STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24CV020983-590
ECO FIBER INC., Plaintiff, v. YUKON PACKAGING, LLC; ZONE 1 CONSULTING, LLC; CHRISTOPHER JAMES POORE; DAVID KEVIN VANCE; and RABINDRANAUTH HEERALALL, Defendants.	**ORDER ON PLAINTIFF'S AMENDED MOTION FOR PRELIMINARY INJUNCTION**

1. Pending is Plaintiff Eco Fiber Inc.'s amended motion for preliminary injunction against Defendants Yukon Packaging, LLC, Zone 1 Consulting, LLC, Christopher Poore, David Vance, and Rabindranauth Heeralall. (ECF No. 23.) For the reasons discussed below, the Court **DENIES** the motion.

2. Eco Fiber makes and sells insulated boxes for cold-chain packaging. Over the past few years, its most important customer has been Veritiv Corporation. Veritiv is a distribution company that buys cold-chain packages from Eco Fiber to resell to end users. The bulk of Eco Fiber's sales to Veritiv are for use by an entity that the parties call "Customer 1." Eco Fiber's revenue from Veritiv's Customer 1 business peaked in 2022 at close to $19 million, fell to about $10 million in 2023, and dropped even more in the first half of 2024. This sharp decline culminated in an announcement by Veritiv in April 2024 that it would not submit any more purchase orders to Eco Fiber for Customer 1 business. (*See, e.g.*, V. Compl. ¶¶ 10, 12, 86, ECF No. 3; Schneider Sr. Am. Aff. ¶¶ 16, 19, 23, 24, ECF No. 26.)

3. In this lawsuit, Eco Fiber accuses Defendants of unfairly poaching the Customer 1 business. Poore, Vance, and Heeralall used to work for Eco Fiber. Heeralall served as president; Poore and Vance provided consulting services through their company, Zone 1 Consulting. Eco Fiber alleges that the three men secretly formed Yukon Packaging in late 2022 with an eye toward stealing away Veritiv's business. Although Eco Fiber fired Heeralall in February 2023 (before Yukon Packaging made its first sale), Vance continued to provide consulting services into December 2023, and Poore continued to do so into April 2024. This insider access, according to Eco Fiber, allowed them to conceal their activities while competing against it and using its resources to benefit Yukon Packaging. (*See, e.g.*, V. Compl. ¶¶ 23, 25, 38, 41, 51, 52, 59; Schneider Jr. Aff. ¶¶ 26, 31, ECF No. 28; *see also* Heeralall Decl., Ex. F, ECF No. 41.)

4. There's some debate about when Eco Fiber first discovered this alleged scheme. It was undoubtedly aware of Vance's involvement with Yukon Packaging by the end of 2023 but claims not to have known about Poore's involvement (and Heeralall's) until much later. Following Vance's departure from Eco Fiber, Poore allegedly denied any association with Yukon Packaging, stayed on as a consultant, and urged Eco Fiber to charge higher prices that he knew Veritiv would not accept. Around the same time, Vance allegedly asserted—falsely—that Veritiv risked infringing a patent that he owned if it continued to buy and resell containers from Eco Fiber. Soon after, Veritiv halted orders from Eco Fiber. Only then, Eco Fiber claims, was it able to piece together that Poore, Vance, and Heeralall were working

together. (*See, e.g.*, V. Compl. ¶¶ 72, 75, 78, 80; Schneider Sr. Am. Aff. ¶¶ 40–42; Schneider Jr. Aff. ¶¶ 26, 27, 29, 30.)

5. Immediately after filing suit, Eco Fiber moved for a temporary restraining order and preliminary injunction to bar Defendants from selling three-pad cold-chain packages to Veritiv for its Customer 1 business. The Court denied the motion for temporary restraining order and ordered expedited briefing on the motion for preliminary injunction. Defendants then removed the case to federal court where Eco Fiber amended its motion for preliminary injunction. After the parties completed briefing but before a hearing, the federal court remanded the case. At the parties' joint request, the Court agreed to decide the motion for preliminary injunction based on the briefs filed in federal court but allowed them to supplement their supporting evidence.

6. In the interim, a few important developments have occurred. In a letter to Eco Fiber's counsel, Vance made a covenant not to sue Eco Fiber or its customers for patent infringement. Separately, Veritiv has begun submitting new purchase orders to Eco Fiber, with promises to restore at least half the Customer 1 business. (*See* BenGera Aff., Ex. A, ECF No. 51.1; 3d Schneider Sr. Aff. ¶ 14, ECF No. 54.)

7. The Court held a hearing on 11 July 2024 at which all parties were represented by counsel. The motion is now ripe for disposition.

8. A preliminary injunction is an "extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 701 (1977). The plaintiff bears the burden of proof and must

show not only a likelihood of success on the merits of its claims but also a likelihood of irreparable harm in the absence of an injunction. *See A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983).

9. Eco Fiber asks the Court to enjoin Defendants from selling any three-pad cold-chain packages to Veritiv for its Customer 1 business through the pendency of this litigation. According to Eco Fiber, Defendants conspired to poach Veritiv's Customer 1 business through unlawful means. It contends that it is likely to succeed on its claims for breach of fiduciary duty (against Heeralall), tortious interference with prospective business relations (against all Defendants), and unfair or deceptive trade practices under N.C.G.S. § 75-1.1 (also against all Defendants).[1]

10. Defendants admit having formed Yukon Packing to compete against Eco Fiber but contend that it was lawful to do so. They note, among other things, that Eco Fiber released all claims against Heeralall relating to his employment, that the consulting agreement between Eco Fiber and Poore and Vance does not include an exclusivity requirement, and that no Defendant is subject to a covenant not to compete. They further contend that Eco Fiber's own actions are to blame for the deterioration of its relationship with Veritiv.

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[1] Eco Fiber also relies on its claims for constructive fraud and civil conspiracy. The claim for constructive fraud is essentially identical to the claim for breach of fiduciary duty. Likewise, the conspiracy claim is predicated on the same unlawful conduct underlying the other claims. As a result, there is no need to discuss these claims separately. Notably, Eco Fiber does not rely on, or contend that it is likely to succeed on the merits of, its claims for misappropriation of trade secrets and breach of certain contractual provisions restricting the use of confidential information.

11. **Breach of Fiduciary Duty.** The Court begins with the claim for breach of fiduciary duty against Heeralall. It is undisputed that Heeralall owed a fiduciary duty to Eco Fiber while he served as its president. *See* N.C.G.S. § 55-8-42. It is also undisputed that he helped form Yukon Packaging and made plans to compete against Eco Fiber before his tenure as president ended in February 2023. (*See* Heeralall Decl. ¶ 18, ECF No. 39.) But "merely making plans to compete with an employer before leaving the company, without more, does not necessarily constitute a breach of fiduciary duty." *RoundPoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at *25 (N.C. Super. Ct. Feb. 18, 2016).

12. There are limits, of course, to what a corporate officer can do when preparing to leave his employer and compete against it. Forbidden acts include (among other things) misappropriating the employer's trade secrets, soliciting its customers, and misusing its assets. *See id.* at *26. No available evidence shows that Heeralall crossed those lines, though. Eco Fiber has not argued that he misappropriated its trade secrets or solicited its customers. And its argument that he used its financial assets and other resources for Yukon Packaging's benefit lacks convincing support. (*See* V. Compl. ¶ 51(a) (admitting that invoice "was actually paid by Yukon," not Eco Fiber); Mateo Am. Aff. ¶ 13 (admitting that Eco Fiber "never paid this invoice"), ECF No. 27; *see also* Heeralall Decl. ¶¶ 23–26.)

13. Eco Fiber bears the burden to show that Heeralall's activities went beyond planning and preparing to compete. It has not carried that burden and has not shown that it is likely to succeed on its claim for breach of fiduciary duty. *See, e.g.*, *Fletcher,*

Barnhardt & White, Inc. v. Matthews, 100 N.C. App. 436, 441–42 (1990) (concluding that defendant's "actions in preparing to leave the company and in forming his own business were not a breach of duty owed to plaintiff"); *Fogartie v. Edrington*, 2017 NCBC LEXIS 106, at *22–23 (N.C. Super. Ct. Nov. 17, 2017) (denying motion for preliminary injunction when evidence did "not establish that Defendants' activities amounted to improper preparations to compete"); *Sunbelt Rentals, Inc. v. Head & Engquist Equip., L.L.C.*, 2002 NCBC LEXIS 2, at *26 (N.C. Super. Ct. July 10, 2002) (dismissing claim for breach of fiduciary duty based on allegations that did "not amount to anything beyond the planning of competitive activity").

14. What's more, Eco Fiber released "any and all claims . . . whether known or unknown" that it may have against Heeralall relating to his employment. (Heeralall Decl., Ex. A, ECF No. 41.) That includes the claim for breach of fiduciary duty. Perhaps Eco Fiber will be able to prove at a later stage that the release is unenforceable (its counsel suggested as much at the hearing), but it hasn't done so yet. For now, the release appears to be enforceable, and if so, then Eco Fiber cannot succeed on claims that it has voluntarily given up. *See Adder v. Holman & Moody, Inc.*, 288 N.C. 484, 492 (1975) ("A release is the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be exercised.").

15. **Tortious Interference.** Nor has Eco Fiber shown that it is likely to succeed on its claim for tortious interference with prospective business relations. A "plaintiff's mere expectation of a continuing business relationship is insufficient to establish such a claim. Instead, a plaintiff must produce evidence that a contract

would have resulted *but for* a defendant's malicious intervention." *Beverage Sys. of the Carolinas, LLC v. Associated Bev. Repair,* LLC, 368 N.C. 693, 701 (2016) (emphasis added; internal citation omitted). Eco Fiber's briefs don't even mention this essential claim element, much less point to evidence to show that it would have kept all or part of Veritiv's business but for Defendants' interference. For the party with the burden of proof, that oversight is self-defeating.

16. This may seem like judicial nitpicking. It isn't. The purpose of briefing is to sharpen the issues for court review. Arguments that are too general, too conclusory, or too fragmentary hinder that review. They also frustrate the adversarial process by depriving an opponent of a fair chance to respond. *See* BCR 7.2 ("The function of all briefs required or permitted by this rule is to define clearly the issues presented to the Court and to present the arguments and authorities upon which the parties rely in support of their respective positions.").

17. Defendants, unlike Eco Fiber, take the causation element head on in their response brief. They plausibly argue that Eco Fiber's own actions imperiled its relationship with Veritiv. It is undisputed, for example, that Veritiv asked Eco Fiber to open new locations outside North Carolina to help lower freight costs. As early as 2021, though, Veritiv expressed "shock" when Eco Fiber postponed plans to expand after having "told us several times that the west [locations] would be up and running" in short order. (Poore Decl., Ex. M, ECF No. 38.) Years later and after Veritiv had slashed the volume of its orders, Eco Fiber opened a single new location. (*See* 3d Schneider Sr. Aff. ¶ 14.) One reasonable inference is that Eco Fiber's excessive

freight costs and unfulfilled promises are to blame for much of its lost business. Eco Fiber has not carried its burden to show otherwise. *See, e.g.*, *Dalton v. Camp*, 353 N.C. 647, 655 (2001) (reasoning that plaintiff's rejection of third party's proposed contract terms undermined its argument that a contract would have resulted but for defendant's alleged interference).

18. **Section 75-1.1.** That leaves the catchall claim for unfair or deceptive trade practices under section 75-1.1. This claim is partly based on the allegations of breach of fiduciary duty and tortious interference. Eco Fiber is not likely to succeed on those allegations for the reasons discussed above.

19. This claim is also partly based on Eco Fiber's general contention that it was unfair for Poore and Vance to charge it for consulting services while competing against it through their work for Yukon Packaging. But no legal duty or contractual obligation restrained Poore and Vance from consulting for a competitor or engaging in competition themselves. They owed no fiduciary duties to Eco Fiber; their consulting agreement with Eco Fiber does not demand exclusivity, require them to disclose their other clients, or impose a covenant not to compete; and Eco Fiber does not argue that they misused trade secrets or confidential information received from it during their work as consultants.

20. Eco Fiber's strongest arguments relate to two events that, if true, likely go beyond the bounds of fair competition. First, Vance allegedly made a baseless assertion to Veritiv that its purchase and resale of containers made by Eco Fiber infringed one of his patents. Vance denies the allegation. Second, Poore falsely

assured Eco Fiber that he was not involved with Yukon Packaging and then allegedly used his insider influence to induce Eco Fiber to raise its prices to a level that Veritiv would not be willing to pay. Poore denies having induced the price increase but does not deny having hidden his relationship with Yukon Packaging.

21. These are serious allegations that deserve serious consideration. But they do not support the relief that Eco Fiber seeks, even assuming for argument's sake that it is likely to succeed in proving them. A preliminary injunction is prospective in effect. Its purpose is not to punish past wrongs but to prevent future injuries "of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *A.E.P. Indus.*, 308 N.C. at 407 (citation and quotation marks omitted). Here, the alleged misconduct—Vance's baseless assertion of infringement and Poore's duplicitous meddling in price negotiations—is exceedingly unlikely to recur. In recent weeks, Vance has unequivocally covenanted not to sue Eco Fiber or Veritiv for patent infringement. (*See* BenGera Aff., Ex. A.)[2] And Eco Fiber dismissed Poore from his consulting role months ago; it can lower its prices if it wishes. (*See* V. Compl., Ex. N (message from Eco Fiber asking to "re-quote" and assuring Veritiv "we can get to the price targets needed to make it work on your end").) Absent ongoing wrongful activity, there is nothing to enjoin.

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[2] Eco Fiber sued Vance in federal court under the North Carolina Abusive Patent Assertion Act and moved for an injunction on that claim. Though noting that it was a "close call," the court concluded that Vance had "made an assertion of patent infringement to Veritiv" and went on to enjoin him "from making in bad faith objectively false assertions to any customer or prospective customer of" Eco Fiber that its "insulated containers . . . infringe" his patent. (ECF No. 50.1 at 5, 10.) This, too, makes it exceedingly unlikely that either Eco Fiber or Veritiv will face baseless assertions of patent infringement going forward.

22. Moreover, the remedy should fit the wrong. Eco Fiber does not seek to enjoin specific unlawful acts (such as baseless assertions of patent infringement). Rather, it seeks a broad injunction that would bar Defendants from selling any three-pad cold-chain packages to Veritiv for Customer 1 business. That goes too far. It would effectively impose a restraint on trade against Defendants who are not subject to covenants not to compete and have not been shown to have misappropriated trade secrets. *See, e.g.*, *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 23, at *33 (N.C. Super. Ct. Mar. 15, 2017) (refusing to enjoin competition by former employees who were not subject to covenants not to compete); *Comp. Design & Integration, LLC v. Brown*, 2017 NCBC LEXIS 8, at *36 (N.C. Super. Ct. Jan. 27, 2017) (same); *see also City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 145 (2d Cir. 2011) ("An injunction is overbroad when it seeks to restrain the defendants from engaging in legal conduct, or from engaging in illegal conduct that was not fairly the subject of litigation.").

23. Eco Fiber warns that it cannot survive without an injunction. That is not a given: Veritiv has thrown it a lifeline with promises to restore at least half the Customer 1 business. Regardless, Eco Fiber could have bargained for covenants not to compete, guarantees of exclusivity, and similar contractual safeguards to lessen or neutralize threats to its relationship with its most important customer. It didn't. Though Eco Fiber may regret that decision, equity cannot give it the benefit of a bargain that it did not make.

24. For all these reasons, the Court **DENIES** Eco Fiber's amended motion for preliminary injunction.

SO ORDERED, this the 23rd day of July, 2024.

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