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Krawiec v. Manly

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> "How can we expect another to keep our secret if we cannot keep it ourselves?"[1]

People have sought to safeguard commercially valuable information throughout most of history.[2] In Ancient China, for example, revealing the secret process of silk-making was punishable by death.[3] Medieval guilds strived to protect the secrets of their crafts through regulated apprenticeships that prohibited the poaching of skilled labor.[4] Today, modern law offers a more methodical approach to protect commercially valuable information.[5] Under current jurisprudence in the United States, trade secret owners can seek to enforce their ownership rights by suing in court for missappropriation.[6]

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1. François de La Rochefoucauld, *translated from French in* Moral Reflections, Sentences and Maxims of Francis, duc de la Rochefoucauld 31 (William Gowans, 1851). French original: "Comment espérer qu'une autre personne gardera notre secret si nous ne le gardons pas nous-mêmes." 1 François de La Rochefoucauld, Reflexions Ou Sentences et Maximes Morales 48 (Paris, 1665).

2. *See Trade Secrets: History*, Digital Business Law Group, https://www.digitalbusinesslawgroup.com/internet-lawyer-trade-secrets-history.html (last visited Feb. 11, 2021) ("[T]he protection of trade secrets dates back to earlier times. Some argue that trade secret protection started during Roman times where there were laws against corrupting the slaves of another. Presumably the corruption was intended to reveal secrets of the slave owner . . . .").

3. 1 Handbook of Natural Fibres 49 (Ryszard M. Kozłowski ed., 2012).

4. *See* Robert P. Merges, *From Medieval Guilds to Open Source Software: Informal Norms, Appropriability Institutions, and Innovation* (Nov. 13, 2004), https://www.immagic.com/eLibrary/ARCHIVES/GENERAL/UCB_US/B041113M.pdf ("The craft guild also enabled individual members to capture a share of consumer surplus from their invention, by forbidding the poaching of skilled labor employed by the inventor . . . ."). Labor poaching, also known as job poaching, "occurs when a company hires an employee from a competing company." Alison Doyle, *What Is Job Poaching?*, The Balance Careers, https://www.thebalancecareers.com/what-is-employee-poaching-2061980 (last updated July 28, 2020). Labor poaching is common "in growing industries that require employees with high-demand skills," such as software development, programming, and data analysis. *Id.*

5. *See* Sharon K. Sandeen, *The Evolution of Trade Secret Law and Why Courts Commit Error When They Do Not Follow the Uniform Trade Secrets Act*, 33 Hamline L. Rev. 493, 520–38 (2010).

6. *See Trade Secrets Tutorial,* Digital Business Law Group, https://www.digitalbusinesslawgroup.com/internet-lawyer-trade-secrets.html (last visited Feb. 11, 2021) (noting that "[t]rade secrets are protected under state law" and that a "majority of states have adopted the Uniform Trade Secrets Act"). *See generally* Sharon K. Sandeen & Christopher B. Seaman, *Toward a Federal Jurisprudence of Trade Secret Law*, 32 Berkley Tech. L.J. 829 (2017) (discussing the federally enacted Defend Trade Secrets Act of 2016, which "created a federal civil cause of action for trade secret misappropriation for the first time"). "An owner of a trade secret that is misappropriated may bring a civil action . . . if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce." Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836(b)(1) (2016). "Trade secret" includes:

> all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—(A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being

Krawiec v. Manly was one such misappropriation case. There, in 2018, the Supreme Court of North Carolina considered, as a matter of first impression, the proper pleading standard required for a claim of trade secret misappropriation[7] to survive a motion to dismiss for failure to state a claim on which relief can be granted.[8] The court found that the complaint did not identify the alleged trade secrets with sufficient particularity, and thus, failed to state a valid claim for misappropriation.[9]

This Case Comment contends that the *Krawiec* court applied the wrong pleading standard when it ruled on the sufficiency of a complaint for the purpose of overcoming a motion to dismiss.[10] First, the court unnecessarily heightened the pleading standard by requiring more precise disclosure of the trade secret allegedly misappropriated.[11] Second, the court misapplied precedent by relying on cases with different procedural postures.[12] Finally, the court ignored a core principle of trade secret protection by requiring precise descriptors of the plaintiffs' trade secrets and, therefore, greater public disclosure of information with an inherently secret nature.[13]

Michael and Jennifer Krawiec, a married couple, owned Happy Dance—a dance studio in Clemmons, North Carolina.[14] In 2011, they hired Ranko Bogosavac and Darinka Divljak ("the Dancers") to work as instructors and performers at Happy Dance.[15] The Dancers entered into written employment contracts with the studio in which they agreed, among other things, not to work for another company offering

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> generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 1839(3)(A)–(B).

7. Under North Carolina state law, "misappropriation" is defined as as the "acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret." N.C. Gen. Stat. § 66-152(1) (2019).

8. Krawiec v. Manly, 811 S.E.2d 542, 545–47 (N.C. 2018); *see* N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2019) (providing procedural guidelines for North Carolina's motion to dismiss for failure to state a claim upon which relief can be granted).

9. *Krawiec*, 811 S.E.2d at 549–52.

10. *See id.* at 556 (Beasley, J., dissenting) ("[T]he majority has validated a heightened pleading standard for misappropriation of trade secrets claim with no discussion as to why it believes it is necessary to do so.").

11. *See supra* note 10.

12. *Krawiec*, 811 S.E.2d at 553 (Beasley, J., dissenting). *See* VisionAIR, Inc. v. James, 606 S.E.2d 359, 364 (N.C. Ct. App. 2004) (evaluating a case for the purpose of granting a preliminary injunction); *see also* Combs & Assocs., Inc. v. Kennedy, 565 S.E.2d 634, 638–39 (N.C. Ct. App. 2001) (evaluating a complaint for the purpose of granting summary judgment).

13. *See Krawiec*, 811 S.E.2d at 553 (Beasley, J., dissenting) (recognizing that "public disclosure of confidential information is a real concern for plaintiffs" who bring misappropriation claims and arguing that the majority's heightened pleading requirement undermines that concern).

14. Plaintiff-Appellants' Brief at 9, *Krawiec*, 811 S.E.2d 542 (No. 252A16), 2016 WL 7838933.

15. *Krawiec*, 811 S.E.2d at 545.

dance instruction for one year after termination of their contracts.[16] They also agreed not to "disclose the dance studio's confidential information to any person or entity for any purpose other than for the benefit of Happy Dance."[17] This confidential information included the studio's concepts for dance productions, marketing strategies, and client lists.[18]

The Krawiecs alleged that in early 2012, the Dancers, while still employed by Happy Dance and in violation of their contractual duties, began working as instructors for Metropolitan Ballroom ("Metropolitan"), a dance studio in Charlotte, North Carolina owned by Jim and Monette Manly, and "shared with Metropolitan confidential and trade secret information [belonging to] Happy Dance."[19] The Krawiecs further alleged that "Metropolitan produced and marketed the [Krawiecs'] shows as its own original productions."[20]

In 2015, the Krawiecs sued the Dancers, the Manlys, and Metropolitan in the North Carolina Superior Court of Mecklenburg County for misappropriation of trade secrets.[21] In response, the Dancers, the Manlys, and Metropolitan all filed motions to dismiss the claim for failure to state a claim upon which relief may be granted, under section 12(b)(6) of the North Carolina Rules of Civil Procedure.[22]

The trial court granted the motions, finding that the Krawiecs failed to identify their alleged trade secrets with sufficient particularity and failed to allege the specific acts of misappropriation in which the defendants supposedly engaged.[23] The Krawiecs appealed to the Supreme Court of North Carolina pursuant to North

16. Krawiec v. Manly, No. 15 CVS 1927, 2016 WL 374734, at *1–2 (N.C. Super. Ct. Jan. 22, 2016).

17. *Id.* at *2.

18. *Id.*

19. *Id.* This confidential information included concepts for dance productions, marketing strategies, and client lists. *Id.*

20. *Id.* The record is silent as to the number of the Krawiecs' shows allegedly copied by Metropolitan.

21. Amended Complaint at 1, 14–16, Krawiec v. Manly, No. 15 CVS 1927 (N.C. Super. Ct. Aug. 24, 2015), 2015 WL 13752634. The Krawiecs also sued for several other causes of action, namely breach of contract, tortious interference with business relations, fraudulent misrepresentation, and unfair and deceptive trade practices. *Id.* at 8–16. These additional claims are outside the scope of this Case Comment.

22. *Krawiec*, 2016 WL 374734, at *1; *see also* N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2019). The Dancers filed a motion to dismiss pursuant to § 1A-1, Rule 12(b)(6) based on the argument that the Krawiecs "fail[ed] to state a claim upon which relief can be granted, and because the relevant statute of limitations for each claim [had] expired." *Krawiec*, 2016 WL 374734, at *4. The Manlys and Metropolitan jointly filed a motion to dismiss pursuant to § 1A-1, Rule 12(b)(6) and argued that the misappropriation claim should be dismissed because "the only trade secrets alleged to have been misappropriated are 'original ideals [sic] for dance productions' which [did] not identify with sufficient particularity the trade secrets allegedly misappropriated." Motion to Dismiss Amended Complaint at *3–4, Krawiec v. Manly, 2015 NCBC Motions LEXIS 124 (No. 15 CVS 1927) (N.C. Super. Ct. Sept. 18, 2015).

23. *Krawiec*, 2016 WL 374734, at *8–10, *16 (holding that the Krawiecs' identification of their trade secrets as "ideas and concepts," "marketing strategies and tactics," and "student, client and customer lists and their contact information" was "so non-specific and generalized as to be meaningless" when stating a claim and, further, that their "bare, unsupported allegation that the [defendants] 'unlawfully disclosed' [the Krawiecs'] alleged trade secrets does not satisfy [the] mandatory pleading requirement").

Carolina General Statute § 7A-27(a)(3)(a)[24] and argued that the trial court improperly granted the defendants' motions to dismiss because the complaint had, in fact, sufficiently stated a claim for misappropriation of trade secrets upon which relief may be granted.[25]

Trade secret law began to develop in the United States in 1837 with *Vickery v. Welch*[26] and the deliciously precious "secret manner of making chocolate."[27] Jonas Welch, the defendant, had sold to John Vickery, the plaintiff, his chocolate-making business, but thereafter refused to keep his chocolate-making method secret, claiming that doing so would amount to an unlawful restraint of trade.[28] Vickery then sued Welch for breach of contract.[29] The court, in a decision based on law and equity principles first developed in England,[30] held in favor of Vickery.[31] It found that Welch breached the terms and defeated the purpose of the contract when he refused to keep the method secret.[32] The court explained that prohibiting Welch from divulging this method to others was not a restraint of trade because it was "of no consequence to the public whether the secret art be used by the plaintiff or by the defendant."[33]

Similarly, in the 1868 case of *Peabody v. Norfolk*, an engineer at a burlap making factory signed a contract saying that he would consider the factory's original machinery "sacred" and prevent outsiders from obtaining any information that would

24. N.C. Gen. Stat. § 7A-27(a)(3)(a) (2019) ("Appeal lies of right directly to the Supreme Court . . . [f]rom any interlocutory order of a Business Court Judge that . . . [a]ffects a substantial right.").

25. Plaintiff-Appellants' Brief, *supra* note 14, at 36–41.

26. 36 Mass. (1 Pick.) 523 (1837).

27. Matthew Poppe & Johanna Jacob, *Founding Fathers (or cases) of Trade Secret Law: A Look Back in Celebration of Independence Day*, Lexology: Trade Secrets Watch Blog (July 5, 2016), https://www.lexology.com/library/detail.aspx?g=2a37febf-8b81-4605-80ae-df1646a0b6ba (internal quotations omitted).

28. *Vickery*, 36 Mass. (1 Pick.) at 523–24, 527. Welch claimed that agreeing to give Vickery the "instruction and information . . . [in private]" and not sharing it with "all other people" would prejudice the public and thus amount to a "restraint of trade." *Id.* at 524, 527.

29. *See id.* at 527 (finding that "there was a breach of the [contract] when the defendant refused . . . to assure the right to the plaintiff and his associates"); *see also* Poppe & Jacob, *supra* note 27 (summarizing *Vickery* and explaining that Vickery sued Welch "for breach of contract, claiming [Vickery] 'should have the exclusive benefit of making chocolate in the mode used by [Welch]'").

30. *See* Sandeen, *supra* note 5, at 498 ("Two essential questions confronted early courts in trade secret cases. First was whether the actions of the defendant were sufficiently wrongful to justify relief . . . . If the first question was answered affirmatively, the nature of the appropriate relief had to be determined.").

31. *Vickery,* 36 Mass. (1 Pick.) at 527.

32. *See id.* at 526–27 ("The defendant was to sell, the plaintiff was to buy. Now we cannot perceive the least reason which, after such sale, would enable the defendant lawfully to retain any right in the property or rights sold, nor any right to convey to strangers, any part of what was to be transferred to the plaintiff.").

33. *Id.* at 527.

enable them to use it.[34] Subsequently, the engineer quit, taking models and drawings of the machines with him.[35] When the plaintiff, who invented and built the machinery, sought an injunction[36] to prevent the engineer from revealing the machines' secret specifications, the court granted it, stating that "courts of equity will restrain a party from making a disclosure of secrets communicated to him in the course of a confidential employment."[37]

Importantly, these early trade secret cases often turned on the "existence of an express or implied agreement of confidentiality or breach of good faith."[38] Soon thereafter, however, courts began to question the nature of trade secret information.[39] In 1908, in *Hamilton Manufacturing Co. v. Tubbs Manufacturing Co.*, the U.S. Circuit Court for the Western District of Michigan scrupulously differentiated between trade secret information and information already known to the public.[40] The court noted that "[t]here can be no property in a process, and no right of protection, if knowledge of it is common to the world."[41]

By 1939, trade secret law had developed enough at common law to be compiled by the American Law Institute[42] and published in Volume IV of the Restatement (First) of Torts.[43] Sections 757 through 759 of that Restatement laid the foundation

34. 98 Mass. (1 Allen) 452, 453 (1868). The opinion specified that the plaintiff was engaged in the "manufacture [of] gunny cloth from jute botts," which is known today as burlap. *Id.*; Poppe & Jacob, *supra* note 27.

35. *Peabody*, 98 Mass. (1 Allen) at 454.

36. "A court order commanding or preventing an action." *Injunction*, Black's Law Dictionary (11th ed. 2019). "To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted." *Id.*

37. *Peabody*, 98 Mass. (1 Allen) at 459–61 (quoting 2 Story Eq. § 952) (internal quotations omitted).

38. Sandeen, *supra* note 5, at 499; *see Vickery v. Welch*, 36 Mass. (1 Pick.) 523, 524 (1837) ("If on these facts . . . a breach of the [contract] was proved, for which the defendant was liable, he was to be defaulted, and such a hearing to be had as to damages, as the Court should order."); *see also Peabody*, 98 Mass. (1 Allen) at 452 ("One who invents . . . and keeps secret . . . whether proper for a patent or not, has a property therein which a court of chancery will protect against one who in violation of contract and breach of confidence undertakes to apply it to his own use or disclose it to third persons.").

39. *See* Sandeen, *supra* note 5, at 499 (explaining that it was difficult for some courts to determine "if secret information actually existed").

40. 216 F. 401 (C.C.W.D. Mich. 1908).

41. *Id.* at 407 (quoting Cincinnati Bell Foundry Co. v. Dodds, 10 Ohio Dec. Reprint 154, 155 (Super. Ct. 1887)). "In every case where the plaintiff seeks protection for a trade secret, it must appear that it really is a secret. If a so-called secret process is lawfully known to others in the trade, no one will be enjoined from disclosing or using it." *Id.* (internal quotations omitted).

42. The American Law Institute is an "independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law." *About ALI*, A.L.I., https://www.ali.org/about-ali/ (last visited Feb. 11, 2021).

43. Sandeen, *supra* note 5, at 496, 500–01.

for modern trade secret jurisprudence by synthesizing and organizing the common law approach.[44]

Still, throughout the development of trade secret law, there was confusion as to how the common law notion of trade secret law fit in amongst the more established forms of intellectual property protection;[45] it was unclear whether federal patent law preempted state trade secret protection.[46] In 1974, the U.S. Supreme Court resolved this issue in *Kewanee Oil Co. v. Bicron Corp.*, holding that federal patent law does not preempt state trade secret protections.[47] This decision established the basis for states to freely develop their own trade secret regulations.[48]

Common law trade secret jurisprudence continued to develop and, in 1979, the Uniform Law Commission[49] published the Uniform Trade Secrets Act (UTSA),[50] which aimed to unify state regulations.[51] The Act has since been adopted by forty-eight of the fifty states; one of the two outliers is North Carolina.[52] As a result of the North Carolina legislature's refusal to adopt the UTSA, the state courts have created

44. *Id.* at 500–01. Section 757 set forth how one could be liable under a trade secrets claim. *Id.* at 501 (citing Restatement (First) of Torts § 757 (1934)). Section 758 provided that "innocent discovery of trade secrets is not actionable" and "created an exception [for] cases where the defendant received notice of the misappropriation before a material change in his or her position." *Id.* (citing Restatement (First) of Torts § 758). Lastly, "[s]ection 759 addressed the situation where business information not qualifying as a trade secret is acquired using 'improper means.'" *Id.* (citing Restatement (First) of Torts § 759).

45. In 1974, there were federally enacted laws protecting copyrights and patents, whereas trade secrets were protected by state laws only. *See* Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 479 (1974) (comparing the federally enacted laws protecting copyrights and patents to Ohio's trade secrets law).

46. *See* Sandeen, *supra* note 5, at 507 (explaining that in 1964, "[t]he need for a federal law to govern unfair competition became more urgent" after a series of cases established that "the unfair competition laws of Illinois which prohibited product simulation, were preempted by federal patent law"). However, it was unclear whether the holdings of those cases were "limited to cases of product simulation or . . . extended to the whole field of unfair competition," including state trade secret laws. *Id.* at 508 (citation omitted) (internal quotations omitted). In fact, "[p]roposals were . . . made for the adoption of federal legislation to make it clear that patent law was not intended to preempt state trade secret law." *Id.* at 508–09 (citation omitted).

47. 416 U.S. at 474.

48. *See id.* at 492–93 ("Congress, by its silence over these many years, has seen the wisdom of allowing the States to enforce trade secret protection. Until Congress takes affirmative action to the contrary, States should be free to grant protection to trade secrets.").

49. The Uniform Law Commission "provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law." *About Us*, Unif. L. Comm'n, https://www.uniformlaws.org/aboutulc/overview (last visited Feb. 11, 2021).

50. The Uniform Trade Secrets Act, adopted in 1979 and amended in 1985, "codifies the basic principles of common law trade secret protection, preserving its essential distinctions from patent law." Uniform Trade Secrets Act prefatory note (1979) (Unif. L. Comm'n amended 1985).

51. Sandeen, *supra* note 5, at 514 (explaining why uniformity in trade secret laws is necessary).

52. 1 Roger M. Milgrim & Eric E. Bensen, Milgrim on Trade Secrets § 1.01(2)(c)(i) (2020). New York is the other state that did not adopt the UTSA. *Id.*

inconsistent jurisprudence and infringed on the duties of the legislative branch by changing the law governing trade secret claims.[53]

The effects of North Carolina's inconsistent jurisprudence directly affected the owners of Happy Dance. On appeal before the Supreme Court of North Carolina, the Krawiecs offered several arguments to support the sufficiency of their complaint.[54] First, they argued that the complaint's description of the trade secrets at issue as "original ideas and concepts for dance productions, marketing strategies and tactics, as well as student, client and customer lists and their contact information" was legally sufficient to plead the existence of trade secret information.[55]

Second, they maintained that, as a matter of law, "customer lists and contact information are protectable trade secrets."[56] Further, the Krawiecs asserted that the complaint adequately described the act by which the misappropriation was accomplished[57] because: (1) it alleged that the Krawiecs had "shared their original ideas for dance productions and other trade secrets with the [D]ancers in confidence while the [D]ancers were employed by [Happy Dance]," and (2) it alleged that the Dancers disclosed the information to the Manlys and Metropolitan without the Krawiecs' consent.[58] Finally, the Krawiecs argued that the Manlys and Metropolitan received the trade secret information directly from the Dancers, and then went on to use that information to produce and market the Krawiecs' shows as their own original works.[59]

The defendants requested that the trial court's ruling be affirmed, arguing that the Krawiecs' complaint had failed to identify the alleged trade secrets with sufficient particularity.[60]

The *Krawiec* court affirmed the trial court's ruling and granted the defendants' motions to dismiss.[61] The court found not only that the Krawiecs had provided a legally insufficient description of their trade secrets, but also that they had failed to properly allege the existence of a trade secret because they did not include in their

53. *See* Christopher A. Moore, Comment, *Redefining Trade Secrets in North Carolina*, 40 Campbell L. Rev. 643, 644–45 (2018) (asserting that North Carolina courts have inconsistently interpreted the statutory definition of trade secret).

54. Krawiec v. Manly, 811 S.E.2d 542, 547 (N.C. 2018).

55. *Id.*; Plaintiff-Appellants' Brief, *supra* note 14, at 38.

56. *Krawiec*, 811 S.E.2d at 547.

57. *See* Washburn v. Yadkin Valley Bank & Tr. Co., 660 S.E.2d 577, 585–86 (N.C. Ct. App. 2008) (explaining that a complaint must specifically identify the trade secrets allegedly misappropriated and sufficiently identify "the acts by which the alleged misappropriations were accomplished," neither of which can be "sweeping and conclusory statements").

58. Plaintiff-Appellants' Brief, *supra* note 14, at 40.

59. *Id.*

60. Defendants-Appellees' Brief at 26, *Krawiec*, 811 S.E.2d 542 (2018) (No. 252A16), 2017 WL 384819.

61. *Krawiec*, 811 S.E.2d at 552. The court dismissed the plaintiffs' claims for "tortious interference with contract, unfair and deceptive practices, and unjust enrichment against the Metropolitan defendants." *Id.* The court remanded the case for further proceedings on the civil conspiracy claim. *Id.*

complaint allegations of secrecy other than that the information had been shared with the Dancers "in confidence."[62]

The *Krawiec* court applied the wrong standard when it ruled on the sufficiency of the complaint for the purpose of overcoming a motion to dismiss and, in doing so, created a heightened pleading standard for North Carolina plaintiffs seeking trade secret protection under state law.[63] North Carolina's liberal statutory pleading standard requires a plaintiff to submit "[a] short and plain statement of the claim sufficiently particular to give the court and the [defendant] notice of the . . . occurrences . . . that [would entitle the plaintiff to relief]."[64] When pleading misappropriation of trade secrets, the plaintiff must also allege that the defendant "(1) [k]nows or should have known of the trade secret; and (2) [h]as had a specific opportunity to acquire it for disclosure . . . without the express or implied consent or authority of the owner."[65]

At the outset of a trade secret misappropriation claim, a plaintiff must properly plead the existence of trade secret information.[66] North Carolina courts have found that short and plain descriptions of the nature of the secret information, sufficiently particular to give the court and the defendant notice of the occurrences that would entitle the plaintiff to relief, are legally sufficient to show the existence of trade secret information; in contrast, general descriptions, as well as sweeping and conclusory statements, are not.[67] However, the *Krawiec* court required the plaintiffs to identify

62. *Id.* at 549. In addition, the Krawiecs alleged that the Dancers entered into non-compete agreements with Happy Dance; however, this is not addressed in the opinion. *See* Krawiec v. Manly, No. 15 CVS 1927, 2016 WL 374734, at *6 (N.C. Super. Ct. Jan. 22, 2016) (stating that dismissing the "[p]laintiffs' claim for breach of the non-competition agreement on [the basis that the Dancers both signed a non-compete agreement] is not proper at this stage of the litigation").

63. *See Krawiec*, 811 S.E.2d at 553 (Beasley, J., dissenting) ("[T]he majority validates a heightened pleading standard for a [misappropriation of trade secrets] claim . . . . There is no statutory heightened pleading standard for misappropriation of trade secrets . . . and additional guidance from the Court of Appeals on pleading this particular claim rests on cases evaluating the issue from an entirely different procedural posture than a motion to dismiss.").

64. N.C. Gen. Stat. § 1A-1, Rule 8(a)(1) (2019). The *Krawiec* court relied on the 2017 version of the North Carolina General Statutes, which were subsequently amended in 2019; because the amendment did not affect the provisions of the statutes cited in this Case Comment, this Case Comment cites to the most recent version of the statutes.

65. N.C. Gen. Stat. § 66-155 (2019).

66. *See Krawiec*, 811 S.E.2d at 547–48 (quoting Washburn v. Yadkin Valley Bank & Tr. Co., 660 S.E.2d 577, 585–86 (N.C. Ct. App. 2008)). Under North Carolina law, a "trade secret" includes:

> business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that . . . [d]erives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and . . . [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.C. Gen. Stat. § 66-152(3)(a)–(b) (2019).

67. *Compare* Med. Staffing Network, Inc. v. Ridgway, 670 S.E.2d 321, 328–29 (N.C. Ct. App. 2009) (finding "nurses' phone numbers, pay rates, specializations, and preferences regarding shifts and

their trade secret with more particularity than statutorily necessary to put the defendants on notice of the trade secret they are accused of misappropriating and to allow the court to determine whether misappropriation has occurred.[68] The *Krawiec* standard thus requires overly detailed disclosure of the trade secret allegedly misappropriated.[69]

In the 2009 case *Medical Staffing Network, Inc. v. Ridgway,* the plaintiff brought a claim of misappropriation of trade secrets against a former employee after he joined a competing staffing company and allegedly shared information about Medical Staffing Network's business strategies and marketing plans.[70] The Court of Appeals of North Carolina found that the plaintiff had sufficiently pleaded a claim for misappropriation of trade secrets because it had shown that the competing company had access to the information through the plaintiff's former employee and described the trade secrets as price and costing information and a list of staff nurses.[71]

In 2015, in *Southern Fastening Systems, Inc. v. Grabber Construction Products, Inc.*, the plaintiff's former employee allegedly breached his non-disclosure agreement[72] by sharing the names of the plaintiff's customers with a competing company and contacting these customers to solicit sales of competing products.[73] Southern Fastening Systems brought a claim of trade secret misappropriation against the former employee in the North Carolina Superior Court of Buncombe County, claiming that the customer lists were entitled to trade secret protection.[74] The court found that the plaintiff's descriptions of its trade secrets as "confidential customer information such as customer contact information and customer buying preferences and history," as well as "confidential freight information, sales reports, prices and

facilities" as well as "marketing information and client order documents" sufficiently descriptive), *and* S. Fastening Sys. v. Grabber Constr. Prods., No. 14 CVS 04260, 2015 WL 2031007, at *4 (N.C. Super. Ct. Apr. 28, 2015) (finding that the plaintiff's descriptions of the trade secrets as "confidential customer information such as customer contact information and customer buying preferences and history," as well as "confidential freight information, sales reports, prices and terms books, sales memos, sales training manuals, commission reports, and information concerning [the company's] relationship with its vendors," were sufficient to show the existence of trade secret information), *with Washburn*, 660 S.E.2d at 585–86 (finding the identification of trade secrets as "confidential client information and confidential business information" too broad and vague).

68. *Krawiec*, 811 S.E.2d at 547–48 (quoting *Washburn*, 660 S.E.2d at 585).

69. *See id.* at 554 (Beasley, J., dissenting) (emphasis in original) ("[T]he majority now requires *evidence* at the pleading stage showing the plaintiff took steps to keeps [sic] its trade secrets confidential.").

70. 670 S.E.2d at 328–29.

71. *Id.*

72. A non-disclosure agreement (NDA), which is also known as a confidentiality agreement, is "[a] contract or contractual provision containing a person's promise not to disclose any information shared by or discovered from a holder of confidential information, including all information about trade secrets, procedures, or other internal or proprietary matters." *Nondisclosure Agreement*, Black's Law Dictionary (11th ed. 2019).

73. No. 14 CVS 04260, 2015 WL 2031007, at *1–3 (N.C. Super. Ct. Apr. 28, 2015).

74. *Id.* at *6. In addition, Southern Fastening Systems also brought a claim against the former employee for breach of the non-disclosure agreement. *Id.* at *3.

terms books, sales memos, sales training manuals, commission reports, and information concerning [the company's] relationship with its vendors," were made with sufficient particularity to give the court and the defendant notice of the occurrences which may entitle the plaintiff to relief.[75]

In contrast, in *Washburn v. Yadkin Valley Bank & Trust Co.*, the Court of Appeals of North Carolina held in 2008 that a complaint making "general allegations in sweeping and conclusory statements, without specifically identifying the trade secrets allegedly misappropriated, is insufficient to state a claim for misappropriation."[76] In *Washburn,* two former bank employees allegedly shared trade secret information after moving to a competing financial group.[77] The *Washburn* court found that the complaint did not include allegations of the acts giving rise to the alleged misappropriation and that the identification of the trade secrets only as "confidential client information and confidential business information" was overly broad and vague and thus, could not support the claim of misappropriation.[78]

In their complaint, the Krawiecs described their trade secrets as "original ideas and concepts for dance productions, marketing strategies and tactics, as well as student, client and customer lists and their contact information," and further showed that the Manlys received this information directly from the Dancers.[79] The Krawiecs, like the plaintiff in *Medical Staffing Network*, sufficiently pleaded a claim for trade secret misappropriation because they included a short and plain statement with sufficiently specific details about the nature of the allegedly misappropriated information and showed that the Manlys had access to secret information directly from the Krawiecs' former employees.[80]

Similarly, the plaintiff in *Southern Fastening* was able to overcome a motion to dismiss by sufficiently detailing the type, nature, and purpose of the alleged trade secrets, so as to give the court and the defendant notice of the occurrences which might entitle the plaintiff to relief.[81] The Krawiecs' description of their trade secrets

75. *Id.* at *4–5 (citation omitted).

76. 660 S.E.2d 577, 585–86 (N.C. Ct. App. 2008) (citing VisionAIR, Inc. v. James, 606 S.E.2d 359, 364 (N.C. Ct. App. 2004)) (internal quotations omitted).

77. *Id.* at 581, 586.

78. *Id.* at 586.

79. Krawiec v. Manly, 811 S.E.2d 542, 547 (N.C. 2018) (internal quotations omitted).

80. *See id.* at 555 (Beasley, J., dissenting) (arguing that the North Carolina Court of Appeals has previously construed "customer lists and their contact information" and "marketing strategies" as trade secrets, so "it [would be] unreasonable to [now] conclude that a plaintiff cannot rely on these holdings to plead its claim").

81. *See* S. Fastening Sys., Inc. v. Grabber Constr. Prods., No. 14 CVS 04260, 2015 WL 2031007, at *4–5 (N.C. Super. Ct. Apr. 28, 2015) (recognizing that North Carolina courts have regularly found "protectable trade secrets . . . for Rule 12(b)(6) purposes" when plaintiffs described them as "'confidential customer information such as customer contact information and customer buying preferences and history[,] … confidential freight information, sales reports, prices and terms books, sales memos, sales training manuals, commission reports, and information concerning [the plaintiff's] relationship with its vendors'").

was likewise sufficient to overcome a motion to dismiss because it included specific details about those trade secrets, such as "ideas and concepts for dance productions," "marketing strategies," and "client and customer lists,"[82] which sufficiently identified the trade secrets at issue, giving the defendant and the court notice of the occurrences that might entitle the Krawiecs to relief.[83]

The Krawiecs' description of their trade secret information is more akin to the descriptions in *Medical Staffing Network* and *Southern Fastening* than to the description in *Washburn* because the Krawiecs alleged and described the particular type and purpose of the information misappropriated.[84] In *Washburn,* the description merely characterized the information as "confidential" and did not specify the nature of the information allegedly misappropriated.[85] In contrast, the *Medical Staffing Network* and *Southern Fastening* descriptions specifically categorized the information as lists of staff nurses[86] and "customer contact information,"[87] respectively. Likewise, the Krawiecs' complaint specifically categorized the information at issue as "concepts for dance productions" and client "contact information."[88] Thus, the Krawiecs—just like the plaintiffs in *Medical Staffing Network* and *Southern Fastening*—identified their trade secrets with sufficient particularity.[89]

Second, the *Krawiec* court misapplied precedent by relying on cases with procedural postures different from the case at hand.[90] The court determined the

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82. *Krawiec*, 811 S.E.2d at 547.

83. *Id.* at 556 (Beasley, J., dissenting) ("[T]he allegations here provided more specific details regarding both client and business information to more particularly describe the trade secrets . . . . Because this description is sufficient to put defendants on notice of the transactions and occurrences at issue, I cannot join the majority.").

84. *Compare id.* at 549 (majority opinion) (describing the trade secrets as "original ideas and concepts for dance productions, marketing strategies and tactics, as well as student, client and customer lists and their contact information" from plaintiff's database) (internal quotations omitted), Med. Staffing Network, Inc. v. Ridgway, 670 S.E.2d 321, 328 (N.C. Ct. App. 2004) (identifying the "two categories of trade secrets [as] information about *per diem* nurses and business strategies and marketing plans"), *and S. Fastening Sys.*, 2015 WL 2031007, at *4 (including "confidential customer information such as customer contact information and customer buying preferences and history [. . .] confidential freight information, sales reports, prices and terms books, sales memos, sales training manuals, commission reports, and information concerning [the plaintiff's] relationship with its vendors" as plaintiff's trade secret information) (internal quotations omitted), *with* Washburn v. Yadkin Valley Bank & Tr. Co., 660 S.E.2d 577, 586 (N.C. Ct. App. 2008) (alleging the trade secrets were: "knowledge of . . . business methods; clients, their specific requirements and needs; and other confidential information pertaining to [the] business").

85. *Washburn,* 660 S.E.2d at 586.

86. *Med. Staffing Network*, 670 S.E.2d at 328.

87. *S. Fastening Sys.*, 2015 WL 2031007, at *4.

88. *Krawiec*, 811 S.E.2d at 547.

89. *See id.* at 556 (Beasley, J., dissenting).

90. *See id.* at 553 ("The majority's reasoning and reliance on various authority conflate the North Carolina standards for Rule 12(b)(6) motions to dismiss, motions for preliminary injunction, and motions for summary judgment . . . .").

sufficiency of the Krawiecs' complaint for the purpose of surviving a motion to dismiss by relying on cases[91] that examined the sufficiency of complaints for the purposes of other motions, namely motions for summary judgment[92] and preliminary injunction.[93] But the pleading standard for surviving a motion to dismiss differs significantly from the standards used for motions for summary judgment or preliminary injunction.[94] To succeed on a motion for summary judgment or preliminary injunction, the moving party must show a likelihood of success on the merits of their claim.[95] Further, in deciding a motion for summary judgment, a court will take all of the plaintiff's factual allegations as true.[96] In contrast, to survive a motion to dismiss, a plaintiff need only offer a "short and plain statement of the claim sufficiently particular to give the court and the parties notice[97] of the . . . transactions or occurences . . . intended to be proved showing that the pleader is entitled to relief."[98] The standards used in evaluating

91. *Id.* at 547–48 (majority opinion); *see* VisionAIR, Inc. v. James, 606 S.E.2d 359, 360, 364 (N.C. Ct. App. 2004) (evaluating the merits of a misappropriation of trade secrets claim for the purpose of issuing a preliminary injunction); *see also* Analog Devices, Inc. v. Michalski, 579 S.E.2d 449, 451–52 (N.C. Ct. App. 2003) (evaluating the merits of a misappropriation of trade secrets claim for the purpose of issuing a preliminary injunction); *see also* Combs & Assocs., Inc. v. Kennedy, 555 S.E.2d 639–40 (N.C. Ct. App. 2001) (evaluating the merits of a misappropriation of trade secrets claim for the purpose of succeeding on a motion for summary judgment).

92. A motion for summary judgment is "[a] request that the court enter judgment without a trial because there is no genuine issue of material fact to be decided by a fact-finder—that is, because the evidence is legally insufficient to support a verdict in the nonmovant's favor." *Motion for Summary Judgment*, Black's Law Dictionary (11th ed. 2019).

93. A preliminary injunction is "[a] temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case." *Injunction*, Black's Law Dictionary (11th ed. 2019).

94. *See Krawiec*, 811 S.E.2d at 554 (Beasley, J., dissenting) (distinguishing the standards for a preliminary injunction, motion for summary judgment, and a 12(b)(6) motion).

95. *See* N.C. Gen. Stat. § 1A-1, Rule 56(c) (2019) (providing that summary judgment will be issued if the moving party "show[s] 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," thus proving the likelihood of success on the merits of the claim); *see also id.* § 1A-1, Rule 65(b) (providing that a temporary restraining order will be issued if "it clearly appears from specific facts shown . . . by verified complaint that immediate and irreparable injury will result to the applicant before the adverse party . . . can be heard in opposition . . . .").

96. *See* Combs & Assocs., Inc. v. Kennedy, 555 S.E.2d 634, 639 (N.C. Ct. App. 2001) ("Because summary judgment supplants trial of the factual issues, all the evidence is viewed in the light most favorable to the nonmoving party.").

97. Notice pleading is "[a] procedural system requiring that the pleader give only a short and plain statement of the claim showing that the pleader is entitled to relief, and not a complete detailing of all the facts." *Pleading*, Black's Law Dictionary (11th ed. 2019). North Carolina generally employs a liberal notice pleading standard. *See Krawiec*, 811 S.E.2d at 553 (Beasley, J., dissenting) (stating that North Carolina's pleading standard "is not a difficult standard for plaintiffs to meet . . . ."); *see also* N.C. Gen. Stat. § 1A-1, Rule 8(a)(1) (2019) (requiring a short and plain statement of the claim sufficient to put the parties on notice of the claims against them).

98. N.C. Gen. Stat. § 1A-1, Rule 8(a)(1).

motions for summary judgment or preliminary injunction are thus significantly higher than the standard required to survive a motion to dismiss.[99]

To analyze the sufficiency of the Krawiecs' complaint for the purposes of surviving a motion to dismiss, the *Krawiec* court relied on the 2001 decision in *Combs & Associates, Inc. v. Kennedy*, where a company providing "sales representation for manufacturers of water and wastewater equipment" sued a former employee and a former client for misappropriation of trade secrets after the employee formed a competing company for that client.[100] When the trial court granted summary judgment in favor of the defendants, the plaintiff appealed, "arguing that there were genuine issues of material fact regarding its claims."[101] The appellate court, however, found that the defendants had shown a likelihood of success on the merits of their claim and thus the plaintiff's claim necessarily failed—even if taking the plaintiff's facts as true—because the former client already possessed the allegedly misappropriated information when forming the business relationship with the former employee.[102]

The *Krawiec* court also relied on the 2004 trade secrets misappropriation case of *VisionAIR, Inc. v. James*.[103] There, a company developing software for public safety agencies sued a former employee who left for a competitor.[104] After the trial court denied the company's motion for a preliminary injunction, the company argued on appeal that it had sufficiently demonstrated the likelihood of success on the merits because it had shown that the defendant had violated their non-disclosure agreement.[105] The *VisionAIR* court explained that it could issue a preliminary

99. *Compare id.*, *with id.* § 1A-1, Rule 56(c), *and id.* § 1A-1, Rule 65(b).

100. *See* Krawiec v. Manly, 811 S.E.2d 542, 548 (N.C. 2018) (quoting *Combs & Assocs.,* 555 S.E.2d at 640) (stating that there are circumstances when customer database information is not considered a trade secret). In *Combs & Assocs.,* one of the defendants, while still working for the plaintiff's company, approached one of the plaintiff's clients with the idea of "forming a new manufacturers' sales representative company" together. *Combs & Assocs.*, 555 S.E.2d at 637. The client eventually agreed to form a new company with the plaintiff's employee, while the employee was still working for the plaintiff. *Id.*

101. *Id.* at 639. The plaintiff argued that genuine issues of material fact existed "regarding its claim for misappropriation of trade secrets," that its customer lists and regional sales activities that one co-defendant used during his employment with plaintiff constituted trade secrets, and that he shared such secrets with the other co-defendant. *Id.* at 639–40.

102. *See id.* (quoting N.C. Gen. Stat. § 66-155 (2019)) ("The burden of proof initially rests with the owner [of the trade secrets] who must establish a prima facie case of misappropriation . . . . Once the owner establishes a prima facie case, the burden of proof shifts to the defendant who may rebut the allegation by introducing substantial evidence that the trade secret was acquired through 'independent development, reverse engineering, or [. . .] was obtained from another person with a right to disclose the trade secret.'"). The appellate court found that the defendants "rebut[ted] the allegation" since both co-defendants possessed, or "could have easily compiled," the alleged trade secret information, and therefore, such information did not constitute "trade secrets." *Id.* at 640. Thus, the appellate court affirmed that "the trial court properly granted defendants' motion for summary judgment," since there was no valid misappropriation claim. *Id.*

103. *Krawiec*, 811 S.E.2d at 548 (relying on language from VisionAIR, Inc. v. James, 606 S.E.2d 359, 364 (N.C. Ct. App. 2004)).

104. *VisionAIR,* 606 S.E.2d at 361.

105. *Id.* at 360.

injunction only upon a showing of "a likelihood of success on [the] merits of the case" and that "the movant [would] likely suffer irreparable loss unless the injunction [was] issued."[106] Using this framework, the court held that the company could not show a likelihood of success on the merits and the trial court had properly denied the preliminary injunction because the company failed to allege any specific trade secret that the defendant had compromised.[107]

In 2003, in *Analog Devices, Inc. v. Michalski*—another case considered by the *Krawiec* court—the plaintiff similarly failed to show a likelihood of success on the merits for its motion for a preliminary injunction.[108] The plaintiff sought this injunction against a former employee for alleged misappropriation of trade secrets concerning specific electronic devices, combinations, and processes for plaintiff's integrated circuits.[109] It alleged that the former employee had printed seventy-seven pages of confidential schematics and taken them with him when he went to work for a competitor.[110] The *Analog* court found that the plaintiff failed to establish misappropriation of trade secrets and thus failed to demonstrate a likelihood of success on the merits because the evidence presented at trial showed substantial differences in the integrated circuits produced by the parties.[111]

The *Krawiec* court based its decision primarily on cases evaluating the sufficiency of a complaint for purposes entirely different than for a motion to dismiss.[112] In *VisionAIR*, the company failed to identify a specific trade secret that was compromised by the defendant and, consequently, could not show a likelihood of success on the merits warranting a preliminary injunction.[113] The court noted that "[b]ecause a preliminary injunction is an extraordinary measure," it can only be issued when "the movant[] show[s] that . . . there is a likelihood of success on the merits of [the] case" and that "the movant will likely suffer irreparable loss unless the injunction is issued."[114] In contrast, the Krawiecs sufficiently identified their trade secret for the purpose of fulfilling North Carolina's liberal pleading standard and faced no requirement to show a likelihood of success on the merits in order to survive a motion to dismiss.[115] The question for the court to consider on a motion to dismiss under North Carolina's Rule

106. *Id.* at 362 (citations omitted) (internal quotations omitted).

107. *Id.* at 364.

108. Analog Devices, Inc. v. Michalski, 579 S.E.2d 449, 452 (N.C. Ct. App. 2003); *see also Krawiec*, 811 S.E.2d at 548 (relying on language from *Analog*).

109. *Analog*, 579 S.E.2d at 452–53.

110. *Id.* at 451.

111. *Id.* at 452.

112. *See Krawiec*, 811 S.E.2d at 547–48 (considering several cases that evaluated pleadings for the purpose of determining whether to grant summary judgment or issue a preliminary injunction and not whether to grant a motion to dismiss).

113. VisionAIR, Inc. v. James, 606 S.E.2d 359, 364 (N.C. Ct. App. 2004).

114. *Id.* at 362 (emphasis omitted) (citations omitted) (internal quotations omitted).

115. *See Krawiec*, 811 S.E.2d at 554–55 (Beasley, J., dissenting); *see also* N.C. Gen. Stat. § 1A-1, Rule 8(a)(1) (2019).

12(b)(6) is "whether as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted . . . ."[116] Stated another way, "the court should not dismiss the complaint unless it appears beyond a doubt that the plaintiff could not prove any set of facts to support [its] claim [that] would entitle [it] to relief," which was not the case in *Krawiec*.[117]

Like the company in *VisionAIR*, the plaintiff in *Analog* failed to demonstrate a likelihood of success on the merits to succeed on a motion for preliminary injunction because it neglected to establish misappropriation of trade secrets.[118] Again, the standard used in *Analog* is inapplicable to *Krawiec* because overcoming a 12(b)(6) motion to dismiss requires no showing of a likelihood of success on the merits.[119]

Finally, the claim in *Combs & Associates* was necessarily defeated by a summary judgment motion, meaning that success on the merits of the plaintiff's claim was impossible, because the defendant-client had possessed the allegedly misappropriated information prior to their relationship with the plaintiff's former employee.[120] This standard of success on the merits is similarly inapplicable to the Krawiecs' attempt to overcome a motion to dismiss because North Carolina's liberal pleading standard merely requires the plaintiff to put the defendant on notice of the occurrences intended to be proved.[121]

The *Krawiec* court's misapplication of legal precedent has led to inconsistent interpretations of pleading standards in trade secret misappropriation cases.[122] The sufficiency required of a trade secret misappropriation claim to survive a motion to dismiss was a matter of first impression for the Supreme Court of North Carolina[123] and its choice to disregard relevant lower court decisions increased the confusion surrounding trade secret protections in the state.[124]

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116. S. Fastening Sys., Inc. v. Grabber Constr. Prods., No. 14 CVS 04260, 2015 WL 2031007, at *3 (N.C. Super. Ct. Apr. 28, 2015) (quoting Harris v. NCNB Nat'l Bank of N.C., 355 S.E.2d 838, 840 (N.C. Ct. App. 1987)) (internal quotations omitted).

117. *Id.* (quoting Block v. Cnty. of Person, 540 S.E.2d 415, 419 (N.C. Ct. App. 2000)); *see Krawiec*, 811 S.E.2d at 549 (dismissing the complaint because the plaintiffs did not plead facts with sufficient particularity).

118. Analog Devices, Inc. v. Michalski, 579 S.E.2d 449, 452 (N.C. Ct. App. 2003).

119. *Compare* N.C. Gen. Stat. § 1A-1, Rule 8(a)(1), *with id.* § 1A-1, Rule 65(b).

120. Combs & Assocs., Inc. v. Kennedy, 555 S.E.2d 634, 640 (N.C. Ct. App. 2001); *see* N.C. Gen. Stat. § 1A-1, Rule 56(c).

121. N.C. Gen. Stat. § 1A-1, Rule 8(a)(1).

122. *See* Krawiec, 811 S.E.2d at 552–56 (Beasley, J., dissenting) (noting how the majority opinion conflated the standards for preliminary injunction, summary judgment, and motion to dismiss, thus creating "muddled" and "heightened" pleading standards for future plaintiffs to navigate when attempting to properly plead misappropriation claims).

123. *Id.* at 553.

124. *See id.* at 556 ("[T]his court had the opportunity to correct the faulty logic that for over a decade has resulted in the substitution of a preliminary injunction standard for our general pleading standard governing this particular claim. Instead, the majority has validated a heightened pleading standard for a misappropriation of trade secrets claim . . . .").

"*Krawiec* demonstrates that . . . alleging violations of the North Carolina trade secret statutes can [become] a technical and complex endeavor," potentially requiring public disclosure of precise and explicit details regarding information of an inherently secret nature.[125] The standard adopted by the North Carolina Supreme Court in *Krawiec* not only offends the state's liberal pleading standards and ignores a core principle of trade secret protection by requiring disclosure of confidential details, but also potentially bars otherwise legally sufficient trade secret misappropriation claims by raising the pleading standard required to overcome a motion to dismiss.[126] While the consequences of the *Krawiec* court's decision are not as severe as those of revealing the secret process of silk-making in Ancient China, the court has unnecessarily created heightened and muddled standards for North Carolina plaintiffs seeking to adequately plead a misappropriation of trade secrets claim.[127]

125. Mike Dowling & David W. Sar, *NC Supreme Court Reinforces Need For Precision In Trade Secret Misappropriation Claims*, Brooks Pierce (May 21, 2018), https://brookspierce.com/news-insights/nc-supreme-court-reinforces-need-precision-trade-secret-misappropriation-claims. *See Krawiec*, 811 S.E.2d at 553, 556 (Beasley, J., dissenting) (citations omitted) (stating that "the majority validate[d] a heightened pleading standard for a claim in which public disclosure of confidential information is a real concern" and describing trade secrets as already "one of the most elusive and difficult concepts in the law").

126. *See supra* note 125 and accompanying text.

127. *Krawiec*, 811 S.E.2d at 552 (Beasley, J., dissenting).