, the Court need not address these arguments because the continued viability of Greentouch's tortious interference claims—without more—is sufficient to allow Greentouch to proceed on a UDTP claim. *See, e.g., S. Fastening Sys. v. Grabber Constr. Prods.*, 2015 NCBC LEXIS 42, at *28–29 (N.C. Super. Ct. Apr. 28, 2016) (noting that "our courts have long recognized that claims for . . . tortious interference with contract may form the basis of a UDTP claim"); *Bldg. Ctr., Inc. v. Lumber Inc.*, 2016 NCBC LEXIS 79, at *30 (N.C. Super. Ct. Oct. 21, 2016) (holding that a validly pled tortious interference claim also "allege[s] sufficient facts for [a] UDTP claim to survive"); *see also Truist Fin. Corp. v. Rocco*, 2024 NCBC LEXIS 62, at *97–99 (N.C. Super. Ct. Apr. 25, 2024) (holding that a sufficiently pled claim for tortious interference is an "independent reason at [the motion to dismiss] stage of the litigation" to sustain a UDTP claim).

78. Since the Court has determined that Greentouch is entitled to proceed with its tortious interference claims against Defendants, its UDTP claim can likewise go forward.[6]

79. Therefore, the Motion to Dismiss is **DENIED** as to Greentouch's UDTP claim.

F. Punitive Damages

80. Finally, Defendants assert that Greentouch's claim for punitive damages should be dismissed.

81. "North Carolina courts have repeatedly held that 'a claim for punitive damages is not a stand-alone claim.'" *Aldridge v. Metro. Life Ins. Co.*, 2019 NCBC LEXIS 116, at *146 (N.C. Super. Ct. Dec. 31, 2019) (cleaned up). Rather, punitive damages are an appropriate remedy "to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts." N.C.G.S. § 1D-1.

82. Therefore, to the extent that Greentouch intended to assert a standalone claim for punitive damages, Defendants' Motion to Dismiss is **GRANTED** but without prejudice to Greentouch's ability to seek punitive damages at a later stage of this litigation as a remedy to the extent it is entitled to do so under applicable law.

[6] As a result, the Court need not—and does not—address whether Greentouch's allegations of deceptive conduct would independently be sufficient to support a UDTP claim.

CONCLUSION

THEREFORE, IT IS ORDERED as follows:

1. Defendants' Motion to Dismiss is **GRANTED** as to Greentouch's claim for defamation, and that claim is **DISMISSED** without prejudice.

2. Defendants' Motion to Dismiss is **GRANTED** as to Greentouch's claim for punitive damages without prejudice to Greentouch's ability to seek punitive damages as a remedy at a later stage of this litigation to the extent permitted by applicable law.

3. In all other respects, the Motion to Dismiss is **DENIED**.

SO ORDERED, this the 2nd day of October, 2024.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases