

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 4611

HE CHI; BIAN YIDE; CAO YONGJIE;  
CHEN MINZHI; CHENG TAO; HU  
KUN; LIANG JINGQUAN; LUO PENG;  
MA QIHONG; MA WEIGUO; SONG  
YING; WANG JIAN; WANG LING;  
WANG XUEHAI; XIE QIN; YE XIAFEN;  
and ZHANG YUNLONG,  
Plaintiffs,

v.

NORTHERN RIVERFRONT MARINA  
AND HOTEL LLLP; NRMH HOLDINGS  
LLC; NRMH HOTEL HOLDINGS LLC;  
USA INVESTCO LLC; PAC RIM  
VENTURE LTD.; RIVERFRONT  
HOLDINGS II LLC; WILMINGTON  
RIVERFRONT DEVELOPMENT LLC;  
GOLDEN MARINA LLC; CIRCLE  
MARINA CARWASH, INC.; CHARLES  
J. SCHONINGER; JOHN C. WANG;  
JIANGKAI WU; CHRISTOPHER  
ARDALAN; and GONGZHAN WU,  
Defendants.

**ORDER AND OPINION ON NRMH  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

1. **THIS MATTER** is before the Court on the Remaining NRMH Defendants' and Counterclaim Plaintiffs' Motion for Summary Judgment Pursuant to North Carolina Rule of Civil Procedure 56 (the "Motion"), (ECF No. 232). Defendants Wilmington Riverfront Development, LLC ("WRD"), and Charles J. Schoninger ("Schoninger") move for summary judgment with respect to the two remaining claims pending against them. In addition, WRD and Northern Riverfront Marina and Hotel, LLLP ("NRMH") move for affirmative summary judgment with respect to their counterclaim against remaining Plaintiffs, Ma Weiguo ("Plaintiff Weiguo") and Cao Yongjie ("Plaintiff Yongjie").

2. Having considered the Motion, the Defendants' briefing, and other relevant matters of record, the Court hereby **GRANTS** the Motion in its entirety.<sup>1</sup>

*Plaintiffs Cao Yongjie and Ma Weiguo, pro se.*

*The Law Offices of Oliver & Cheek, PLLC, by George M. Oliver, for Defendants Wilmington Riverfront Development LLC, Northern Riverfront Marina and Hotel, LLLP, and Charles J. Schoninger.*

Earp, Judge.

### I. FACTUAL BACKGROUND<sup>2</sup>

3. The Court does not make findings of fact when ruling on motions for summary judgment but instead “summarizes the relevant evidence of record, noting both the facts that are disputed and those that are uncontested, to provide context for the claims and the Motions.” *Aym Techs., LLC v. Rodgers*, 2019 NCBC LEXIS 64, at \*2 (N.C. Super. Ct. Oct. 16, 2019) (citing *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 142 (1975)).

4. WRD and Plaintiffs entered into an Agreement of Limited Partnership (the “Partnership Agreement”), the purpose of which was to form NRMH, a limited partnership through which Plaintiffs were able to invest in the development of real property located along the riverfront in Wilmington, North Carolina (the “Project”). (Second Am. Compl., Ex. E [“Partnership Agreement”], ECF No. 99.)

---

<sup>1</sup> The Court determines that a hearing will not facilitate its decision and decides the Motion without a hearing pursuant to Business Court Rule 7.4.

<sup>2</sup> Additional background information is detailed in the Court's Order and Opinion on Motion to Dismiss. See *Chi v. N. Riverfront Marina and Hotel LLLP*, 2023 NCBC LEXIS 89 (N.C. Super. Ct. July 27, 2023) [hereinafter “Order and Opinion”], (ECF No. 136).

5. The business plan for the Project, as described in an Offering Circular, was for NRMH to construct a marina with 204 boat slips, two restaurants, and a 136-room hotel with approximately 35,000 square feet of retail space. (Second Am. Compl., Ex. B [“Offering Circular”], ECF No. 99.)

6. Pursuant to the Partnership Agreement, WRD is the General Partner of NRMH. (Partnership Agreement Art. I, § 1.4.) Charles Schoninger (“Schoninger”) is the Managing Member of WRD. (Offering Circular at 1.)

7. The Partnership Agreement required Plaintiffs to execute a Subscription Agreement and to invest the required minimum \$500,000 capital contribution (plus fees) in the Project. (Partnership Agreement Art. I, § 1.4; Offering Circular at 1-2.) By agreeing to the terms of a Subscription Agreement and investing their money, both Plaintiff Weiguo and Plaintiff Yongjie became limited partners in NRMH. (Answer and Countercl. Second Am. & Ver. Compl. [“Counterclaim”] at ¶ 6, ECF No. 148.)

8. The Subscription Agreement contains a merger clause in Section V(I): “This Subscription Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof.” (Second Am. Compl. Ex. F [“Subscription Agreement”] § V(I), ECF No. 98.1.)

9. In addition, Section 7.4 of the Partnership Agreement limits the General Partner’s liability:

The General Partner does not, in any way, guarantee the return of a Partner’s Capital Contribution, the Preferred Return, or any profit from the operations of the Partnership. No General Partner shall be responsible to any Partner because of a loss of their investments or a

loss in operations, unless the loss shall have been the result of gross negligence or willful misconduct[.]

(Partnership Agr. § 7.4. *See also* § 8.4 (“[N]o Limited Partner shall have any recourse against the General Partner . . . except as otherwise set forth herein.”).)

10. Similarly, subsection J of the Subscription Agreement provides:

[T]he General Partner shall not be liable to the Limited Partners for any loss or liability incurred in connection with the affairs of the Partnership, so long as such loss or liability did not result from willful misconduct or gross negligence. . . . Therefore, a Limited Partner may have a more limited right of action against the General Partner than he would have had absent these provisions in the Partnership Agreement.

(Subscription Agreement § III(J).)

11. Plaintiff Weiguo was deposed on 5 June 2023. He testified that in or around 2011 or 2012, he retained New Starting Point Company, an immigration agency, to help his family gain permanent resident status in the United States. From New Starting Point Company, Plaintiff Weiguo learned about the NRMH Defendants’ real estate project, which was being marketed to foreign investors as part of the U.S. Citizenship and Immigration Services EB-5 visa program (the “EB-5 Program”).<sup>3</sup> (Defs.’ Mem. Supp. Mot. for Summ. J. Ex. C – Dep. Ma Weiguo, ECF No. 233.3 [“Weiguo Dep.”] 94:6-14, 96:11-97:5.)

12. Plaintiff Weiguo alleges that he signed the Subscription Agreement, which incorporated the terms of the Partnership Agreement (together “the

---

<sup>3</sup> The EB-5 Program was created by the Immigration Act of 1990 to “stimulate the U.S. economy by giving immigrant investors the opportunity to permanently live and work in the United States after they have invested in a new commercial enterprise.” (Compl. ¶ 27, ECF No. 3.)

Contract”), on or about 19 June 2012. (Second Am. Compl. ¶ 91(j), ECF No. 88.) Plaintiff Weiguo then invested more than \$500,000 in the NRMH Project believing that he would receive (1) a marina slip and two hotel rooms as collateral, and (2) a one percent return every year. (Weiguo Dep. 96:11-19, 123:19-125:1.)

13. A cover letter to the Offering Circular, signed by Schoninger as General Partner of WRD and Managing Member of NRMH, states: “The investment will provide a 1% per annum interest payment over the initial 3 year period, with 2 one-year options to extend the investment period, for a total of 5 years. The 27.5 million dollar investment will own 10% of the new Limited Partnership (pro rata), and will receive 10% of the distributable profit after capital repayment to investors and all expenses.” (Second Am. Compl. Ex. B, 5 January 2011 Schoninger Letter, ECF No. 99.)

14. However, the Offering Circular itself, to which the Partnership Agreement and Subscription Agreement were attached, states in relevant part:

**THESE SECURITIES ARE SUBJECT TO A HIGH DEGREE OF RISK. SEE SECTION III, “RISK FACTORS” IN SUBSCRIPTION AGREEMENT.**

(Offering Circular at i.)

15. It also contains a series of securities disclosure notices, among them:

**FORWARD-LOOKING STATEMENTS. THIS OFFERING CIRCULAR CONTAINS FORWARD-LOOKING STATEMENTS BASED ON THE MANAGING GENERAL PARTNER’S EXPERIENCE AND EXPECTATIONS ABOUT THE MARKETS IN WHICH THE PARTNERSHIP INVESTS . . . . SUCH FORWARD-LOOKING STATEMENTS ARE NOT GUARANTIES OF FUTURE PERFORMANCE AND ARE SUBJECT TO MANY RISKS, UNCERTAINTIES, AND ASSUMPTIONS THAT ARE DIFFICULT TO PREDICT. THEREFORE,**

ACTUAL RETURNS COULD DIFFER MATERIALLY AND ADVERSELY FROM THOSE EXPRESSED OR IMPLIED IN ANY FORWARD-LOOKING STATEMENTS AS A RESULT OF VARIOUS FACTORS. THE SECTION III, ENTITLED "RISK FACTORS" IN THE SUBSCRIPTION AGREEMENT . . . DISCUSSES SOME OF THE IMPORTANT RISK FACTORS THAT MAY AFFECT THE PARTNERSHIP'S RETURNS. PROSPECTIVE INVESTORS SHOULD CAREFULLY CONSIDER THOSE RISKS . . . BEFORE DECIDING WHETHER TO INVEST IN THE PARTNERSHIP. NEITHER THE MANAGING GENERAL PARTNER NOR THE PARTNERSHIP UNDERTAKES ANY OBLIGATION TO REVISE OR UPDATE ANY FORWARD-LOOKING STATEMENT FOR ANY REASON.

SUITABILITY. THIS IS A PRIVATE OFFERING AND IS AVAILABLE ONLY TO INVESTORS WHO ARE "ACCREDITED INVESTORS" AS DEFINED IN REGULATION D PROMULGATED BY THE SEC . . . . EACH INVESTOR MUST . . . HAVE SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT SUCH INVESTOR IS CAPABLE OF EVALUATING THE MERITS AND RISKS OF THIS INVESTMENT AND MUST BE ABLE TO BEAR THE ECONOMIC RISKS OF THIS INVESTMENT . . . . DO NOT CONSIDER INVESTING IF YOU ARE NOT FINANCIALLY SOPHISTICATED AND CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE INVESTMENT, EITHER ON YOUR OWN OR WITH THE ASSISTANCE OF YOUR FINANCIAL ADVISOR. THESE SECURITIES ARE SPECULATIVE AND THEY INVOLVE A SUBSTANTIAL RISK, AND THEY ARE ONLY A SUITABLE INVESTMENT FOR A LIMITED PORTION OF THE RISK SEGMENT OF YOUR PORTFOLIO.

TERMS OF THE OFFERING.

\* \* \* \*

NO ONE HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS ABOUT THE ISSUER OR THE SECURITIES, OTHER THAN THOSE REPRESENTATIONS MADE IN THIS OFFERING CIRCULAR. THEREFORE, DO NOT CONSIDER ANY INFORMATION THAT HAS BEEN DESCRIBED TO YOU ORALLY. PLEASE MAKE SURE THAT YOU INVEST SOLELY ON THE BASIS OF THE INFORMATION IN THIS OFFERING CIRCULAR.

THIS OFFERING CIRCULAR IS NOT LEGAL, TAX OR FINANCIAL ADVICE. PLEASE CONSULT YOUR OWN PROFESSIONAL ADVISORS AS TO THE LEGAL, TAX AND FINANCIAL IMPLICATIONS OF THIS INVESTMENT . . . .

IN MAKING AN INVESTMENT DECISION, RELY ON YOUR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED . . . .

AN INVESTMENT IN THE PARTNERSHIP INVOLVES A HIGH RISK OF LOSS OF PRINCIPAL AND LACK OF LIQUIDITY, AND THEREFORE REQUIRES THE FINANCIAL ABILITY AND WILLINGNESS TO BEAR SUCH RISKS . . . . THE MANAGING GENERAL PARTNER WILL RESPOND TO ANY QUESTIONS YOU OR YOUR ADVISERS MAY HAVE CONCERNING THIS OFFERING AND WILL MAKE AVAILABLE FOR EXAMINATION BY YOU OR YOUR ADVISERS SUCH RECORDS AND FILES IN ITS POSSESSION AS MAY BE PERTINENT TO YOUR DECISION WHETHER TO INVEST IN INTERESTS.

**THE TERMS AND CONDITIONS OF THIS OFFERING . . . AND THE RIGHTS AND LIABILITIES OF THE PARTNERSHIP, THE MANAGING GENERAL PARTNER AND THE LIMITED PARTNERS ARE GOVERNED BY THE [PARTNERSHIP] AGREEMENT AND THE SUBSCRIPTION AGREEMENT BETWEEN EACH LIMITED PARTNER AND THE PARTNERSHIP . . . AND THE DESCRIPTION OF ANY OF SUCH MATTERS IN THE TEXT OF THIS OFFERING CIRCULAR IS SUBJECT TO AND QUALIFIED IN ITS ENTIRETY BY REFERENCE TO [THE PARTNERSHIP AGREEMENT AND THE SUBSCRIPTION AGREEMENT].**

(Offering Circular at ii-iv (emphasis added).)

16. The Subscription Agreement also contains representations and warranties that were required of each Plaintiff before they were permitted to invest. Among the representations each Plaintiff made were: (1) that each Plaintiff was aware that an investment in the partnership was “highly speculative” and subject to “substantial risks”; (2) that NRMH had no history of achieving revenues and that the estimated returns were uncertain and the actual results “could vary in a materially adverse manner”; (3) that each Plaintiff, in making the decision to invest, relied on his/her own independent investigation; and (4) that each Plaintiff either read and

understood English or had the Subscription Agreement translated by a trusted advisor into a language that the Plaintiff understood. (Subscription Agreement § II.)

17. Section III of the Subscription Agreement is captioned “Risk Factors” and repeats multiple times many of the same warnings listed above. Notably, Plaintiffs were told that “[n]o assurances can be made that [the general partner’s] forecasts will prove to be accurate, and investors are cautioned against placing excessive reliance on such forecasts in deciding whether to invest in the Partnership.” (Subscription Agreement § III(B).)<sup>4</sup>

18. Plaintiff Weiguo testified that he was aware that the Project was a high-risk investment and that the EB-5 program did not permit NRMH to guarantee repayment. (Weiguo Dep. 219:11-17.) While he believes that the Contract guaranteed repayment of his investment, (Weiguo Dep. 219:18-21), Plaintiff Weiguo admits that he never actually read the Contract. (Weiguo Dep. 221:14-16.)

19. Plaintiff Weiguo acknowledges receiving K-1 forms from NRMH showing a loss for the Project each year. (Weiguo Dep. 135:3-7.) He alleges that the annual loss to each investor was consistently approximately \$1,500.00. (Second Am. Compl. ¶ 98.)

20. Plaintiff Weiguo has yet to receive any payments from NRMH. Additionally, Plaintiff Weiguo has not received a marina slip or two hotel rooms. However, Plaintiff Weiguo did receive his conditional green card on 28 December

---

<sup>4</sup> The Subscription Agreement that was filed as an exhibit to the Second Amended Complaint omits page 75, apparently in error. A complete copy of the Subscription Agreement can be found at First Am. Compl. Ex F, ECF No. 26.1 (under seal).



2014, and his permanent green card on or around 26 March 2019, as a result of his participation in the Project. (Weiguo Dep. 125:23-128:4.)

21. Plaintiff Yongjie signed the Contract on 19 December 2011. (Second Am. Compl. ¶ 91(c).) He refused to appear for a deposition, but he did respond to interrogatories, which he verified, and to requests for admission. (Defs.' Memo Supp. Motion SJ Exs. D, E, ECF Nos. 233.4, 233.5.)

22. The Partnership Agreement and the Subscription Agreement were both included as exhibits to the Offering Circular, which contained additional background information regarding the Project. The Offering Circular was distributed to each Plaintiff. It states in relevant part:

The information in this Offering Circular is furnished on a confidential basis exclusively for your use and retention and, by accepting this Offering Circular, you agree not to transmit, reproduce or make available to any other person (other than your legal, tax, accounting, and other advisers) all or any part of this Offering Circular without the General Partner's express written permission.

(Offering Circular at i.)

23. Similarly, the Subscription Agreement states:

**B. Confidentiality.** The undersigned acknowledges that the information contained in this Subscription Agreement and in the Offering Circular, and which the undersigned receives orally or in writing from the Partnership is confidential and non-public and agrees that all such information shall be kept in confidence by the undersigned unless disclosure is otherwise required by law or court order.

(Subscription Agreement § V(B).)

24. Plaintiffs included the Offering Circular, with the Partnership Agreement and the Subscription Agreement attached, as an exhibit to their First

Amended & Verified Complaint, which they filed in unredacted form on the public docket on 3 February 2022. (First Am. & Verif. Compl., ECF No. 26.)<sup>5</sup>

## II. PROCEDURAL HISTORY

25. After the filing of a Second Amended and Verified Complaint, (*see* ECF No. 88), the NRMH Defendants<sup>6</sup> and Defendant Jiangkai Wu separately filed motions to dismiss pursuant to Rules 12(b)(6) and 9(b). (*See* Defs.’ Mot. Dismiss Pursuant N.C. R. Civ. P. 12(b)(6), 9(b), N.C.G.S. § 1-52, ECF No. 92; Def. Jiankai “Samson” Wu’s Mot. Dismiss Second Am. Compl., ECF No. 95.) Following briefing and a hearing on the motions, the Court entered an order dismissing a number of the claims. *See He Chi v. N. Riverfront Marina Hotel LLLP*, 2023 NCBC LEXIS 89 (N.C. Super. Ct. July 27, 2023). Subsequently, beginning in December 2023 and continuing through January 2024, the majority of Plaintiffs filed stipulations indicating that they had voluntarily dismissed their claims with prejudice. (Stip. Vol. Dism. With Prej., ECF Nos. 177-180, 198-211.)

26. As a result, the two remaining claims are: (1) Plaintiff Weiguo’s breach of contract claim against WRD, and (2) his claim for conversion against Schoninger and WRD.<sup>7</sup>

---

<sup>5</sup> Months later, Plaintiffs moved to seal portions of their filings, and the motion was granted. (Order on Pls.’ Motions to File Verified Complaints Under Seal, ECF No. 94.)

<sup>6</sup> At the time, the NRMH Defendants included NRMH; NRMH Holdings, LLC; NRMH Hotel Holdings LLC; USA Investco, LLC; Riverfront Holdings II, LLC; WRD; Golden Marina, LLC; Circle Marina Carwash, Inc.; Schoninger; John C. Wang; and Christopher Ardan.

<sup>7</sup> In addition, a demand for inspection survived as to nine Plaintiffs. Plaintiff Weiguo was not among them. (Decl. Katherine Burghardt Kramer ¶¶ 6-10, ECF No. 137.)

27. In addition, NRMH and WRD have asserted a counterclaim for breach of contract resulting from Plaintiff Weiguo and Plaintiff Yongjie’s “filing upon the public record numerous accounts of oral and written communications and information relating to the [Project],” including the Offering Circular and the Subscription Agreement in violation of nondisclosure provisions in the Contract. (Counterclaim at ¶¶ 10-15.)

28. On 29 February 2024, the Court permitted counsel for Plaintiff to withdraw. (Order Withdrawal Pls.’ Counsel, ECF No. 218.) Plaintiffs Weiguo and Yongjie proceeded *pro se*. Subsequently, Plaintiff Yongjie’s claims against the NRMH Defendants were dismissed without prejudice. (Order on NRMH Defs.’ Motion Contempt and Sanctions Against Pl. Cao Yongjie, ECF No. 231.) The counterclaim against Plaintiff Yongjie, as well as Plaintiff Weiguo, remains pending.

29. In accordance with the Third Amended Case Management Order, the NRMH Defendants filed the instant Motion and its supporting brief on 26 June 2024, (ECF Nos. 232, 233). Plaintiffs Weiguo and Yongjie had until 26 July 2024 to file a responsive brief, but neither did. Accordingly, the Court treats the Motion as uncontested pursuant to BCR 7.6.

### **III. LEGAL STANDARD**

30. Summary judgment is only appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that [the movant] is entitled to a judgment as a matter of law.” N.C. R. Civ. P. 56(c).

31. Genuine issues of material fact are those “which can be maintained by substantial evidence.” *Kessing v. Nat’l Mortg. Corp.*, 278 N.C. 523, 534 (1971). “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.” *Daughtridge v. Tanager Land, LLC*, 373 N.C. 182, 187 (2019) (citation and internal quotation marks omitted).

32. In reviewing a motion for summary judgment, the Court must consider all evidence in the light most favorable to the non-moving party. *Belmont Ass’n v. Farwig*, 381 N.C. 306, 310 (2022) (citing *Dalton v. Camp*, 353 N.C. 647, 651 (2001)). Parties moving for summary judgment have “the burden of establishing the lack of any triable issue of fact.” *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491 (1985).

33. A movant may satisfy its burden by proving that “an essential element of the opposing party’s claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of [the] claim.” *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (citations omitted).

34. Should the movant satisfy its burden, “then the burden shifts to the non-moving party to ‘set forth specific facts showing that there is a genuine issue for trial.’” *Lowe v. Bradford*, 305 N.C. 366, 369-70 (1982) (quoting N.C. R. Civ. P. 56(e)). In doing so, the non-moving party may not rest upon his pleadings. *Id.* at 370. Instead, “[t]he non-moving party ‘must come forward with facts, not mere allegations,

which controvert the facts set forth in the moving party's case.' ” *Ward v. Kantar Operations*, 209 N.C. App. 448, 450 (2011) (quoting *Econo-Travel Motor Hotel Corp. v. Taylor*, 301 N.C. 200, 204 (1980)). If the nonmoving party does not satisfy its burden, then summary judgment, if appropriate, shall be entered against the nonmovant. N.C. R. Civ. P. 56(e).

35. Affirmative summary judgment on a party's own claims for relief carries an even greater burden. *Brooks v. Mount Airy Rainbow Farms Ctr., Inc.*, 48 N.C. App. 726, 728 (1980). The moving party “must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by the jury.” *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985).

#### IV. ANALYSIS

##### A. Plaintiff Weiguo's Breach of Contract Claim Against WRD

36. Plaintiff Weiguo alleges that WRD breached the Subscription Agreement by “obtaining and transferring title to the Project Property after the commencement of the Investment Term to entities other than NRMH, failing to remit the 1% per annum Preferred Return for the duration of the Investment Term, failing to provide partial repayment of Plaintiff[s] capital contribution in accordance with the LP Property Rights agreement incorporated into the Subscription[] [Agreement] by executing the Quit Claim deeds, failing to provide any return of investment capital to Plaintiff[] at the expiration of the Investment Term, and by successfully operating

the Marina for more than six (6) years without remitting the 10% *pro rata* allocation of profits to Plaintiff[], as [a] limited partner[] of NRMH.” (Second Am. Compl. ¶ 156.)

37. However, when deposed, Plaintiff Weiguo was unable to identify any term of the Contract that had been breached. (Weiguo Dep. 210:1-5.) He admitted that he received his visa and that he knew the risks of investing in the Project, including the risk that he might never be repaid. (Weiguo Dep. 126:19-127:21, 219:11-17.) Accordingly, WRD argues that summary judgment should be granted in its favor. (Defs.’ Mem. Supp. Mot. for Summ. J. (“Defs.’ Br.”) 13-17, ECF No. 233.)

38. There are only two elements for a claim for breach of contract: “(1) existence of a valid contract and (2) breach of the terms of that contract.” *Poor v. Hill*, 138 N.C. App. 19, 26 (2000) (citing *Jackson v. Cal. Hardwood Co.*, 120 N.C. App. 870, 871 (1995)).

39. “Under the general rules of contract construction, where an agreement is clear and unambiguous, no genuine issue of material fact exists and summary judgment is appropriate.” *Carolina Place Joint Venture v. Flamers Charburgers, Inc.*, 145 N.C. App. 696, 699 (2001) (citing *Corbin v. Langdon*, 23 N.C. App. 21, 27 (1974)).

40. As stated above, the Subscription Agreement repeatedly warns about the risk of loss and contains no guarantee on investment. The merger clause in that agreement forecloses the possibility of a guarantee originating in another agreement. Allegations in the Second Amended Complaint are not enough, standing alone, to defeat a motion for summary judgment.

41. Further, Section 7.4 of the Partnership Agreement expressly states that WRD “does not, in any way, guarantee the return of a Partner’s Capital Contribution, the Preferred Return, or any profit from the operations of the Partnership.” The Subscription Agreement contains a similar provision in Section III(J): “[T]he General Partner shall not be liable to the Limited Partners for any loss or liability incurred in connection with the affairs of the Partnership, so long as such loss or liability did not result from willful misconduct or gross negligence.”

42. Given the plain language of the Contract, as well as Plaintiff Weiguo’s testimony, the Court concludes that no genuine issue of material fact exists with respect to Plaintiff Weiguo’s breach of contract claim, and WRD is entitled to summary judgment.

B. Plaintiff Weiguo’s Conversion Claim Against WRD and Schoninger

43. Plaintiff Weiguo alleges that “the wrongful retention by Defendants [WRD and Schoninger] and their ongoing refusal to return [his] capital contribution[] after the expiration of the Investment Terms while continuing efforts to wrongfully extend those Investment Terms, constitutes a claim of dominion and control on these Defendants’ part, and a substantial interference with Plaintiff[s] possessory rights in same.” (Second Am. Compl. ¶ 172.)

44. WRD and Schoninger respond that summary judgment is appropriate with respect to any claim for conversion of Plaintiff Weiguo’s capital contribution because, on behalf of NRMH, they took lawful possession of Plaintiff’s investment

capital under the terms of the Contract, and no return was guaranteed. (Defs.' Br. 17-20.)

45. Under North Carolina law, conversion “is defined as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner’s rights.” *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 51, at \*15 (N.C. Super. Ct. June 9, 2017) (internal quotation marks and citation omitted). The claim requires a plaintiff to prove “both ownership in himself and the wrongful possession or conversion of the property by the defendant.” *Gadson v. Toney*, 69 N.C. App. 244, 246 (1984).

46. Here, the evidence is that Plaintiff Weiguo decided to invest his money in a partnership interest in NRMH. He has admitted that he knew this investment had risks, including the possibility that it would not produce the expected return. Further, when asked directly, Plaintiff Weiguo testified that he did not “remember clearly” any facts that supported a claim for conversion. (Weiguo Dep. 224:13-21.)

47. Accordingly, WRD and Schoninger are entitled to summary judgment with respect to this claim.

#### C. WRD and NRMH’s Counterclaim Against Plaintiffs Weiguo and Yongjie

48. Finally, WRD and NRMH move for affirmative summary judgment with respect to their counterclaim for breach of contract. The claim results from Plaintiffs’ decision to publish confidential information regarding the Project, including the



Offering Circular and Subscription Agreement, by filing the information in the public record without the express written permission of WRD, the general partner.

49. The record is clear that both Plaintiff Weiguo and Plaintiff Yongjie verified the First Amended Complaint and were aware of its contents prior to its filing. The language of the Contract plainly required each of them to keep confidential and not publicize the Offering Circular, Subscription Agreement, or other confidential information regarding the Project, whether received orally or in writing from the Partnership, unless disclosure was required by law or court order. Plaintiffs failed to move to seal their First Amended Complaint and its exhibits, and instead decided to file them without redaction on the public record. There being no genuine issue of material fact with respect to this claim, WRD and NRMH are entitled to summary judgment in their favor.

## V. CONCLUSION

50. For the foregoing reasons, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

- i. WRD's Motion for Summary Judgment with respect to Plaintiff Weiguo's Breach of Contract claim is **GRANTED**, and the claim is dismissed with prejudice;
- ii. WRD and Schoninger's Motion for Summary Judgment with respect to Plaintiff Weiguo's Conversion claim is **GRANTED**, and the claim is dismissed with prejudice;

- iii. WRD and NRMH's Motion for Summary Judgment with respect to their Breach of Contract Counterclaim is **GRANTED**; and
- iv. By separate order, the Court shall set a date for a jury trial to determine damages with respect to WRD and NRMH's counterclaim.

**SO ORDERED**, this the 10th day of September, 2024.

/s/ Julianna Theall Earp  
Julianna Theall Earp  
Special Superior Court Judge  
for Complex Business Cases