STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23 CVS 5594
HUSQVARNA PROFESSIONAL PRODUCTS, INC. and HUSQVARNA BUSINESS SUPPORT AB, Plaintiffs, v. ROBIN AUTOPILOT HOLDINGS, LLC; ROBIN TECHNOLOGIES, INC.; ROBOTIC MOWING INVESTMENTS, LLC; RLAM AZALEA, LLC; JEFFREY R. DUDAN IRREVOCABLE TRUST; JEFFREY DUDAN; and ANTHONY HOPP, Defendants.	**ORDER AND OPINION ON DEFENDANTS' MOTION TO DISMISS CLAIMS AGAINST THE MEMBER DEFENDANTS AND ROBIN TECHNOLOGIES, INC.**

1. **THIS MATTER** is before the Court on Defendants Robotic Mowing Investments, LLC, RLAM Azalea, LLC, Jeffrey R. Dudan Irrevocable Trust, Jeffrey Dudan, and Anthony Hopp's (collectively, the "Member Defendants"), and Defendant Robin Technologies, Inc.'s ("Robin Technologies") Motion to Dismiss Claims Against the Member Defendants and Robin Technologies ("the Motion") pursuant to Rules 12(b)(6) and 12(h)(3) of the North Carolina Rules of Civil Procedure (the "Rule(s)") in the above-captioned case. (ECF No. 7.)

2. For the reasons set forth below, the Court **GRANTS in part** and **DENIES in part** the Motion.

Nelson Mullins Riley & Scarborough, LLP, by Thomas G. Hooper, for Plaintiffs/Counterclaim Defendants Husqvarna Professional Products, Inc. and Husqvarna Business Support AB.

O'Hagan Meyer PLLC, by Aretina K. Samuel-Priestley and Candice A. Diah, Lincoln Derr PLLC, by Tricia M. Derr and R. Jeremy Sugg, and Jackson Walker LLP, by Blake T. Dietrich and Hailey Oestreich, for Defendants/Counterclaim Plaintiffs Robotic Mowing Investments, LLC, RLAM Azalea, LLC, Jeffrey R. Dudan Irrevocable Trust, Jeffrey Dudan, Anthony Hopp, and Robin Technologies, Inc.

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

3. The Court does not make findings of fact on motions presented under Rule 12. Rather, the Court recites the allegations asserted and documents referenced in the pleadings that are relevant to the Court's determination of the motions.

4. This action arises out of the relationship between Plaintiffs Husqvarna Professional Products, Inc. ("Husqvarna Products") and Husqvarna Business Support AB ("Husqvarna Business"; together with Husqvarna Products, "Plaintiffs" or the "Husqvarna Parties"), on the one hand, and Defendant Robin Autopilot Holdings, LLC ("Robin Autopilot"), Robin Technologies (together with Robin Autopilot, the "Robin Parties"), and the Member Defendants, on the other hand.

5. Husqvarna Business is a Swedish foreign limited company with its principal place of business in Sweden. Husqvarna Products is a Delaware corporation that markets and sells outdoor power equipment, including in particular, robotic lawn mowers. Husqvarna Products is an affiliate of Husqvarna Business.[1]

[1] (Compl. ¶¶ 5, 6, 16, 17, ECF No. 4.)

6. Robin Autopilot is an Ohio limited liability company with its principal place of business in Texas.[2] Robin Autopilot rents or sells robots to subscribers,[3] and its members include the Member Defendants.[4] Robin Technologies is a Delaware corporation with its principal place of business in Texas and is an affiliate of Robin Autopilot.[5]

7. In the summer of 2019, the Robin Parties and the Husqvarna Parties began discussing a possible business relationship.[6] These discussions culminated in Husqvarna Products' and Robin Technologies' entry into a non-disclosure agreement (the "NDA") in June 2019.[7]

8. On 27 May 2021, Robin Autopilot and Husqvarna Business entered into an Original Admission Agreement.[8] In relevant part, the Original Admission Agreement provided that, in exchange for Husqvarna Business's contribution of capital and Husqvarna Products' provision of certain robotics, parts, and accessories to Robin Autopilot through a separate Supply Agreement,[9] Husqvarna Business

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[2] (Compl. ¶ 7.)

[3] (Compl. ¶¶ 9–13, 18.)

[4] (Compl. ¶¶ 9–13.)

[5] (Compl. ¶¶ 8, 19.)

[6] (Compl. ¶ 20.)

[7] (Compl. ¶ 22.)

[8] (Compl. ¶ 23.)

[9] Husqvarna Products and Robin Autopilot entered into the contemplated Supply Agreement at about this same time under which Husqvarna Products agreed to sell, and Robin Autopilot agreed to purchase, certain products. (Compl. ¶¶ 26–28.)

would be admitted as a member of, and granted membership units in, Robin Autopilot. Husqvarna Business would also be permitted to fill one seat on Robin Autopilot's board of managers.[10] The Original Admission Agreement also included a non-solicitation provision prohibiting the Husqvarna Parties from soliciting two businesses—Weed Man, USA and MowBot, Inc.—for a period of twelve months (the "Non-Solicitation Agreement").[11]

9. On 1 December 2021, the Member Defendants and Husqvarna Business—the members of Robin Autopilot's board of managers—entered into a Fourth Amended and Restated Operating Agreement for Robin Autopilot (the "Operating Agreement").[12] Section 14 of the Operating Agreement provides that Robin Autopilot's members were permitted to "engage in or possess an interest in other business ventures . . . that may be competitive" with Robin Autopilot.[13]

10. In the second quarter of 2022, disputes arose between the Husqvarna Parties and the Robin Parties about the Non-Solicitation Agreement and certain intellectual property.[14] To settle these disagreements, the Husqvarna Parties and the Robin Parties entered into a Settlement and Release Agreement (the "Settlement

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[10] (Compl. ¶ 23.)

[11] (Compl. ¶ 24.)

[12] (Compl. ¶ 29; *see* Pls.' Opp'n Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies Ex. C [hereinafter "Operating Agreement"], ECF Nos. 17.3 (sealed), 41.2 (redacted).)

[13] (Compl. ¶ 32.)

[14] (Compl. ¶¶ 33–35.)

Agreement"),[15] and, at the same time, Husqvarna Business and Robin Autopilot entered into an Amended Admission Agreement and a Note Purchase Agreement to facilitate further investments by Husqvarna Business in Robin Autopilot.[16]

11. Among other provisions, the Settlement Agreement provided that "upon expiration of the Non-Solicitation Agreement, no non-solicitation obligations remain between the parties unless [the] parties explicitly agree otherwise in writing."[17]

12. As alleged by Plaintiffs, the Amended Admission Agreement "confirmed the rights and commitments that remained outstanding under the Original Admission Agreement,"[18] "provided for the acceleration of Husqvarna Business's final cash contribution to Robin Autopilot under the Original Admission Agreement," committed "Husqvarna to invest an additional $500,000 in Robin Autopilot if 'certain growth targets' were met," and awarded Husqvarna Business an additional vote on Robin Autopilot's board of managers.[19]

13. The Note Purchase Agreement was entered into by Husqvarna Business, Robin Autopilot, and a third party, Robotic Mowing Investments, LLC, pursuant to which Husqvarna Business purchased a convertible promissory note in the original principal amount of $1,000,000, which was executed by Robin Autopilot in favor of

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[15] (Compl. ¶¶ 33–35.)

[16] (Compl. ¶¶ 40, 41.)

[17] (Compl. ¶ 37.)

[18] (Compl. ¶ 41.)

[19] (Compl. ¶ 42.)

Husqvarna Business with a maturity date of 8 September 2023.[20] The Robin and Husqvarna Parties also agreed in the Note Purchase Agreement to enter into the Settlement Agreement.[21]

14. The events precipitating this litigation began when Husqvarna Products changed its business strategy in December 2022 from working with the Robin Parties to service and sell robotic mowers to the professional landscaping market to a strategy of "pursu[ing] sales of its robotic products directly to professional users (including landscapers)."[22] In response to Husqvarna Products' initiation of direct competition, the Robin Parties' Chief Executive Officer, Logan Fahey ("Fahey"), sent a memorandum to the Husqvarna Parties on 6 March 2023 (the "March 6 Memo"),[23] objecting to Husqvarna Products' direct solicitation of certain customers.[24] Fahey stated in the March 6 Memo that "Robin," which the memo defined as "Robin Autopilot," would "not sit idly by" and allow "Husqvarna's current strategy" to "undercut Robin's business and success."[25] Fahey also asserted that "to the extent Husqvarna will not cease these sales, [Robin] believe[s] this will materially alter the

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[20] (Compl. ¶¶ 45–47.) The convertible note also provided Husqvarna Business an option to convert unpaid principal and interest into additional units of Robin Autopilot. (Compl. ¶ 47.)

[21] (Pls.' Opp'n Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies Ex. F, ECF Nos. 17.6 (sealed), 41.5 (redacted).)

[22] (Compl. ¶¶ 52, 53.)

[23] (Compl. ¶ 57.)

[24] (Compl. ¶¶ 58–68.)

[25] (Compl. ¶ 61.)

companies' relationship and create a situation where we cannot continue forward as things currently stand."[26] The March 6 Memo indicated that it was from Fahey as CEO of Robin Autopilot, but the memo was signed by Fahey over a signature line reading "CEO | Robin Technologies."[27] A Robin Technologies watermark also appeared on each page of the March 6 Memo.[28]

B. Procedural History

15. The Husqvarna Parties filed this action on 3 April 2023, asserting claims against (i) the Robin Parties and the Member Defendants for a declaratory judgment concerning the parties' rights under the Original Admission Agreement, the Amended Admission Agreement, and the Operating Agreement; (ii) the Robin Parties for anticipatory breach of the Settlement Agreement and for a declaratory judgment concerning the parties' rights under the Settlement Agreement, the Note Purchase Agreement, and the Supply Agreement; and (iii) Robin Autopilot for breach of the Supply Agreement and for anticipatory breach of the Note Purchase Agreement, the Original Admission Agreement, and the Amended Admission Agreement.[29]

16. On 12 May 2023, the Member Defendants and Robin Technologies filed the current Motion, seeking the dismissal of Plaintiffs' claims for declaratory judgment

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[26] (Compl. ¶ 61.)

[27] (Pls.' Opp'n Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies Ex. A [hereinafter "March 6 Memo"], ECF No. 17.1.)

[28] (*See* March 6 Memo.)

[29] (Compl. ¶¶ 69–126.)

against the Member Defendants concerning the parties' rights under the Original Admission Agreement, the Amended Admission Agreement, and the Operating Agreement, and against Robin Technologies for anticipatory breach of the Settlement Agreement and for declaratory judgment concerning the parties' rights under the Settlement Agreement, the Note Purchase Agreement, and the Supply Agreement.[30]

17. After full briefing, the Court convened a hearing on the Motion on 22 August 2023, at which all parties were represented by counsel (the "Hearing"). The Motion is now ripe for resolution.

II.

LEGAL STANDARD

18. When deciding whether to dismiss for failure to state a claim under Rule 12(b)(6), the Court considers "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Corwin v. Brit. Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (quoting *CommScope Credit Union v. Butler & Burke, LLP*, 369 N.C. 48, 51 (2016)).

19. "[D]ismissal pursuant to Rule 12(b)(6) is proper when '(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.' " *Corwin*, 371 N.C. at 615 (quoting *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)).

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[30] (Defs.' Mot. Dismiss Claims Against Member Defs. and Robin Technologies [hereinafter "Defs.' Mot. Dismiss"], ECF No. 7.)

20. Under Rule 12(b)(6), "the trial court is to construe the pleading liberally and in the light most favorable to the plaintiff, taking as true and admitted all well-pleaded factual allegations contained within the complaint." *Donovan v. Fiumara*, 114 N.C. App. 524, 526 (1994) (cleaned up). The Court need not, however, accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Good Hope Hosp., Inc. v. N.C. HHS, Div. of Facility Servs.*, 174 N.C. App. 266, 274 (2005) (quotation marks and citation omitted).

21. When considering a motion to dismiss under Rule 12(b)(6), a court "may properly consider documents which are the subject of a plaintiff's complaint and to which the complaint specifically refers even though they are presented by the defendant." *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60 (2001); *see, e.g.*, *Deluca v. River Bluff Holdings II, LLC*, 2015 NCBC LEXIS 12, at *8 (N.C. Super. Ct. Jan. 28, 2015) (stating that under Rule 12(b)(6), "a trial court may properly consider a contract that is the subject matter of the complaint, even if the plaintiff did not attach it to the complaint[ ]"). Moreover, the Court "can reject allegations that are contradicted by the documents attached to, specifically referred to, or incorporated by reference in the complaint." *Moch v. A.M. Pappas & Assocs., LLC*, 251 N.C. App. 198, 206 (2016) (quoting *Laster v. Francis*, 199 N.C. App. 572, 577 (2009)).

22. Rule 12(h)(3) provides that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." N.C. R. Civ. P. 12(h)(3). As this Court has previously explained:

> A defect in subject matter jurisdiction may be raised by a party or by the court *sua sponte*. A motion to dismiss for lack of subject matter jurisdiction is not viewed in the same manner as a motion to dismiss for failure to state a claim upon which relief can be granted. A court may consider matters outside the pleadings in determining whether subject matter jurisdiction exists.

Miller v. Burlington Chem. Co., LLC, 2017 NCBC LEXIS 6, *11 (N.C. Super. Ct. Jan. 27, 2017) (cleaned up).

23. Rule 12(h)(3) may be invoked in the context of a declaratory judgment action. As recently explained by our Supreme Court:

> As a jurisdictional prerequisite, the Declaratory Judgment Act requires the pleadings and evidence to disclose the existence of an actual controversy between the parties having adverse interests in the matter in dispute. This controversy between the parties must exist at the time the pleading requesting declaratory relief was filed. Absolute certainty of litigation is not required, but the plaintiff must demonstrate to a practical certainty that litigation will arise.

Button v. Level Four Orthotics & Prosthetics, Inc., 380 N.C. 459, 466 (2022) (cleaned up).

24. Under the North Carolina Uniform Declaratory Judgment Act (the "DJA"), N.C.G.S. §§ 1-253–67, courts have the authority to enter declaratory judgments as follows:

> Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

N.C.G.S. § 1-253.

25. "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." N.C.G.S. § 1-260. For pleading purposes under the DJA:

> It is required only that the plaintiff shall allege in his complaint . . . that a real controversy, arising out of [the parties'] opposing contentions as to their respective legal rights and liabilities under a deed, will or contract in writing, or under a statute, municipal ordinance, contract or franchise, exists between or among the parties, and that the relief prayed for will make certain that which is uncertain and secure that which is insecure."

North Carolina Consumers Power, Inc. v. Duke Power Co., 285 N.C. 434, 449 (1974) (citation omitted).

26. "Although it is not necessary that one party have an actual right of action against another to satisfy the jurisdictional requirement of an actual controversy, it is necessary that litigation appear unavoidable." *Gaston Bd. of Realtors, Inc. v. Harrison*, 311 N.C. 230, 234 (1984). "When the record shows that there is no basis for declaratory relief, or the complaint does not allege an actual, genuine existing controversy, a motion for dismissal under . . . Rule 12(b)(6) will be granted." *Id.* at 234–35.

III.

ANALYSIS

A. Plaintiffs' Claims Against the Member Defendants and Robin Technologies Based on the Admission and Operating Agreements

1. The Original and Amended Admission Agreements

27. The Husqvarna Parties first seek a declaration that neither the Original Admission Agreement nor the Amended Admission Agreement restricts their right to sell their products directly to professional landscape service providers.[31] The Member Defendants and Robin Technologies seek to dismiss this claim, contending that they are not signatories to either agreement, their interests are unaffected by the declarations sought under these agreements, and therefore there is not an actual case or controversy under these agreements with the Husqvarna Parties.[32]

28. The Husqvarna Parties seek to avoid dismissal on two grounds. First, they assert that an actual controversy exists because they have alleged that the Member Defendants "have indicated support of the Robin Parties' refusal to honor their obligations and have even gone so far as to engage counsel (separate from the company) for the members other than Husqvarna Business to seek legal process with respect to this position."[33] In addition, they contend that the Member Defendants' and Robin Technologies' interests will be affected by a determination of the

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[31] (*See* Compl. ¶¶ 26, 27.)

[32] (*See* Br. Supp. Defs.' Mot. Dismiss 5–6, ECF No. 8.)

[33] (Compl. ¶ 66.)

Husqvarna Parties' rights under these agreements.[34] *See, e.g.*, *Singleton v. Sunset Beach & Twin Lakes, Inc.*, 147 N.C. App. 736, 742 (2001) (holding that defendant was a proper party because the requested declaration would necessarily "affect the [defendant's] interest").

29. The Court agrees with the Member Defendants and Robin Technologies. First, the fact that the Member Defendants agree with the positions taken in the March 6 Memo is of no legal consequence on this Motion. *See, e.g.*, *Gaston Bd. of Realtors, Inc.*, 311 N.C. at 234 (holding that "a mere difference of opinion between the parties does not constitute a controversy within the meaning of the Declaratory Judgment Act"). The same is true of the Member Defendants' retention of counsel; indeed, clients routinely retain counsel to provide legal advice concerning contemplated transactions and conduct long before litigation "appears unavoidable." *Id.*; *see also, e.g.*, *Town of Spencer v. Town of E. Spencer*, 351 N.C. 124, 127 (1999) ("A justiciable controversy exists when litigation to resolve the controversy appears to be unavoidable.").

30. The fact remains that none of these Defendants is a signatory to either admission agreement. Nor do they have rights under these agreements. Indeed, a declaration of rights under the admission agreements will impact the Husqvarna Parties' interests only through Husqvarna Business's status as a member of Robin Autopilot and will impact Robin Autopilot's interest only to the extent that Husqvarna Business is one of its members. In short, the declarations sought under

[34] (*See* Pls.' Opp'n Defs.' Mot. Dismiss 22, ECF No. 16.)

these agreements do not impact any interests of the Member Defendants and Robin Technologies.

31. For each of these reasons, therefore, the Court will grant the Motion and dismiss Plaintiffs' claim for declaratory judgment against the Member Defendants and Robin Technologies based on the Original and Amended Admission Agreements.

2. The Operating Agreement

32. The Husqvarna Parties seek a similar declaration that the Operating Agreement (and specifically Section 14) does not restrict their right to sell their products directly to professional landscape service providers.[35] The Member Defendants and Robin Technologies contend that the claim should be dismissed as to them because the Operating Agreement does not create rights and obligations between the Husqvarna Parties, on the one hand, and the Member Defendants or Robin Technologies, on the other.[36]

33. The Husqvarna Parties disagree and, for their first argument, advance the same reasons to support their declaratory judgment claim based on the Operating Agreement as they did to support their DJA claims based on the Original and Amended Admission Agreements.[37] However, the Court again rejects the Husqvarna Parties' contention that an actual controversy arises from the Member Defendants'

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[35] (*See* Compl. ¶¶ 26, 27.)

[36] (Br. Supp. Defs.' Mot. Dismiss 6–9.)

[37] (Pls.' Opp'n Defs.' Mot. Dismiss 20–22.)

alleged agreement with positions taken in the March 6 Memo and their engagement of counsel for the same reasons.

34. The Court therefore addresses the Husqvarna Parties' second argument—that the Member Defendants' and Robin Technologies' interests will be affected by a determination of the Husqvarna Parties' rights under Section 14 of the Operating Agreement.

35. Section 14 provides as follows:

> **14. Other Business**. During the term of this Agreement, the Members and any affiliate of the Members may engage in or possess an interest in other business ventures (unconnected with the Company and its subsidiaries) of every kind and description, independently or with others, including interests, activities and investments with respect to landscaping or lawn care services or the provision of software, subscription services, training services or support services that may be competitive with Company. The Members shall have no duty to disclose to or permit the Company to participate in any project or investments that may be of interest to the Company or any other Member. To the extent that any holder of Units is subject to a restrictive covenant with the Company or any subsidiary pursuant to an employment agreement, equity grant instrument or other contract, the terms of such contract or agreement supersede this Section 14.[38]

36. The Husqvarna Parties seek a declaration of Husqvarna Business's rights to compete as a member of Robin Autopilot under Section 14. A determination of Husqvarna Business's rights under this Section, however, will necessarily determine the Member Defendants' rights to compete against Robin Autopilot because Husqvarna Business and the Member Defendants are all members of Robin Autopilot. As a result, the Member Defendants are proper party-defendants on

[38] (Operating Agreement, Section 14.)

Plaintiff's declaratory judgment claim based on the Operating Agreement, and the Court concludes that the Member Defendants' Motion should be denied with respect to this claim.[39]

37. In contrast, however, Robin Technologies is not a member of Robin Autopilot and has no rights under the Operating Agreement. As a result, a declaration as to Husqvarna Business's right to compete under Section 14 will not impact any interest of Robin Technologies. Accordingly, the Court will grant Defendants' Motion in part and dismiss this claim against Robin Technologies.

B. Plaintiffs' Claims Against Robin Technologies Based on the Settlement, Supply, and Note Purchase Agreements

38. The Husqvarna Parties seek a declaration against the Robin Parties concerning the Husqvarna Parties' rights under the Settlement Agreement, the Supply Agreement, and the Note Purchase Agreement.[40] Robin Technologies seeks dismissal of these claims as to each agreement.

1. The Supply Agreement

39. Robin Technologies asserts that it is not a signatory to the Supply Agreement and thus that there is not an actual controversy with the Husqvarna

[39] The Member Defendants argue in their briefing that Plaintiffs' claims against them are premised on a veil-piercing theory, which they then endeavor to attack. (*See* Br. Supp. Defs.' Mot. Dismiss 6.) Plaintiffs, however, have not sought to hold the Member Defendants liable for the Robin Parties' conduct, and at the Hearing, Plaintiffs' counsel expressly disavowed that Plaintiffs' claims sought to impose liability on the Member Defendants through the Robin Parties' conduct on a veil-piercing theory.

[40] (*See* Compl. ¶¶ 96–100.)

Parties regarding that agreement.[41] The Husqvarna Parties disagree, contending that Robin Technologies has an interest that will be affected by the requested declaration because the Supply Agreement was executed in conjunction with a collection of agreements including the NDA, the Amended Admission Agreement, and the Operating Agreement.[42] The Court agrees with Robin Technologies.

40. A review of the Supply Agreement makes plain that Robin Technologies is not a signatory and has no rights under that agreement.[43] The mere fact that the Supply Agreement was executed in tandem with, or at the same time as, other agreements, some of which Robin Technologies signed and some of which it did not, does not give rise to an interest in the Supply Agreement that is implicated by the declaration Plaintiffs seek. Because a determination of the Husqvarna Parties' rights under the Supply Agreement will not affect any interest of Robin Technologies, the Court will grant the Motion and dismiss the declaratory judgment claim against Robin Technologies.

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[41] (*See* Br. Supp. Defs.' Mot. Dismiss 10.)

[42] (*See* Pls.' Opp'n Defs.' Mot. Dismiss 30.)

[43] The Court notes that the Supply Agreement included as Exhibit B to Plaintiffs' opposition brief, (ECF Nos. 17.2 (sealed), 41.1 (redacted)), lacks a signature block. The parties, however, informed the Court at the hearing on Plaintiffs' Motion to Dismiss Defendants' Counterclaims on 19 September 2023 that they have agreed that the copy of the Supply Agreement attached as Exhibit B contains identical terms to the original agreement, which contains an executed signature block.

2. The Settlement Agreement

41. Robin Technologies contends that the Husqvarna Parties' Settlement-Agreement-based declaratory judgment claim should be dismissed because Plaintiffs have failed to allege a case or controversy affecting Robin Technologies through a declaration of Plaintiffs' rights under the Settlement Agreement.[44] As the Husqvarna Parties contend, however, Robin Technologies is a signatory to, and has continuing obligations under, the Settlement Agreement, and a declaration of the Husqvarna Parties' rights to compete under that agreement will necessarily affect Robin Technologies' interests, particularly given Plaintiffs' allegation that Fahey sent the March 6 Memo challenging Plaintiffs' competition rights on behalf of Robin Technologies.[45] As a result, the Court will deny Defendants' Motion to the extent that it seeks dismissal of Plaintiffs' declaratory judgment claim against Robin Technologies based on the Settlement Agreement.

3. The Note Purchase Agreement

42. Finally, Robin Technologies seeks to dismiss the Husqvarna Parties' claim for a declaration that the Note Purchase Agreement does not restrict Plaintiffs' right to sell products directly to professional landscape service providers, contending that it was not a party to that agreement and did not have any rights or duties thereunder.[46]

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[44] (*See* Br. Supp. Defs.' Mot. Dismiss 14.)

[45] (*See* Pls.' Opp'n Defs.' Mot. Dismiss 28–29.)

[46] (*See* Br. Supp. Defs.' Mot. Dismiss 10.)

43. The Husqvarna Parties oppose Defendants' Motion, asserting that Robin Technologies has an interest in the resolution of the declaratory judgment claim based on the Note Purchase Agreement because the agreement "expressly obligates Robin Technologies to enter into the [Settlement Agreement]," the Settlement Agreement addresses the Husqvarna Parties' permitted competition against Robin Autopilot,[47] and Robin Technologies' failure to comply with the Settlement Agreement's non-competition provisions could therefore constitute a breach of the Note Purchase Agreement.[48] The Court finds Plaintiffs' arguments without merit.

44. Indeed, North Carolina law is clear that, absent veil-piercing or agency, neither of which is alleged, Robin Technologies cannot bring an action on the Note Purchase Agreement or be held liable for any breach of that agreement because it is neither a party to nor a third-party beneficiary of that agreement. *See, e.g.*, *Howe v. Links Club Condo. Ass'n*, 263 N.C. App. 130, 139 (2018) ("[A]s a matter of law, a non-party to a contract cannot be held liable for any breach that may have occurred." (cleaned up)); *see also Energy Invs. Fund, L.P. v. Metric Constructors, Inc.*, 351 N.C. 331, 338 (2000) (noting the requirement of contractual privity to sustain a claim for breach of warranty). Thus, Robin Technologies' promise in the Note Purchase Agreement to enter into the Settlement Agreement does not create enforceable contract rights by and against Robin Technologies under the Settlement Agreement. To the contrary, any rights under the Settlement Agreement are enforceable by the

[47] (*See* Pls.' Opp'n Defs.' Mot. Dismiss 29.)

[48] (*See* Tr. 22:8, 15.)

parties to that agreement under that agreement's terms—not by the Husqvarna and Robin Parties through the terms of the Note Purchase Agreement, as Plaintiffs urge the Court to find here. As a result, Robin Technologies does not have an interest in Plaintiffs' declaratory judgment claim based on the Note Purchase Agreement, and the Court will therefore grant Defendants' Motion and dismiss this claim against Robin Technologies.

C. Plaintiffs' Claim for Anticipatory Breach of the Settlement Agreement

45. Robin Technologies also seeks to dismiss the Husqvarna Parties' claim for anticipatory breach of the Settlement Agreement,[49] contending that the claim rests solely on the March 6 Memo and that the memo shows Robin Autopilot's refusal to perform under the Settlement Agreement, not any refusal to perform by Robin Technologies.[50] In making this argument, Robin Technologies asserts that Fahey sent the March 6 Memo on behalf of Robin Autopilot, that Robin Autopilot does business as "Robin Technologies,"[51] and that the references to Robin Technologies in the March 6 Memo should be understood in that light.[52]

46. The Court finds Robin Technologies' arguments unpersuasive at the Rule 12(b)(6) stage. The Husqvarna Parties have alleged that Fahey is the CEO of both Robin Parties, that Fahey wrote and sent the March 6 Memo, that "Robin

[49] (*See* Compl. ¶¶ 101–07.)

[50] (*See* Br. Supp. Defs.' Mot. Dismiss 11.)

[51] (*See* Br. Supp. Defs.' Mot. Dismiss 12.)

[52] (*See* Br. Supp. Defs.' Mot. Dismiss 12–14.)

Technologies" appears as a watermark throughout the memo, and that the signature line on the memo identified Fahey as "CEO | Robin Technologies."[53] Considering these allegations in the light most favorable to Plaintiffs, the Court cannot conclude as a matter of law at this time that the March 6 Memo was sent only on behalf of Robin Autopilot and not also on behalf of Robin Technologies. The Court therefore concludes that Defendants' Motion to dismiss Plaintiffs' claim for anticipatory breach of the Settlement Agreement against Robin Technologies should be denied.

IV.

CONCLUSION

47. **WHEREFORE,** for the reasons set forth above, the Court hereby **GRANTS in part** and **DENIES in part** the Motion as follows:

a. The Motion is **GRANTED** as to Plaintiffs' claim against the Member Defendants and Robin Technologies for a declaratory judgment concerning the Original Admission Agreement and Amended Admission Agreement, and that claim is hereby **DISMISSED with prejudice**;

b. The Motion is **DENIED** as to Plaintiffs' claim for declaratory judgment against the Member Defendants concerning the Operating Agreement, and that claim shall proceed to discovery;

c. The Motion is **GRANTED** as to Plaintiffs' claim for declaratory judgment against Robin Technologies concerning the Operating Agreement, and that claim is hereby **DISMISSED with prejudice**;

[53] (Compl. 57; (Pls.' Opp'n Defs.' Mot. Dismiss Ex. A.)

d. The Motion is **GRANTED** as to Plaintiffs' claims for declaratory judgment against Robin Technologies concerning the Supply Agreement and the Note Purchase Agreement, and these claims are hereby **DISMISSED with prejudice**; and

e. The Motion is **DENIED** as to Plaintiffs' claims against Robin Technologies for anticipatory breach of the Settlement Agreement and for declaratory judgment concerning the Settlement Agreement, and those claims shall proceed to discovery.

SO ORDERED, this the 22nd day of September, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge