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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-765

Filed: 5 September 2017

Mecklenburg County, No. 14 CVS 21105

SAM KHASHMAN and TECHNOLOGY PARTNERS, INC., Plaintiffs,

v.

CANDACE KHASHMAN, RONNIE SMITH, KENNETH T. DAVIES, and IOANNIS PAPAIOANNOU, Defendants.

Appeal by plaintiffs from order entered 10 March 2016 by Judge Hugh B. Lewis in Mecklenburg County Superior Court. Heard in the Court of Appeals 25 January 2017.

*Nexsen Pruet, PLLC, by R. Daniel Boyce and Alex R. Williams, for Plaintiffs-Appellants.*

*Poyner Spruill LLP, by Cynthia L. Van Horne, for Defendants-Appellees.*

INMAN, Judge.

An attorney who encouraged his client's private investigator to contact the client's ex-husband's business associates to gather information helpful in litigation was entitled to summary judgment against claims by the client's ex-husband for engaging in an unfair or deceptive trade practice and civil conspiracy based on the statutory "learned profession" exemption from liability.

Sam Khashman (“Mr. Khashman”) and Technology Partners, Inc. (“TPI”) appeal from an order for summary judgment entered in favor of defendant Kenneth T. Davies (“Mr. Davies”). For the following reasons, we affirm.

I. Background

Following their acrimonious divorce in 2008, Mr. Khashman and Candace Khashman (“Mrs. Khashman”) have been embroiled in multiple lawsuits adverse to each other. Mr. Khashman filed the initial complaint in this matter against Mrs. Khashman on 14 November 2014. In his initial complaint, Mr. Khashman alleged that Mrs. Khashman had slandered him by telling a third party that Mr. Khashman: (1) had an affair with an underage woman; (2) hired someone to burn down Mrs. Khashman’s house with her in it; and (3) paid his way out of two felonies. Mr. Khashman alleged Mrs. Khashman made these false statements to damage his personal and business reputations.

On 7 July 2015, Mr. Khashman filed a motion for leave to file a first amended complaint on grounds that since the filing of his initial complaint against Mrs. Khashman, she participated in a conspiracy with Mr. Davies, defendant Ronnie Smith (“Mr. Smith”), and defendant Ioannis Papaioannou (“Mr. Papaioannou”) “to extort [Mr. Khashman] and his company, [TPI], defame [him], and otherwise interfere with TPI’s business.” The trial court granted Mr. Khashman’s motion to file a first amended complaint and allowed TPI to join the case as a plaintiff by order filed

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on 27 August 2015. Mr. Khashman and TPI (together “Plaintiffs”) filed the first amended complaint on 31 August 2015.

Mr. Davies is an attorney who has provided legal counsel to Mrs. Khashman and Mr. Papaioannou in separate actions adverse to Mr. Khashman and TPI.<sup>1</sup> The record does not reflect that Mr. Davies has served as Mrs. Khashman’s counsel in this action; certificates of service in the record refer to Mrs. Khashman as appearing *pro se*.

In addition to the allegations and slander claim in the initial complaint, the first amended complaint included a slander claim against Mr. Smith, unfair and deceptive trade practices (UDTP) claims against all defendants for interference with TPI’s business and extortion of Mr. Khashman and TPI, and a civil conspiracy claim against all defendants. These additional claims were based on allegations that Mr. Smith, a private investigator hired by Mrs. Khashman, made false and defamatory statements about Mr. Khashman as part of a plan with Mrs. Khashman, Mr. Papaioannou, a former TPI employee, and Mr. Davies.

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<sup>1</sup> Mr. Davies was Mrs. Khashman’s counsel of record in a constructive fraud action related to the Khashmans’ separation agreement, *Khashman v. Khashman*, 14-CVD-22437, (Mecklenburg Cnty., N.C. Dist. Ct. 2014), and an eviction action involving the former marital home, *Khashman v. Khashman*, 14-CVS-21154, (Mecklenburg Cnty., N.C. Super. Ct. 2014). Mr. Khashman also represented or provided legal counsel to Mrs. Khashman in relation to several other transactional matters and legal disputes. Mr. Davies also represented Mr. Papaioannou in business litigation adverse to TPI, *Papaioannou v. Technology Partners, Inc., et al.*, 15-CVS-2292, (Mecklenburg Cnty., N.C. Super. Ct. 2015), and *Technology Partners, Inc., et al. v. Papaioannou*, 3:15-cv-00063, (W.D.N.C. 2015).

Plaintiffs allege all defendants conspired to damage Mr. Khashman's reputation and interfere with TPI's business in an effort to extort money from Plaintiffs.

Mr. Davies filed an answer to the first amended complaint on 14 October 2015 and a motion for summary judgment on 1 December 2015. The motion for summary judgment was based on the pleadings and affidavits by Mr. Davies, Mrs. Khashman, and Mr. Smith. On 3 December 2015, Mr. Davies responded to Plaintiffs' request for document production with objections on grounds that his communications with Mrs. Khashman and Mr. Papaioannou were protected by attorney-client privilege and the work product doctrine. Mr. Davies further responded that he was unable to locate any documents reflecting communications with Mr. Smith. Mr. Davies then filed a motion for a protective order on 11 December 2015.

An affidavit filed by Plaintiffs' counsel's paralegal on 11 January 2016 in opposition to Mr. Davies' motions for summary judgment and for a protective order details attempts by Plaintiffs to discover documents and take depositions.

Mr. Davies' motion for a protective order came on for hearing in Mecklenburg County Superior Court before the Honorable Hugh Lewis on 12 January 2016. In support of his motion for a protective order, Mr. Davies explained that he represented Mrs. Khashman and Mr. Papaioannou in separate pending actions involving Mr. Khashman and TPI. Mr. Davies further explained that Plaintiffs' discovery requests were broad and covered the communications in the other cases, not just the present

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case. Counsel for Plaintiffs attempted to clarify that they only sought discovery of communications related to the present case.

The trial court adjourned the hearing, without deciding any of the pending motions, to conduct an *in camera* review of the written communications which Mr. Davies claimed were privileged.

On 24 February 2016, Plaintiffs' counsel's paralegal filed a second affidavit with exhibits in opposition to Mr. Davies' motion for summary judgment. Those exhibits purported to show Mr. Davies' involvement in the conspiracy.

The matter came back for hearing on 26 February 2016. Judge Lewis indicated that he had reviewed the documents at issue in the motions to compel discovery and for protective order. The court then identified the following matters pending before it: Mr. Davies' motion for summary judgment, Mr. Davies' motion for a protective order, Mrs. Khashman's motion for a protective order, Plaintiffs' motion to compel Mrs. Khashman to respond to deposition questions and produce documents, Mr. Papaioannou's motion to dismiss, and Plaintiffs' motion to compel Mr. Papaioannou to appear for a deposition and produce documents. The trial court chose to proceed first with Mr. Davies' motion for summary judgment, explaining "[t]hat will direct us as to how we are going to handle the other matters."

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Upon hearing arguments regarding Mr. Davies' motion for summary judgment, the court proceeded to issue its decision in open court. Addressing the timing of summary judgment, the court explained as follows:

All discovery has not been completed in this case because of all the numerous issues brought forth. However, this Court has examined those as previously stated on the record earlier today, numerous e-mails, other documents and presentations that were presented, and the Court has looked carefully at the wording of certain statements, and even though that discovery is not complete, the Court believes that the topography of this case is well apparent and would allow for a ruling on summary judgment at this time.

The trial court then granted summary judgment in favor of Mr. Davies in open court.

The trial court acknowledged that Plaintiffs presented statements in testimony and emails to support their claims against Mr. Davies. The court, however, reasoned that Mr. Davies did not hire the investigator and that none of the evidence, even considered in a light most favorable to Plaintiffs, raised a genuine issue of material fact regarding whether Mr. Davies directed any of the investigator's actions. The court characterized Mr. Davies' email messages as "open responses" to messages from Mrs. Khashman and noted they "are not directing how that investigator is to conduct his activities." The court then explained as follows:

Though those e-mails were not in the best wording, because Mr. Davies is not directly instructing the investigator what he can or cannot do, that language does not reach to a level of a scintilla of evidence of conspiracy and is not sufficient to create in a reasonable mind even a level of suspicion for conjecture.

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A relationship either personal or professional does not in and of itself create a conspiracy, and the Court will make no more comment on those issues that were raised at a previous time.

Therefore, the Court grants summary judgment pursuant to North Carolina Rule of Civil Procedure 56 in that there is no genuine issue of any material fact relating to Defendant Davies being involved in conspiracy with the other parties and therefore he is entitled judgment in his favor as a matter of law.

Based on the grant of summary judgment in favor of Mr. Davies, the court determined that Mr. Davies' motion for protective order was moot. The court then considered motions concerning defendants other than Mr. Davies.

Plaintiffs filed a notice of appeal on 8 March 2016, before the court's ruling was reduced to a written order. In its written order filed on 10 March 2016, the court reiterated why Mr. Davies was entitled to entry of summary judgment:

The Court has conducted an in depth, *in camera*, review of all documents listed on the privilege log submitted by Mr. Davies to this Court . . .; it has examined the pleadings, the motion for summary judgment, and the affidavits and documents submitted by Mr. Davies in support of the motion for summary judgment, and the affidavits, all exhibits thereto, documents and recordings submitted by Plaintiffs in opposition to the motion for summary judgment and in opposition to the motion for protective order; it has examined Mr. Davies' memorandum in support of his motion for summary judgment, and Plaintiffs' memoranda in opposition to the motion for summary judgment and in opposition to the motion for protective order; and it has heard extensive argument of counsel for Plaintiffs and for Mr. Davies.

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Based on the Court's consideration of the foregoing, the Court is of the opinion and concludes that, although discovery in this matter has not been completed, the Court has been provided ample evidence from Plaintiffs and Mr. Davies on which to determine the appropriateness of summary judgment.

Based on the Court's consideration of the foregoing, the Court is of the opinion and concludes that the evidence submitted by Plaintiffs in opposition to Mr. Davies' motion for summary judgment does not amount to more than a scintilla of evidence and fails to establish beyond mere speculation or conjecture the essential element of their claims. The Court further concludes there is no genuine issue of any material fact and that Mr. Davies is entitled to judgment in his favor as a matter of law.

Plaintiffs' notice of appeal does not technically comply with Rule 3(c) of the North Carolina Rules of Appellate Procedure because it was not filed within 30 days after entry of judgment or after service of judgment on Plaintiffs. N.C. R. App. P. 3(c). Rather, it was filed before judgment was entered. Defendants do not move to dismiss the appeal on this ground. In our discretion we treat the purported appeal as a petition for writ of certiorari and consider the merits pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure. *See State v. SanMiguel*, 74 N.C. App. 276, 277-78, 328 S.E.2d 326, 328 (1985); N.C. R. App. P. 21.

II. Analysis

Plaintiffs contend the trial court erred in entering summary judgment in favor of Mr. Davies because discovery was not complete and because the evidence already discovered and presented to the trial court, when viewed in the light most favorable



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to Plaintiffs, shows that Mr. Davies participated in a conspiracy to defame Mr. Khashman and interfere with TPI's business with the goal of extorting Plaintiffs. We disagree.

*A. Timing of Summary Judgment*

Plaintiffs argue that the trial court erred in granting summary judgment in favor of Mr. Davies prior to discovery being complete. In support of their argument, Plaintiffs compare their case to *Ussery v. Taylor*, 156 N.C. App. 684, 577 S.E.2d 159 (2003), in which this Court held the trial court erred in granting summary judgment to the defendants while discovery was outstanding. In *Ussery*, this Court explained that

[t]he general purpose of discovery is to assist in the disclosure prior to trial of any relevant unprivileged materials and information. Such exchanges help the parties narrow and sharpen the basic facts and issues prior to trial. Thus, motions for summary judgment generally should not be decided until all parties are prepared to present their contentions on all the issues raised.

*Id.* at 686, 577 S.E.2d at 161 (internal quotations marks and citation omitted). Thus, in *Ussery*, this court reversed the trial court's grant of summary judgment in favor of the defendant approximately two months after the complaint was filed, noting that the plaintiff's discovery requests were pending. This Court reasoned that

[t]here is no evidence to suggest that plaintiff was dilatory in his actions, or that the pending procedures could not have led to the discovery of relevant evidence. Quite simply, plaintiff did not have adequate time to develop his case before the trial court entertained defendants' motion

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for summary judgment. Therefore, at this early stage, summary judgment was improper and both parties should have the opportunity to further develop the facts surrounding plaintiff's allegations.

*Id.* at 686, 577 S.E.2d at 161 (internal citation omitted).

Plaintiffs are correct that “[o]rdinarily it is error for a court to hear and rule on a motion for summary judgment when discovery procedures, which might lead to the production of evidence relevant to the motion, are still pending and the party seeking discovery has not been dilatory in doing so.” *Conover v. Newton*, 297 N.C. 506, 512, 256 S.E.2d 216, 220 (1979). “However, the trial court is not barred in every case from granting summary judgment before discovery is completed.” *Evans v. Appert*, 91 N.C. App. 362, 367-68, 372 S.E.2d 94, 97 (1998) (citation omitted).

When a party opposing a motion for summary judgment has moved for a continuance to complete discovery, “[t]he decision to grant or deny a continuance is solely within the discretion of the trial court, and its decision will not be reversed absent a manifest abuse of that discretion.” *Id.* at 368, 372 S.E.2d at 97. In *Evans*, the action had been pending for more than a year but a deposition had not yet been completed by the court reporter for the trial court’s consideration. This Court concluded the trial court did not abuse its discretion in denying the motion for continuance and granting the defendant’s motion for summary judgment. *Id.* at 368, 372 S.E.2d at 97.

Mr. Davies' motion for summary judgment was filed 1 December 2015, more than a year after this action was commenced, more than three months after Plaintiffs filed their first amended complaint, and about a month after Plaintiffs served discovery requests on all defendants. None of the defendants had responded to the discovery requests or produced witnesses for deposition when Mr. Davies moved for summary judgment or when the motion came on for hearing. Plaintiffs did not seek to continue the hearing pursuant to Rule 56(f) of the North Carolina Rules of Civil Procedure, but cited that rule to support its argument that summary judgment was premature.

Of the discovery outstanding, Plaintiffs point specifically to the "crucial deposition of Mr. Davies – an individual known to have information relevant to the issues of [sic] presented in summary judgment." Plaintiffs, however, fail to acknowledge that the trial court issued an order on 28 May 2015, even before Mr. Davies was named a defendant in the first amended complaint, requiring Mr. Davies to appear and testify by deposition. Notwithstanding the May order, Plaintiffs did not attempt to depose Mr. Davies until December, after Mr. Davies filed his motion for summary judgment.

The trial court's order granting Mr. Davies' motion for summary judgment expressly acknowledges that discovery had not been completed. The trial court, nevertheless, had before it the pleadings, affidavits and documents submitted in

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support of and in opposition to the motion for summary judgment – hundreds of pages of documents -- and the arguments of counsel. We agree with the trial court that it had before it “ample evidence from Plaintiffs and Mr. Davies on which to determine the appropriateness of summary judgment.”

Finally, because one of Mr. Davies’ defenses, discussed *infra*, arises from the statutory learned profession exemption from UDTP liability for attorneys performing duties for their clients, the trial court’s entry of judgment in his favor before the completion of discovery was appropriate. Allowing Plaintiffs to pursue discovery against Mr. Davies as a party rather than pursuant to a subpoena undermines the learned profession exemption.

We hold that the trial court did not err by entering summary judgment before discovery was complete.

*B. Standard of Review*

Besides arguing summary judgment was premature, Plaintiffs also contend summary judgment was inappropriate based on the evidence before the trial court. “Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that ‘there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.’ ” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting

*Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)); *see also* N.C. Gen. Stat.

§ 1A-1, Rule 56(c) (2015). This Court has explained that

[t]he moving party bears the burden of showing that no triable issue of fact exists. This burden can be met by proving: (1) that an essential element of the non-moving party's claim is nonexistent; (2) that discovery indicates the non-moving party cannot produce evidence to support an essential element of his claim; or (3) that an affirmative defense would bar the claim. Once the moving party has met its burden, the non-moving party must forecast evidence demonstrating the existence of a *prima facie* case.

*CIM Ins. Corp. v. Cascade Auto Glass, Inc.*, 190 N.C. App. 808, 811, 660 S.E.2d 907, 909 (2008) (internal citations omitted). "If the movant meets this burden, the nonmovant must take 'affirmative steps' to 'set forth specific facts' showing the existence of a genuine issue of material fact." *May v. City of Durham*, 136 N.C. App. 578, 583, 525 S.E.2d 223, 228 (2000). "[A]n adverse party may not rest upon the mere allegations or denials of his pleading[.]" N.C. Gen. Stat. § 1A-1, Rule 56(e). "A genuine issue of material fact is one that can be maintained by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference[.]" *Ussery v. Branch Banking and Trust Co.*, 368 N.C. 325, 335, 777 S.E.2d 272, 278-79 (2015) (internal quotation marks and citations omitted).

*C. Learned Profession Exemption*

At the outset of our substantive analysis, we note that Mr. Khashman's only causes of action against Mr. Davies are two UDTP claims and a third claim for civil

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conspiracy. North Carolina's UDTP statute, N.C. Gen. Stat. § 75-1.1 (2015), plainly exempts from liability claims arising from "professional services rendered by a member of a learned profession[,]" N.C. Gen. Stat. § 75-1.1(b), and it is well-settled law that an attorney's conduct in the usual representation of his client falls within this exemption. *Sharp v. Gailor*, 132 N.C. App. 213, 217, 510 S.E.2d 702, 704-05 (1999); *see also Moch v. A.M. Pappas & Associates, LLC*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 794 S.E.2d 898, 903 (2016) (observing, in an UDTP action, that "[the learned profession] exemption applies anytime an attorney or law firm is acting within the scope of the traditional attorney-client role" (internal quotation marks and citation omitted)). As detailed *infra* in Part II.D., Plaintiffs allege Mr. Davies engaged in unfair or deceptive trade practices when he directed a private investigator retained by his client to interview third parties. Though completely absent from their amended complaint, Plaintiffs also argue on appeal that Mr. Davies' act of conveying a settlement offer from his client to Plaintiffs' counsel was an extortionate unfair or deceptive trade practice because it constituted a sizeable increase over an earlier settlement offer.

The trial court concluded that Plaintiffs had not presented evidence that Mr. Davies directed any of the investigator's actions. We agree, but assuming *arguendo* that Mr. Davies had directed Mr. Smith to interview third parties, because Mr. Davies presented un rebutted evidence that he hoped Mr. Smith's interviews would yield facts and evidence helpful in separate legal matters in which Mr. Davies

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represented Mrs. Kashman, such conduct would undoubtedly be an “act[] within the scope of the traditional attorney-client role.” *Moch* at \_\_\_, 794 S.E.2d at 903. The same is true of Mr. Davies’ settlement communications. *Id.* at \_\_\_, 794 S.E.2d at 904-05 (holding that letters concerning “the merits of the terms of settlement” fell within the learned profession exemption and were therefore not “in commerce” under N.C. Gen. Stat. § 75-1.1(b)). “[P]ublic policy has always required that attorneys represent their clients zealously[,]” *Jenkins v. Wheeler*, 69 N.C. App. 140, 144, 316 S.E.2d 354, 357 (1984), and the learned profession exemption furthers this public policy by shielding attorneys from liability for representing their clients in the adversarial process of litigation. Because this exemption bars the UDTP claims against Mr. Davies, the claim for civil conspiracy must also fail. *Piraino Bros., LLC, v. Atl. Fin. Grp., Inc.*, 211 N.C. App. 343, 350, 712 S.E.2d 328, 333-34 (2011) (“It is well established that there is not a separate civil action for civil conspiracy in North Carolina. Instead, civil conspiracy is premised on the underlying act. Where this Court has found summary judgment for the defendants on the underlying tort claims to be proper, we have held that plaintiff’s claim for civil conspiracy must also fail.” (internal quotation marks and citations omitted)).

Plaintiffs argue that Mr. Davies’ conduct, even if purportedly in the course and scope of his role as legal counsel, is not protected by the learned professional exemption because his conduct violated North Carolina’s Rules of Professional

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Conduct for attorneys. Plaintiffs' argument in this regard is based upon the same evidence which the trial court concluded, and we agree, did not raise a genuine issue of fact regarding whether Mr. Davies had engaged in misconduct.

The above analysis would be sufficient to affirm the trial court's grant of summary judgment. However, assuming *arguendo* that the learned profession exemption did not apply to defeat Mr. Khashman's UDTP claims and, by extension, his civil conspiracy claim, the trial court did not err.

*D. Other Grounds for Summary Judgment*

Independent of the learned profession exemption from liability, Mr. Davies was entitled to summary judgment because Plaintiffs failed to present even a scintilla of evidence necessary to support their claims against him.

Plaintiffs allege Mr. Davies engaged in a conspiracy to defame Mr. Khashman and engaged in an unlawful or deceptive trade practice by interfering with Plaintiffs' business for the purpose of extorting money from Mr. Khashman. "In order to establish a *prima facie* claim for unfair trade practices, a plaintiff must show: (1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff." *Dalton v. Camp*, 353 N.C. 647, 656, 548 S.E.2d 704, 711 (2001). "A conspiracy has been defined as 'an agreement between two or more individuals to do an unlawful act or to do a lawful act in an unlawful way.'" *Dickens v. Puryear*, 302



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N.C. 437, 456, 276 S.E.2d 325, 337 (1981) (quoting *State v. Dalton*, 168 N.C. 204, 205, 83 S.E. 693, 694 (1914)). “The elements of a civil conspiracy are: (1) an agreement between two or more individuals; (2) to do an unlawful act or to do a lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4) pursuant to a common scheme.” *Privette v. Univ. of North Carolina at Chapel Hill*, 96 N.C. App. 124, 139, 385 S.E.2d 185, 193 (1989).

Plaintiffs’ first amended complaint includes few allegations regarding Mr. Davies’ conduct: that he “provided limited legal representation of [sic] both [Mrs. Khashman] and [Mr. Papaioannou] in unrelated matters[,]” that he “gave [Mr. Smith] a list of names and told him to ‘investigate’ the people on the list[,]” and that “[Mr. Smith] confirmed that [Mr. Davies] sent an e-mail to [him] telling him to ‘do what [he] was hired to do.’ ” Otherwise, the first amended complaint alleges, on information and belief, that Mr. Davies was aware that Mr. Smith was contacting clients of TPI and making false and defamatory statements about Mr. Khashman.

To support his motion for summary judgment, Mr. Davies filed a sworn affidavit denying all of Plaintiffs’ allegations. He also filed affidavits by Mrs. Khashman and Mr. Smith stating the following: Mrs. Khashman hired Mr. Smith, who worked exclusively for her, to investigate Mr. Khashman. Mr. Davies met with Mr. Smith on only two occasions; Mrs. Khashman attended both of those meetings and Mr. Papaioannou was present for one of those meetings. In the second meeting,

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Mrs. Khashman provided to Mr. Smith a list of names of Mr. Khashman's business associates. Mr. Davies told Mrs. Khashman and Mr. Smith that investigating those associates could be helpful in gathering information useful in other litigation against Mr. Khashman. Mr. Davies never instructed Mr. Smith what to say to the people he contacted during his investigation, and Mr. Davies never told Mr. Smith to defame Mr. Khashman or threaten anyone he contacted. In response to an inquiry by Mr. Smith concerning what he should be doing on behalf of Mrs. Khashman, Mr. Davies responded that Mr. Smith should do what he was hired to do. In negotiations with Mr. Khashman's counsel regarding settlement of other litigation in which Mr. Davies represented Mrs. Khashman, Mr. Davies relayed that Mrs. Khashman wanted approximately \$650,000.00 to settle her lawsuit with Mr. Khashman concerning their separation agreement.

We hold that Mr. Davies met the movant's summary judgment burden by presenting evidence showing he did not participate in any agreement to defame Mr. Khashman or to interfere with TPI's business. As a result, the burden shifted to Plaintiffs to present evidence to the contrary.

"Although civil liability for conspiracy may be established by circumstantial evidence, the evidence of the agreement must be sufficient to create more than a suspicion or conjecture in order to justify submission of the issue to a jury." *Dickens*,

302 N.C. at 456, 276 S.E.2d at 337. Plaintiffs did not present evidence sufficient to create more than a suspicion or conjecture.

Plaintiffs filed an affidavit by their counsel's paralegal attaching a chart that purports to show Mr. Davies engaged in conspiracy and an unfair or deceptive trade practice. Plaintiffs also point to communications between Mr. Davies and Mrs. Khashman that he contends show Mr. Davies was part of the conspiracy. In one email message, Mr. Davies told Mrs. Khashman to tell Mr. Smith to talk with Mr. Khashman's private investigator but warned that Mr. Smith could not settle any litigation. In another email message, in response to a message from Mrs. Khashman suggesting that "we need to turn up the heat" by directing Mr. Smith, as her private investigator, to contact Mr. Khashman's business associates, Mr. Davies advised his client to "[l]et [Mr. Smith] loose on this." The communications, including the email messages, do not create more than suspicion and conjecture when considered in light of the affidavits by Mr. Davies, Mr. Smith, and Mrs. Khashman.

While Plaintiffs have presented specific evidence of meetings between defendants, a list of Plaintiffs' business associates provided to Mr. Smith by Mrs. Khashman, and Mr. Davies' knowledge that Mr. Smith was contacting names on that list, the evidence does not establish, or create a genuine issue of disputed fact, that Mr. Davies was part of an agreement to defame Mr. Khashman or interfere with TPI's

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business in an effort to extort money from Plaintiffs. Therefore, we hold the trial court did not err in granting Mr. Davies' motion for summary judgment.

Conclusion

For the foregoing reasons, the trial court did not err in entering summary judgment in favor of Mr. Davies. Therefore, the order of the trial court is affirmed.

AFFIRMED.

Judges CALABRIA and HUNTER, JR. concur.

Report per Rule 30(e).