

In re Se. Eye Ctr. (Pending Matters); In re Se. Eye Ctr. (Judgments); In re The Foreclosure of Deed of Tr. Executed by Historic Castle McCulloch, LLC Dated September 30, 2004, 2024 NCBC 87.

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 1648

IN RE SOUTHEASTERN EYE
CENTER – PENDING MATTERS

GUILFORD COUNTY

12 CVS 11322

IN RE SOUTHEASTERN EYE
CENTER – JUDGMENTS

ORDER AND OPINION ON ACCOUNTING
(OLD BATTLEGROUND v. CCSEA)

1. **THIS MATTER** is before the Court, sitting as a master in equity and having conducted a two-day evidentiary hearing to consider the objections filed by Plaintiff Nivison Family Investments, LLC (“NFI”) and Plaintiff Old Battleground Properties, Inc. (“OBP”) (together with Arthur Nivison, the “Nivison Parties”) and by Gerald A. Jeutter, Jr. (the “Receiver”), as Receiver for JDPW Trust U/T/A Dated June 8, 2007 (“JDPW” or “JDPW Trust”), to the accounting filed on 10 October 2022 by Douglas S. Harris (“Doug Harris”), as JDPW’s former trustee, pursuant to court order in the above-captioned actions (the “Accounting Proceeding”).¹

2. Having considered all of the relevant and admissible evidence presented at the evidentiary hearing in the Accounting Proceeding, the arguments of counsel at the evidentiary hearing, the parties’ briefs in support of and in opposition to the

¹ For ease of reference, all ECF citations in this Order are to the Court’s electronic docket in Wake County 15 CVS 1648 unless otherwise specified. Unless otherwise defined, the capitalized terms in this Order and Opinion refer to those terms as used in the Purchase Agreement, which is more specifically defined below.

parties' respective positions on the matters at issue in the Accounting Proceeding, the relevant pleadings, and other appropriate matters of record, the Court, in the exercise of its discretion, hereby makes the following findings of fact and conclusions of law and enters final judgment against Doug Harris as set forth below.

Smith Debnam Narron Drake Saintsing & Myers, LLP, by Byron L. Saintsing, for Plaintiff Nivison Family Investments, LLC, Plaintiff Old Battleground Properties, Inc., and Arthur Nivison.

Oak City Law LLP, by Robert E. Fields III and Samuel Pinero II, for Gerald A. Jeutter, Jr., as Receiver for JDPW Trust U/T/A Dated June 8, 2007.

*Douglas S. Harris, Pro se.*²

Bledsoe, Chief Judge.

² Richard L. Pinto of Pinto Coates Kyre & Bowers, PLLC stated at the evidentiary hearing in the Accounting Proceeding on 26 September 2024 that he was “observing” the hearing for his clients, Richard Harris, Historic Castle McCulloch, LLC, and Castle McCulloch, Inc. (the “CM Defendants”). (Sept. 26, 2024 Hr’g Tr. 6:24–25 [hereinafter, “Acct’g Proc. Tr. Day One”], ECF No. 1653.) Similarly, Kenneth Kyre, Jr. of the same firm stated at the evidentiary hearing in the Accounting Proceeding on 7 November 2024 that he was an “observer” at the hearing on behalf of the same clients. (Nov. 7, 2024 Hr’g Tr. 259:8–14 [hereinafter, “Acct’g Proc. Tr. Day Two”], ECF No. 1666.) Mark McDaniel (“McDaniel”) stated at the hearing on 26 September 2024 that he was present as “a witness and assistant to Doug Harris,” (Acct’g Proc. Tr. Day One 6:21–22), and announced at the proceeding on 7 November 2024 that he was present “as a witness.” (Acct’g Proc. Tr. Day Two 259:6–7.) Notwithstanding the stated appearances above, the Court notes that the CM Defendants have frequently participated in matters in this litigation as either party-defendants or interested parties. McDaniel has likewise frequently participated in these proceedings as an intervenor-defendant.

FINDINGS OF FACT³

3. By way of relevant background, JDPW was established on 8 June 2007 and placed in receivership on 28 April 2016,⁴ at which time the Court appointed the Receiver to serve as the receiver for JDPW.⁵ Prior to the Receiver's appointment, Doug Harris served as trustee for JDPW from 8 June 2007 through 28 April 2016.⁶

4. In deciding various motions for summary judgment in these actions by order and opinion dated 7 May 2019, the Court concluded that Doug Harris owed a fiduciary duty to JDPW, noting that “[u]nder North Carolina law, a trustee under any trust is a fiduciary and owes certain duties to the beneficiaries of that trust. A breach of these fiduciary duties is considered a breach of trust.”⁷

5. On 21 March 2022, the Receiver filed a Motion for Doug Harris to Account.⁸

6. After full briefing and hearing, on 10 August 2022, this Court found in its Order on the Receiver's Motion for Doug Harris to Account (the “Order to Account”) that “principles of equity and the interests of the administration of justice require[d]

³ Any Findings of Fact that are more appropriately deemed Conclusions of Law are incorporated by reference into the Court's Conclusions of Law.

⁴ (*See generally In re Se. Eye Ctr.—Pending Matters*, 2016 N.C. Super. LEXIS 43 (N.C. Super. Ct. Apr. 28, 2016) [hereinafter, the “JDPW Receivership Order”].)

⁵ (JDPW Receivership Order, Order for Relief ¶ 2.)

⁶ (JDPW Receivership Order, Findings Fact ¶ 3.)

⁷ (*In re Se. Eye Ctr.—Pending Matters*, 2019 NCBC LEXIS 29, at *178 (¶ 293) (N.C. Super. Ct. May 7, 2019) [hereinafter, “May 2019 Order”].)

⁸ (Mot. for Order for Doug Harris to Acct. (*Old Battleground v. CCSEA*), ECF No. 1465.)

that the Receiver’s Motion should be granted”⁹ and ordered Doug Harris to file an accounting “setting forth the assets, income, and expenses of JDPW Trust during his service as trustee that includes a statement of all of JDPW’s receipts and disbursements, a listing of all of JDPW’s assets and liabilities, and a statement reflecting JDPW’s acquisition and disposition of all of its assets.”¹⁰ The Court further required Doug Harris to “submit or make available original source documents (vouchers, bills, cancelled checks, etc.) so that the items listed in the accounting may be verified.”¹¹ Finally, the Court provided a timetable for objection and response and ordered that “the Court shall sit as a master in equity to resolve any objections to Doug Harris’s accounting in accordance with the law and the evidence[.]”¹²

7. On 10 October 2022, Doug Harris timely filed his Accounting Report Regarding JDPW Trust (the “Accounting”).¹³ In that Accounting, Doug Harris stated in Section I that “JDPW Trust has never held any funds or property in its possession.”¹⁴ In Section III.C., he elaborated that “[d]uring the period that Doug Harris was in charge of JDPW Trust from June 8, 2007 until 28 April 2016, JDPW

⁹ (Order Receiver’s Mot. Doug Harris to Acct. (*Old Battleground v. CCSEA*) ¶ 13 [hereinafter, “Mot. Acct. Order”], ECF No. 1503.)

¹⁰ (Mot. Acct. Order ¶ 20(a).)

¹¹ (Mot. Acct. Order ¶ 20(a).)

¹² (Mot. Acct. Order ¶¶ 20(b)–(d).)

¹³ (Tr. Douglas S. Harris’s Acct’g Rep. re JDPW Tr. [hereinafter, “D. Harris Acct’g”], ECF No. 1511.)

¹⁴ (D. Harris Acct’g Sec. I.)

had no receipts and made no disbursements. During the same period, JDPW had no income and no expenses.”¹⁵

8. On 9 November 2022, the Receiver¹⁶ and the Nivison Parties¹⁷ timely filed objections to the Accounting (the “Objections”). The Receiver objected to Doug Harris’s Accounting on the grounds that “Harris has not accounted for his dissipation of [] four notes obtained by JDPW from NewBridge Bank without any benefit being received by JDPW in exchange.”¹⁸ The Receiver requested that Doug Harris be held responsible for dissipating the four notes by requiring him to pay an amount equivalent to what would be the current outstanding balance for those four notes.¹⁹ The Nivison Parties raised substantially the same issues as the Receiver in their objections.²⁰

9. Doug Harris responded to the Objections on 30 November 2022, asserting that (a) one of the notes, the Castle McCulloch Note (or “CM Note”),²¹ was a “.00 balance note” when acquired because NewBridge Bank (formerly FNB Southeast, the

¹⁵ (D. Harris Acct’g Sec. III.C.)

¹⁶ (JDPW Obj. Harris Acct’g (*Old Battleground v. CCSEA*) [hereinafter, “JDPW Acct’g Obj.”], ECF No. 1520.)

¹⁷ (Resp. Nivison Parties to Tr. Douglas S. Harris’ Acct’g Rep. re JDPW Tr. [hereinafter, “Nivison Acct’g Resp.”], ECF No. 1517.)

¹⁸ (JDPW Acct’g Obj. 1.)

¹⁹ (JDPW Acct’g Obj. 8.)

²⁰ (*See* Nivison Acct’g Resp. 1–2, 4.)

²¹ (Def. Harris’s Resp. JDPW’s Obj. Harris’s Acct’g 6–7, ECF No. 1527; *see infra* ¶¶ 52–55 and related footnotes.)

“Bank”)²² allocated to the CM Note in its internal accounting records a portion of the approximately \$2.1 million JDPW paid for the four notes that was equal to the outstanding balance of the CM Note, and (b) after 9 January 2015, he could not collect on the three other notes, which were owed by Central Carolina Surgical Eye Associates, P.A. (“CCSEA”),²³ because Superior Court Judge Howard Manning ordered those notes transferred to NFI in early January 2015 (the “CCSEA Notes”; together with the “Castle McCulloch Note” or the “CM Note,” the “Notes”).²⁴

10. The Court thereafter ordered briefing on the Objections, and after briefing was complete, the Court entered an Order dated 9 March 2023²⁵ deferring consideration of the Objections pending resolution of an interlocutory appeal by Doug Harris and Mark McDaniel (“McDaniel”)²⁶ of the Court’s Order and Opinion entered in these actions on 26 April 2021²⁷ and amended on 6 January 2022²⁸ resolving

²² In November 2007, NewBridge Bank formed from the merger of Lexington State Bank and FNB Southeast.

²³ CCSEA is an entity owned by Dr. C. Richard Epes and Dr. John D. Matthews. *In re Se. Eye Ctr.—Pending Matters*, 2016 NCBC LEXIS 57, at *3 (N.C. Super. Ct. Jul. 22, 2016).

²⁴ (Def. Harris’s Resp. JDPW’s Obj. Harris’s Acct’g 7–8; see *Nivison Fam. Invs., LLC v. Harris*, 2015 N.C. Super. LEXIS 87 (N.C. Super. Ct. Jan. 9, 2015).)

²⁵ (Order on Objs. Harris’s Acct’g for JDPW Tr., ECF No. 1541.)

²⁶ Between 2004 and 2015, Mark McDaniel negotiated a number of loans, payment arrangements, and other financial matters on behalf of Dr. C. Richard Epes and his corporations and businesses. (Aug. 22, 2024 Hr’g Tr. 100:19–101:1, ECF No. 1638.)

²⁷ (Order & Op. on Mots. for Summ. J. or Partial Summ. J. (*Old Battleground v. CCSEA*), ECF No. 1413.)

²⁸ (*In re Se. Eye Ctr.—Pending Matters*, 2021 NCBC LEXIS 43 (N.C. Super. Ct. Jan. 6, 2022) [hereinafter, the “Jan. 2022 Am. Order”].)

various motions for summary judgment and partial summary judgment as well as certain aspects of the Receiver's administration of the Receivership. The Supreme Court dismissed the appeal on 12 October 2023.²⁹

11. By order dated 15 August 2024, the Court consolidated the Accounting Proceeding in these actions into *In Re: The Foreclosure of Deed of Trust of Historic Castle McCulloch, LLC Dated September 30, 2004* (Guilford County 23 SP 1872) (the "Foreclosure Proceeding") for the limited purpose of receiving evidence and argument on and determining whether the Castle McCulloch Note has been satisfied.³⁰ On 22 August 2024, after full briefing, the Court held a *de novo* hearing on the Receiver's Notice of Appeal from the Guilford County Clerk's Order denying JDPW Trust's request to allow a foreclosure sale under the power of sale in the Castle McCulloch Deed of Trust.³¹

12. Following additional briefing, the Court set the Objections on for an evidentiary hearing with the Court sitting as a master in equity. The Parties have made voluminous written and document submissions to the Court, and the Court held a two-day evidentiary hearing (the "Hearing") in this Accounting Proceeding on 26 September 2024 and 7 November 2024. The Receiver, the Substitute Trustee of

²⁹ (Order, Supreme Court of North Carolina, ECF No. 1549.)

³⁰ (Ltd. Consolidation Order & Am. Not. Hr'g, ECF Nos. 1623 (15 CVS 1648), 723 (Guilford County 12 CVS 11322), 52 (Guilford County 23 SP 1872).)

³¹ (See Findings Fact, Conclusions L. & Final J. on Foreclosure Appeal (23 SP 1872), filed contemporaneously herewith [hereinafter, "Foreclosure Proceeding Judgment"], ECF No. 1686.)

JDPW Trust, and the Nivison Parties were represented by counsel at the Hearing. Doug Harris appeared *pro se*. The Receiver, McDaniel, Doug Harris, and Tom Harper³² appeared and testified. The Court has received post-Hearing briefs and submissions, and the matter is now ripe for determination.

13. After careful and deliberate review, the Court concludes that the evidence of record establishes the following:

14. In 2012, Doug Harris saw JDPW as a potential vehicle to aid in a plan to refinance the CM Note and the CCSEA Notes, specifically to help his brother, Richard Harris, reorganize his businesses and minimize tax consequences.³³ During this time, Richard Harris had retained Doug Harris, a licensed attorney, to represent him and his businesses in negotiating the refinancing deal.³⁴ Doug Harris's plan entailed JDPW purchasing the CM Note and CCSEA Notes from the Bank, with that purchase to be funded by a loan from one or more of the Nivison Parties.

15. Accordingly, on 27 July 2012, the Bank entered into a written Note Purchase and Sale Agreement (the "Purchase Agreement") with JDPW Trust agreeing to

³² Thomas Oliver Harper, III is a licensed attorney who represented Arthur Nivison and his companies during the period relevant to the matters at issue in these actions. (Acct'g Proc. Tr. Day Two 390:19–392:4.)

³³ (See Not. Filing Dep. D. Harris & Exs. [hereinafter, "Rcvr. Ex. Filing"], Dep. Doug Harris, Vols. 1–4, Pages 1–1085, dated Mar. 19, 2015, 229:1–25, 829:17–830:14 [hereinafter, "D. Harris Dep."], ECF No. 1667.1.) The deposition of Doug Harris was taken over four non-consecutive days: Volume 1 dated 19 March 2015, pages 1–254; Volume 2 dated 1 April 2015, pages 255–574; Volume 3 dated 26 May 2016, pages 575–896; and Volume 4 dated 17 June 2016, pages 987–1085.

³⁴ (See D. Harris Dep. 229:7–12; Rcvr.'s Answer to Cross-cls. of CM Entities & Cross-cls. against D. Harris ¶ 434, ECF No. 716; D. Harris's Answer Cross-Cls. JDPW Tr., CCSEA & DRE & D. Harris's Cross-cls. ¶ 434, ECF No. 739.)

transfer the CM Note, the CCSEA Notes, and all related loan documents (the “Loan Documents”) to JDPW for the Original Purchase Price with a warranted Outstanding Balance.³⁵ The purchase was originally scheduled to close on 20 August 2012. This agreement was executed on behalf of JDPW by Doug Harris.³⁶

16. On 20 August 2012, the Bank and JDPW agreed to a Note Purchase and Sale Modification Agreement (the “Modification Agreement”), changing the purchase price for the Notes and Loan Documents to \$2,126,834.09 (the “Purchase Price”) and postponing the closing date to 21 September 2012. The Modification Agreement was executed by Doug Harris on behalf of JDPW.³⁷

17. The CM Note was one of the Notes to be transferred under the Purchase Agreement. The CM Note was a promissory note dated 30 September 2004,³⁸ which was executed by Historic Castle McCulloch, LLC (“HCM”), Castle McCulloch, Inc. (together with HCM, the “Castle McCulloch Entities” and with Richard Harris, the “Castle McCulloch Defendants”), and NSITE Management LLC (“NSITE”) in the

³⁵ (See Rcvr. Ex. Filing, Harris PX-31, Note Purchase & Sale Agreement ¶ 1, ¶ 7(d) [hereinafter, “Note Purch. & Sale Agmt.”], ECF No, 1667.32.)

³⁶ (Note Purch. & Sale Agmt.)

³⁷ (Rcvr. Ex. Filing, Harris PX-32, Modification to Note Purchase & Sale Agreement [hereinafter, “Mod. Agmt.”], ECF No, 1667.33.)

³⁸ The Court notes that, although the Receiver has identified the date of the CM Note as 24 September 2024, (see Receiver’s & Nivison Parties’ Joint Proposed Findings of Fact & Conclusions of L. Acct’g Proc. ¶ 5, ECF No. 1676), the Note reflects on its face that its date is 30 September 2024, (see Rcvr. Ex. Filing, Harris PX-37, Com. Promissory Note [hereinafter, “CM Note”], ECF No. 1667.38.)

amount of \$2,145,000.00. The CM Note: (a) bore number 5305802;³⁹ (b) was executed by McDaniel for NSITE and HCM and by Richard Harris for Castle McCulloch, Inc. and (c) was secured by a deed of trust also dated 30 September 2004 (the “Castle McCulloch Deed of Trust” or the “CM Deed of Trust”).⁴⁰ HCM was the grantor of the CM Deed of Trust (i.e., the mortgagor), which contained a power-of-sale provision that allowed the lender (or holder of the Note) (i.e., the mortgagee) to foreclose on the Castle McCulloch property (the “CM Property”)⁴¹ in the event of a default on the CM Note.⁴² The Bank was the payee on the CM Note and the grantee on the CM Deed of Trust.⁴³

18. The three other Notes were executed by CCSEA. Two of these promissory notes were executed on 29 October 2007 in favor of FNB Southeast, NewBridge Bank’s predecessor. One was in the principal amount of \$100,000 (Loan No. 6846670101),⁴⁴ and the other was in the principal amount of \$2,450,000 (Loan No. 6846679001).⁴⁵ The third CCSEA note was executed on 6 March 2008 in favor of the

³⁹ The Bank’s loan number for the CM Note was 04753419001.

⁴⁰ (Rcvr. Ex. Filing, Harris PX-34, Assignment of Sec. Instruments [hereinafter, “Assign. Sec. Instruments”], ECF No. 1667.35; *see also* Rcvr. Ex. Filing, Harris DX-145, Real Est. Deed of Tr., ECF No. 1667.144.)

⁴¹ The CM Property is located at 3923-3925 Kivett Drive, Jamestown, North Carolina. (Aff. Richard Harris, dated 6 Mar. 2024, ¶ 1, ECF No. 21 (23 SP 1872).)

⁴² (Rcvr. Ex. Filing, Harris DX-145, Real Est. Deed of Tr. ¶ 16.)

⁴³ (*See* CM Note.)

⁴⁴ (Note Purch. & Sale Agmt., Schedule A.)

⁴⁵ (Note Purch. & Sale Agmt., Schedule A.)

Bank in the principal amount of \$117,850 (Loan No. 06846679002).⁴⁶ The three CCSEA Notes were secured by equipment and vehicles.⁴⁷

19. The Notes and the related Loan Documents provided that, in exchange for approximately \$2.1 million⁴⁸ from JDPW, the Bank would sell and assign to JDPW the four Notes with a warranted outstanding unpaid balance as of Closing⁴⁹ equal to at least \$3,350,139.39.⁵⁰

20. On 21 September 2012, in fulfillment of its obligations under the Purchase Agreement, the Bank executed in favor of JDPW a Bill of Sale and Assignment of Loan Documents (“Assignment of Notes”) that included the CM Note and the CM Deed of Trust⁵¹ and a separate Assignment of Security Interests (“Assignment of CM Security”) for the CM Deed of Trust and related Collateral,⁵² which was recorded with the Guilford County Register of Deeds. The Bill of Sale was signed by the Bank and

⁴⁶ (Note Purch. & Sale Agmt. Schedule A.)

⁴⁷ (Rcvr. Ex. Filing, Harris PX-35, Bill of Sale & Assignment of Loan Documents [hereinafter, “Bill Sale Assign. Loan Docs.”], Schedule A, ECF No. 1667.36; HCM Not. Filing Ev. App. Hr’g, Ex. 29.1, Aff. April Cassidy, dated July 19, 2016 (+2 CDs), YB 00306–07, 00309, 00314 [hereinafter, “Cassidy Aff.”], ECF No. 29.1 (23 SP 1872).)

⁴⁸ The actual amount Nivison transferred to the Bank on behalf of JDPW was \$2,101,834.35. (See Rcvr. Ex. Filing, Harris 127, Closing Statement, ECF No. 1667.126.) The parties’ and the Court’s convention in this case has been to reference the Nivison loan to JDPW as a \$2.1 million loan, rather than to identify the loan by its precise amount. The Court will use this convention from time to time in this Order and Opinion.

⁴⁹ (See Note Purch. & Sale Agmt. ¶ 8.)

⁵⁰ (Mod. Agmt. ¶ 2; Note Purch. & Sale Agmt. ¶ 7(d).)

⁵¹ (Bill Sale Assign. Loan Docs.)

⁵² (Assign. Sec. Instruments; see Note Purch. & Sale Agmt. ¶ 1.)

notarized by the Bank's attorney, Donald VonCannon, on 21 September 2021.⁵³ The Assignment of Notes and the Assignment of CM Security were notarized on 21 September 2012 and, by their terms, were "as of" 21 September 2012 and "[e]ffective as of" 21 September 2012, respectively.⁵⁴

21. The Bank also executed an Allonge in favor of JDPW for the CM Note "[e]ffective as of" 21 September 2012.⁵⁵ The Allonge changed the "Pay to the Order of" directions on the CM Note from the Bank to "Douglas Steven Harris, Trustee of the JDPW Trust," "[e]ffective as of" 21 September 2012.⁵⁶ The Bank likewise issued Allonges for each of the CCSEA Notes directing that payment on those Notes thereafter be made to JDPW.⁵⁷

22. In addition, the Bank issued a document titled *Important Notice Regarding Your NewBridge Bank Loan* to the obligors on each of the Notes ("Notice of Transfer").⁵⁸ Each Notice of Transfer stated, in relevant part, that:

Effective September 21, 2012 (the "Transfer Date"), the above-referenced loans with NewBridge Bank was [sic] sold to DOUGLAS STEVEN HARRIS, TRUSTEE OF THE JDPW TRUST (the "Purchaser"). If you request or otherwise receive from NewBridge Bank a statement regarding your loan after the Transfer Date you might have

⁵³ (Bill Sale Assign. Loan Docs.)

⁵⁴ (Bill Sale Assign. Loan Docs.; Assign. Sec. Instruments.)

⁵⁵ (Rcvr. Ex. Filing, Harris PX-33, Allonge [hereinafter, "Allonge"], ECF No. 1667.34.) An allonge is a document that changes the "Pay to the Order of" directions in a promissory note.

⁵⁶ (Allonge.)

⁵⁷ (Rcvr. Ex. Filing, Harris PX-81–83, Allonge(s), ECF Nos. 1667.82–.84.)

⁵⁸ (See Note Purch. & Sale Agmt., Ex. "E".)

received inaccurate information. Please disregard such statement and contact the Purchaser for your balance information.

PAYMENTS:

Please do not send any future payments to NewBridge Bank after the Transfer Date. Sending payments to NewBridge Bank may delay the date such payment is credited to your loan. The Purchaser or its agent or affiliate will be contacting you shortly with specific instructions about where to send your payments[.]⁵⁹

23. There is no dispute that JDPW Trust entered into the Purchase Agreement for the purchase of the Notes or that the Bank executed the Bill of Sale, the Assignment of Notes, the Assignment of CM Security, or the Allonges for the Notes, and issued the Notices of Transfer. It is also undisputed that subsequent to the Transfer Date, no payments were made by anyone to JDPW as the holder of the CM Note and the three CCSEA Notes.

24. JDPW borrowed the money to pay for the four Notes from one or more of the Nivison Parties.⁶⁰ Specifically, on Friday, 21 September 2012, one of the Nivison Parties caused \$2.1 million to be wired to the Bank.⁶¹ The purpose of this wire was to fund, on behalf of JDPW, the Purchase Price under the Purchase Agreement to obtain transfer of the CM and CCSEA Notes and Loan Documents with outstanding

⁵⁹ (Cassidy Aff., YB 00892–95.)

⁶⁰ (Rcvr. Ex. Filing, Harris PX-52, Promissory Note, ECF No. 1667.53; Receiver’s Ex. 2, Tab 7, *see* ECF No. 1605.10.)

⁶¹ As noted above, the actual amount Nivison transferred to the Bank on behalf of JDPW was \$2,101,834.35. The wire transfer amount differs from the Purchase Price of \$2,126,834.09 due to a seller’s fee by NewBridge Bank of \$1,834.35, (Rcvr. Ex. Filing, Harris PX-5, e-mail, Sheridan to Beever, ECF No. 1667.6), and a \$25,000 deposit previously paid to NewBridge Bank (Mod. Agmt. ¶ 2.)

balances as warranted in the Purchase Agreement.⁶² Neither the Nivison Parties nor JDPW agreed or intended for this payment to be made in satisfaction of, or payment in whole or in part of, the then outstanding principal liability of the obligors under the CM Note.

25. The wire was sent after 5:00 PM on Friday, 21 September 2012 and was not received by the Bank until Monday, 24 September 2012.⁶³ The Bank delivered the Assignment of Notes, Assignment of CM Security, and the Allonges to Doug Harris as trustee of JDPW.⁶⁴ While there is conflicting testimony from Doug Harris as to when he received the closing documents from the Bank,⁶⁵ there is no dispute that he did in fact receive the documents. There is no evidence that the Bank has contested the Closing, has sought recovery of the Closing documents, or has behaved in any way inconsistent with the Purchase Agreement transaction. The Court finds that the Purchase Agreement transaction closed substantially in accordance with its terms.

26. On or about 25 September 2012, the Bank made entries in its internal accounting records applying the Purchase Price proceeds from the Purchase Agreement transaction to the accounts relating to the CM Note and the three CCSEA

⁶² (See Note Purch. & Sale Agmt., Recitals.)

⁶³ (Rcvr. Ex. Filing, Harris PX-30, e-mail, Harper to VonCannon, ECF No. 1667.31.)

⁶⁴ (Aff. Gerald A. Jeutter Jr., dated Mar. 3, 2024, ¶ 5, ECF No. 13.1 (23 SP 1872).)

⁶⁵ Doug Harris testified at his deposition that he received possession of all of the original NewBridge Bank Loan Documents as JDPW's trustee on 21 September 2012, (*see* D. Harris Dep. 242:1–10), but testified at the Hearing in September 2024 that he did not receive those documents until several days later. (*See* Acct'g Proc. Tr. Day One 42:8–16, 48:7–20, 54:6–16.)

Notes. Those internal accounting records show that the Bank allocated \$1,692,430.39 to the internal account for the CM Note and wrote off interest and late fees of \$64,839.77 and \$12,171.10, respectively.⁶⁶

27. Although Doug Harris and McDaniel contend that JDPW did not purchase the CM Note as part of this transaction and instead paid off the CM Note,⁶⁷ they each testified at deposition—testimony that was admitted as evidence at the Hearing—that none of the Notes were paid off and instead that all four Notes were purchased by and transferred to JDPW Trust. In particular, Doug Harris testified at his deposition that “[n]o loans were paid off . . . [t]hey were purchased,”⁶⁸ and he agreed that “the bank in fact assigned all four notes and other documents associated with those loans to JDPW Trust.”⁶⁹ He explained at length that the reason JDPW purchased the Notes and did not pay the notes off was to avoid negative tax consequences.⁷⁰ McDaniel testified to similar effect: “Well, no, [the Notes] weren’t

⁶⁶ (Rcvr. Ex. Filing, Harris DX-153, NewBridge Bank Paid Note Statement, ECF No. 1667.152.)

⁶⁷ (Acct’g Proc. Tr. Day One 72:20–25; Acct’g Proc. Tr. Day Two 303:6–22 (McDaniel claiming that JDPW purchased the CM Note as a “zeroed out mortgage.”))

⁶⁸ (See D. Harris Dep. 73:11–18; Receiver’s Ex. 3, Dep. James Mark McDaniel, Jr., dated Mar. 19, 2015, 111:16–112:3.)

⁶⁹ (See D. Harris Dep. 356:8–20.)

⁷⁰ (See D. Harris Dep. 29:11–14 (“It has tax consequences if you just write it off, and so that couldn’t be done. But if it could be sold to a third party, then there would be no write-off and there would be no tax consequences.”), 48:8–11 (“But there had to be a third party involved because my understanding is a bank can’t transfer—can’t reduce something like that directly to the same person, at least not without tax consequences and all that”), 82:14–16 (“So the only way this could work properly would be to sell it to some other legal entity that was not connected to them. Otherwise they would have tax consequences.”), 248:2–9 (“the loan was

being transferred. They were purchased.”⁷¹ The Court finds that Doug Harris’s and McDaniel’s recent testimony contradicts the testimony they previously provided the Court, is inconsistent with the transaction documents, is self-serving, and lacks credibility.

28. Similarly, the Court finds Doug Harris’s and McDaniel’s new-found contention that JDPW paid off the CM Note and thus received from the Bank a “zeroed out mortgage” lacking in credibility based on the documentary evidence of record, which does not lend any support to this contention. Indeed, other than to rely on the Bank’s post-receipt, internal accounting decisions, which do not control what the parties agreed to in the Purchase Agreement, McDaniel and Harris have failed to point to any credible documentary evidence that verifies their assertion that JDPW purchased the CM Note with a zero balance. None of the transaction documents support that testimony in any respect.

29. In addition, the Castle McCulloch Defendants sought and obtained summary judgment on claims asserted by the Nivison Parties by claiming before this Court that the money paid by the Nivison Parties on behalf of JDPW to the Bank was

transferred so it could be collected by Richard Harris against Castle McCulloch is how it worked out. And once again, the purpose in that was that if it was forgiven, it would be a taxable event. So it was important that—even though he might be paying it to himself in a fashion, it was important that he not forgive it.”), 869:21–870:4 (“[The CM Note] was technically speaking then owed to my brother [following the assignment]” and “I was a little concerned about the tax consequences” of simply releasing the CM Defendants).)

⁷¹ (Receiver’s Ex. 3, Dep. James Mark McDaniel, Jr., dated Mar. 19, 2015, 111:25–112:3 (“Q: So all CCSEA loans, however many there were, were being transferred; is that right? A: Well, no, they weren’t being transferred. They were purchased.”).)

not “furnish[ed] . . . to pay off the Castle McCulloch Note[.]” The Court rejected the Nivison Parties’ request to be equitably subrogated to the rights of the Bank under the Loan Documents in reliance on the arguments asserted by the Castle McCulloch Defendants that the Nivison Parties’ payment on behalf of JDPW did not pay off the CM Note.⁷²

30. There is no evidence that any payments on the CM Note were made by the listed obligors (i.e., HCM, Castle McCulloch, Inc., and NSITE). Richard Harris testified that he made no payments on the CM Note.⁷³ There is no evidence that Dr. C. Richard Epes (“Dr. Epes”)⁷⁴ or McDaniel personally made any payment on the CM Note. Bank records reflect various checks from CCSEA being credited by the Bank as payments on the CM Note.⁷⁵ There is no record of any corporate resolution or approval signed by Dr. Matthews authorizing CCSEA to pay the CM Note on behalf of Dr. Epes, McDaniel, Richard Harris, or the obligors on the Note. The current

⁷² (See CM Defs.’ Br. Opp. Pls.’ Mot. Partial Summ. J. 19, ECF No. 881 (contending that NFI loaned funds to JDPW, who in turned purchased the CM Note and CM Deed of Trust, as constituting two separate transactions, and that permitting NFI’s claim against the CM Defendants and JDPW would permit a double recovery).) The Court permitted the CM Defendants to prevail on their motion for summary judgment against NFI on the ground that JDPW was a separate and distinct entity from the CM Defendants, (see May 2019 Order ¶ 92), yet the CM Defendants seek to avoid liability now on the ground that JDPW is a “pass-through” entity whose existence should be ignored in considering foreclosure.)

⁷³ (CM Defs.’ Filing of Tr. Dep. Richard Harris, Ex. 1664.1, Dep. Richard Harris, dated Oct. 28, 2024, 33:3–35:22, ECF No. 1664.1.)

⁷⁴ (*In re Se. Eye Ctr.—Pending Matters*, 2016 NCBC LEXIS 57, at *3–5 (N.C. Super. Ct. Jul. 22, 2016).)

⁷⁵ (See Cassidy Aff.)

outstanding principal balance on the CM Note is \$1,692,430.39, plus accrued interest and other charges as provided in the CM Note.⁷⁶

31. Despite receiving the Notes and related Loan Documents, including the CM Note, the Allonges, the CM Deed of Trust, the Assignment of Notes, and the Assignment of CM Security as trustee of JDPW, the evidence makes clear that Doug Harris never intended to collect on the CM Note or CCSEA Notes for the benefit of JDPW and made no effort to do so. Doug Harris instead intended to and did use his control as trustee of JDPW over the CM Note, the CM Deed of Trust, and the CCSEA Notes and collateral solely for the benefit of his brother, Richard Harris, and his brother's companies, HCM and Castle McCulloch, Inc., and for himself. Richard Harris was aware of and accepted the benefit of this conduct by Doug Harris. Richard Harris also assisted Doug Harris's plan, on behalf of his companies and for himself, by providing the bridge funding needed to pay deposits required by the Bank between 3 July 2012 and 21 September 2012 and by executing agreements required by the Bank.⁷⁷

32. The original Notes and other instruments were lost by Doug Harris. The contents of the Notes have been established by the Bank's records as well as by other evidence of record. There is no dispute as to the contents of the Notes, the CM Deed of Trust, or the other Loan Documents.

⁷⁶ (Rcvr. Ex. Filing, Harris DX-153, NewBridge Bank Paid Note Statement.)

⁷⁷ (D. Harris Dep. 196:17–197:5; *see also* May 2019 Order ¶ 17.)

33. Doug Harris was representing his brother and his brother's companies, including HCM, in arranging the sale of the CM Note and the CM Deed of Trust to JDPW, which, as discussed above, was a trust controlled by Doug Harris as its trustee.⁷⁸ As the Castle McCulloch Defendants acknowledge, in releasing the CM Deed of Trust and assigning away the CM Note, "Doug Harris was merely effectuating [the] intention" of the debtors, i.e. HCM, Castle McCulloch, Inc., and NSITE.⁷⁹

34. In March 2013, Doug Harris, acting as JDPW's trustee, effectively transferred the CM Note and the related Loan Documents and Collateral to his brother, Richard Harris.⁸⁰ Specifically, he signed over to HCM a deed (the "CM Release Deed"), dated 15 March 2013, that released the CM Collateral—both the real property encumbered by the CM Deed of Trust and the rights to leases and rents under the CM Assignment of Security.⁸¹ He also assigned to Richard Harris all of JDPW's rights under the CM Note.⁸² In Doug Harris's words, "I assigned any and all other rights under the note to him [Richard Harris], so he'd be in control of it instead of anybody else. For whatever—since 2004, for eight years, those rights had been

⁷⁸ (D. Harris Dep. 614:10–21.)

⁷⁹ (CM Defs.' Br. Supp. Mot. Summ. J. 20, ECF No. 831.)

⁸⁰ (See D. Harris Dep. 34:1–11.)

⁸¹ (Rcvr. Ex Filing, Harris PX-91, Release Deed (recorded 14 April 2015) [hereinafter, "Release Deed"], ECF No. 1667.92; D. Harris Dep. 866:19–868:25; see also Am. Cons. Compl. Ex. YY, ECF No. 192.)

⁸² (See D. Harris Dep. 628:12–635:25.)

assigned to NewBridge Bank. It was my purpose to cancel each and every one of those rights because that was the deal.”⁸³ With those transfers effected, JDPW lost all rights to the CM Note and related Loan Documents and Collateral but remained obligated on the \$2.1 million Nivison loan.⁸⁴

35. Nevertheless, Doug Harris failed to list in his Accounting the acquisition of the Notes and related Loan Documents as an asset of JDPW, the \$2.1 million loan by the Nivison Parties to JDPW as a liability, or the execution of a release of the CM Deed of Trust and the transfer of the CM Note to his brother, Richard Harris, as conveyances of assets of JDPW.

36. Deposition testimony also establishes that JDPW borrowed money from Richard Harris in order to facilitate the purchase of the Notes. Like the Notes, these liabilities were not disclosed in Doug Harris’s Accounting.⁸⁵

37. It is undisputed that JDPW never had a bank account, never filed a tax return, never kept any corporate documents of any nature, and never possessed any assets until it acquired the Notes and Loan Documents from the Bank. It is further undisputed that the CM Deed of Trust against the CM Property held substantial value as the real estate that it encumbered was worth several million dollars.

⁸³ (D. Harris Dep. 633:1–5; 57:12–14, “I was there to protect my brother’s interest. I was retained by my brother. I went there to represent my brother.”; Jan. 2022 Am. Order ¶ 80.)

⁸⁴ (Jan. 2022 Am. Order ¶ 21.)

⁸⁵ (D. Harris Dep. 751:8–14.)

38. The CM Release Deed was recorded on 14 April 2015.⁸⁶ By Order and Opinion entered 26 April 2021 and amended on 6 January 2022, this Court set aside the CM Release Deed and the assignment of the CM Note to Richard Harris.⁸⁷ The Court has also previously held that Doug Harris had numerous conflicts of interests in the subject transactions.⁸⁸

39. Doug Harris has failed to account for the only assets ever acquired by JDPW, namely the Notes, the CM Deed of Trust, and the related Loan Documents it acquired from the Bank. Further, Doug Harris made no effort to attempt to collect the Notes for JDPW, or to foreclose on the collateral which secured the Notes for JDPW. Nor did he attempt to cause JDPW to repay the \$2.1 million loan from the Nivison Parties.

40. The amount of the JDPW Allowed Claim as of 21 September 2012 was \$2,100,000. The balance due and owing with accrued interest of 6% as of the date of this Order is \$3,644,104.11.

41. The expected benefit of the purchase of the discounted Notes to JDPW was \$1.3 million. The balance due and owing with accrued interest of 13.6% as of the date of this Order is \$3,466,647.67.

⁸⁶ (Release Deed.)

⁸⁷ (Jan. 2022 Am. Order ¶ 162.)

⁸⁸ (JDPW Receivership Order ¶ 7; May 2019 Order ¶ 35.)

CONCLUSIONS OF LAW⁸⁹

42. The Supreme Court of North Carolina has long made clear that “[a]ll fiduciaries may be compelled by appropriate proceeding to account for their handling of properties committed to their care.” *Lichtenfels v. N. Carolina Nat. Bank*, 260 N.C. 146, 148 (1963). Similarly, N.C.G.S. § 36C-10-1001 provides that

To remedy a breach of trust that has occurred or may occur, the court may:

(4) Order a trustee to account;

...

(9) void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) Order any other appropriate relief.

43. Our Court of Appeals has described an accounting this way:

An accounting is “[a] rendition of an account, either voluntarily or by court order. The term frequently refers to the report of all items of property, income, and expenses prepared by a personal representative, trustee, or guardian and given to heirs, beneficiaries or the probate court.” Black’s Law Dictionary 22 (9th ed. 2009). An accounting is an equitable remedy sometimes pled in claims of breach of fiduciary duty. *See, e.g., Toomer v. Branch Banking & Tr. Co.*, 171 N.C. App. 58, 70 (2005) (“Plaintiffs sought an accounting as an equitable remedy for the alleged breaches of fiduciary duty and constructive fraud.”).

Burgess v. Burgess, 205 N.C. App. 325, 333 (2010). Moreover, “[t]he appropriate method for determining the exact amount which may be due the plaintiff, if anything,

⁸⁹ Any Conclusions of Law that are more appropriately deemed Findings of Fact are incorporated by reference into the Court’s Findings of Fact.

is to require the defendant, who is in possession of the essential information, to render an accounting.” *Watson v. Fulk*, 19 N.C. App. 377, 380 (1973).

44. Various courts have fleshed out what must be shown to entitle a party to an accounting. “Ordinarily, in an action for accounting, the plaintiff must prove something is due him by defendant before plaintiff is entitled to an accounting.” *Gibson v. Deuth*, 220 N.W.2d 893, 897 (Iowa 1974); accord *Physicians & Hosps. Supply Co. v. Johnson*, 231 Minn. 548, 559 (1950) (“The rule is that the principal (used in the agency sense) must establish by a fair preponderance of the evidence that the agent has actually received the particular thing for which he is sought to be held.” (citation omitted)); *Hodson v. Hodson*, 292 So. 2d 831, 835 (La. Ct. App. 1974) (“In an action against a fiduciary for an accounting, the burden is upon the principal to show that the fiduciary received the funds or property and the amount or quality thereof[.]”).

45. These considerations have been established here. Indeed, as the Court found in its Order to Account, it is an undisputed fact that Doug Harris received property while acting as trustee for JDPW⁹⁰ and that Doug Harris breached his fiduciary duty as trustee of JDPW.⁹¹

46. The Illinois courts have provided useful guidance to assist trial courts in structuring an accounting proceeding:

The accounting should contain a statement of all of the receipts and disbursements of the entity in question and should list the financial contributions made to that entity and the current assets and liabilities

⁹⁰ (May 2019 Order ¶¶ 18–19; Jan. 2022 Am. Order ¶ 21.)

⁹¹ (Jan. 2022 Am. Order ¶¶ 81–95.)

of that entity. The original source documents (vouchers, bills, cancelled checks, and etc.) should be tendered or made available so that the items listed in the accounting may be verified. A party is not relieved of its burden to produce a true and full accounting merely because the task is difficult or because the work is voluminous. Any doubt or uncertainty created by the lack of adequate records or by errors or omissions in the accounting itself will be construed against the party whose burden it is to produce the accounting. A party seeking credits against an accounting has the burden of proving that those credits are justified.

Pluciennik v. TCB Univ. Park Cold Storage, LLC, 2013 Ill. App. 3d 120026, ¶ 15 (Ill. App. Ct. 2013) (citations omitted).

47. As trustee of JDPW Trust during the relevant time period, Doug Harris bears the burden of production and persuasion in disclosing the assets and liabilities of JDPW Trust while he served as its trustee. *See, e.g., Watson v. Watson*, 144 Idaho 214, 219 (2007) (“The party called upon to render an accounting bears the burdens of production and persuasion.”).

48. Doug Harris failed to carry his burden to disclose the assets and liabilities of JDPW Trust while he served as its trustee in response to the Court’s Order to Account. To the contrary, Doug Harris has failed to identify in his Accounting any of JDPW’s assets or liabilities identified above. In particular, Doug Harris failed to account for his failure to collect on the four Notes JDPW acquired on 21 September 2012. As this Court has noted previously, “Harris’[s] obligation was not just to avoid harm to the [JDPW] Trust. His obligation was to obtain those benefits that were available to the [JDPW] Trust.”⁹² Among the benefits available to JDPW were the four Notes acquired from NewBridge Bank. Doug Harris should have collected on

⁹² (Jan. 2022 Am. Order ¶ 98.)

these Notes to enable JDPW to meet its obligations, including repaying the Nivison Parties for their \$2.1 million loan to JDPW, and to secure the resulting profit for the benefit of JDPW Trust.

49. Any doubt or uncertainty created by the lack of adequate records or by errors or omission in the Accounting are to be construed against Doug Harris, the party whose burden it was to produce the Accounting.

50. Doug Harris breached his duties to JDPW, damaging JDPW and its assets, and failed to properly account for that damage.

51. The CM Deed of Trust provided sufficient collateral to JDPW for JDPW to collect on the CM Note. However, instead of collecting on the CM Note, Doug Harris transferred the Collateral securing the CM Note to his brother, Richard Harris, putting it beyond the reach of JDPW as well as the Nivison Parties, JDPW's creditor, among others. As a result, JDPW could not collect on the CM Note or foreclose on the CM Deed of Trust, rendering this asset worthless to JDPW. Additionally, Doug Harris made no efforts to collect on the CCSEA Notes in JDPW's possession. At the same time, Doug Harris caused JDPW to borrow \$2.1 million from the Nivison Parties to purchase the CM Note and CCSEA Notes, leaving JDPW indebted to the Nivison Parties in that amount.

52. Much of the evidence Doug Harris relies upon to support his Accounting appears intended to establish that: (1) the proceeds from the Nivison Parties' loan to JDPW to facilitate this transaction were to be used to pay off the CM Note and cause

the release of the CM Property as security for all Epes-related loans;⁹³ (2) the Order by Judge Manning in 2015 satisfied JDPW's obligations with respect to the CCSEA Notes;⁹⁴ (3) JDPW was simply a pass-through entity Doug Harris used to facilitate the Bank's request that, to comply with banking regulations, a neutral third-party receive the CM Note and CM Deed of Trust;⁹⁵ (4) McDaniel negotiated for Dr. Epes and his companies, including CCSEA, a 39.5% reduction in the \$3.4 million in loans then owing to the Bank;⁹⁶ and (5) the CM Note and CM Deed of Trust were to have been paid off and have no value when they were transferred to JDPW.⁹⁷

53. Doug Harris ignores, however, the structure of the transaction as set forth in the transaction documents and that he had a fiduciary duty as JDPW's trustee to act in furtherance of JDPW's best interests. The evidence before the Court affirms the Court's earlier conclusion on summary judgment that, by purchasing the CM Note and CM Deed of Trust and thereafter cancelling the Notes and releasing the CM Deed

⁹³ (Douglas Harris's Acct'g Hr'g Br. 6 [hereinafter, "D. Harris Acct'g Hr'g Br."], ECF No. 1672.)

⁹⁴ (D. Harris. Acct'g Hr'g Br. 9, 20.)

⁹⁵ (D. Harris Acct'g Hr'g Br. 2–6.)

⁹⁶ (D. Harris Acct'g Hr'g Br. 10–11.)

⁹⁷ (D. Harris Acct'g Hr'g Br. 6–7.) Doug Harris also advances arguments that the Receiver has negotiated a double recovery for the \$2.1 million loan, (D. Harris Acct'g Hr'g Br. 11–13), and that the Receiver has made false statements during these proceedings. (D. Harris Acct'g Hr'g Br. 23–28.) After careful consideration, the Court concludes that neither argument has merit.

of Trust on the CM Property, Doug Harris breached his fiduciary duty as JDPW's trustee.⁹⁸

54. More specifically, there is no dispute that the Purchase Agreement, including the written and signed modification thereof, the Bill of Sale and Assignment of Notes, and the Allonges were executed properly, knowingly and with intent to be bound thereby.⁹⁹ These documents conclusively establish that the \$2.1 million wire transfer to the Bank that was initiated on 21 September 2012 was to serve as the Purchase Price to buy the four Notes.¹⁰⁰ These documents also conclusively establish that the Bank no longer had the right to accept payments on the Notes effective as of 21 September 2012 and that the Bank knew that the money was provided by a fiduciary and that the money was intended for the account of the trust represented by that fiduciary.¹⁰¹

55. Doug Harris's contention that the CM Note was paid before it was transferred to JDPW¹⁰² is without merit. Harris relies upon the Bank's post-receipt

⁹⁸ (Jan. 2022 Am. Order ¶¶ 91–99.)

⁹⁹ (*See Note. Purch. & Sale Agmt.; Mod. Agmt; Bill Sale Assign. Loan Docs.; Allonge.*)

¹⁰⁰ (*See Rcvr. Ex. Filing. PX-28, e-mail, Beever to Harper and Nicholson, ECF No. 1667.29; Rcvr. Ex. Filing. PX-21, e-mail, Harper to Nicholson, ECF No. 1667.22; Rcvr. Ex. Filing. PX-22, e-mail, Nicholson to Harper, ECF No. 1667.23; Rcvr. Ex. Filing. PX-18, e-mail, Harper Beever, and Sheridan, ECF No. 1667.19; Rcvr. Ex. Filing. PX-10, e-mail, Harper to Beever and Sheridan, ECF No. 1667.11; Rcvr. Ex. Filing. PX-9, e-mail, Beever to Sheridan, ECF No. 1667.10; Rcvr. Ex. Filing. PX-5, e-mail, Sheridan to Beever, ECF No. 1667.6.*)

¹⁰¹ (*See supra* notes 54–55.)

¹⁰² (*See, e.g., D. Harris Dep. 1029:5–9; Acct'g Proc. Tr. Day One 29:23–25, 72:20–73:1, 236:12–25, 244:2–9.*)

application in its internal records of part of the \$2.1 million wired to the Bank by the Nivison Parties on behalf of JDPW on or about 21 September 2012 as a payment for the benefit of the obligors on the CM Note.¹⁰³ This reliance is misplaced. The wire transfer was the payment of the Purchase Price for JDPW to buy the Notes with their warranted outstanding balance. The Bank's internal accounting does not establish otherwise. HCM did not demonstrate that the Bank's internal accounting would have been any different whether a Note was satisfied or purchased. Moreover, the Bank's post-receipt, internal accounting decisions have no bearing on what the parties agreed to do under the Purchase Agreement several months before. Therefore, the Court concludes that the internal accounting records are neither determinative nor instructive as to the legal effect of the Bank's application of its receipt of the \$2.1 million from the Nivison Parties on behalf of JDPW.

56. Moreover, once the Bank executed the CM Allonge and Assignment of Notes on 21 September 2012, the Bank ceased to be a holder of the CM Note. Since the Bank was no longer a holder of the CM Note as of 21 September 2012, the Bank had no authority or power to accept payments on the CM Note after that date. As a result, the receipt of \$2.1 million by the Bank on 24 September 2012 was not payment on the CM Note. To the contrary, the evidence establishes that Nivison's \$2.1 million payment on behalf of JDPW was made to effect JDPW's purchase of the Notes and related Loan Documents, including the CM Deed of Trust, under the Purchase Agreement with the warranted Outstanding Balance.

¹⁰³ (See *e.g.*, Acct'g Proc. Tr. Day One 236:12–25; D. Harris Acct'g Hr'g Br. 13.)

57. More fundamentally, Doug Harris’s obligation was to obtain the benefit of the bargain offered to JDPW by the Purchase Agreement,¹⁰⁴ which was acquired on 21 September 2012 through the Bill of Sale on that same date.¹⁰⁵ To the extent Doug Harris is correct that he caused JDPW to borrow \$2.1 million from the Nivison Parties only to purchase worthless or devalued notes with the borrowed funds, he has only offered further proof of his breach of fiduciary duty to JDPW and the resulting damage the Receiver claims on behalf of JDPW Trust.

58. Harris’s argument based on Judge Manning’s order in January 2015 is equally unavailing. Judge Manning entered his January 2015 order over two years after JDPW acquired the CCSEA Notes in September 2012. Doug Harris has offered no evidence that he took any action to collect on the CCSEA Notes at any time during the two years they were in JDPW’s possession before Judge Manning ordered their transfer to the Nivison Parties. His only explanation is that it was always the “plan” not to do so.¹⁰⁶ As the Court has previously held, however, “[t]he question of breach looks to Doug Harris’s conduct vis-à-vis his duties to JDPW, not whether the plan ‘worked’ vis-à-vis his personal interests and the other parties’ intentions.”¹⁰⁷

59. Had Doug Harris chosen a different entity to implement his plan—one to which he did not owe a fiduciary duty—then perhaps his plan may have worked as

¹⁰⁴ (Note Purch. & Sale Agmt.; Mod. Agmt.)

¹⁰⁵ (Bill Sale Assign. Loan Docs.)

¹⁰⁶ (See e.g., Acct’g Proc. Tr. Day One 849:3–19.)

¹⁰⁷ (Jan. 2022 Am. Order ¶ 94.)

he, McDaniel, and Richard Harris had hoped. However, by choosing JDPW, a trust for which he served as trustee and to which he owed fiduciary duties, the plan he conceived required him to ignore those fiduciary duties so that JDPW could pass through to his brother, his brother's companies, and himself the benefits of the transactions his plan made available to JDPW. North Carolina law simply does not permit a trustee to engage in such conduct to the detriment of the trust. *See, e.g., Miller v. McLean*, 252 N.C. 171, 174 (1960) (“Trustees . . . must act in good faith. They can never paramount their personal interest over the interest of those for whom they have assumed to act.”) (citations omitted).

60. Doug Harris and McDaniel also make much of the fact that, in March 2016, the Receiver's counsel stated in open court that JDPW served as a “pass-through entity” in the transactions at issue,¹⁰⁸ suggesting that this acknowledgment is a smoking gun that somehow justifies Doug Harris's conduct. But what Doug Harris and McDaniel fail to apprehend—in this Accounting Proceeding and throughout the litigation of this matter—is that, by using JDPW as a pass-through entity in the transactions at issue, Doug Harris has admitted, and the evidence of record now conclusively shows, that, while serving as JDPW's trustee, he caused JDPW to relinquish benefits (i.e., the right to collect on the four Notes) and incur obligations (i.e., the \$2.1 million Nivison loan) that harmed JDPW and benefited only himself, his brother, and his brother's companies. A trustee of a trust cannot prefer his family members and himself to the detriment of the trust's beneficiary. *See, e.g., Fox v. Fox*,

¹⁰⁸ (Acct'g Proc. Tr. Day One 42:1–7, 131:13–133:25, 226:7–18.)

283 N.C. App. 336, 348 (2022) (“[A] trustee must ‘maintain complete loyalty to the interests of his beneficiaries’”) (citing *Howe v. Links Club Condo. Ass’n*, 263 N.C. App. 130, 149 (2018)); *Melvin v. Home Fed. S&L Ass’n*, 125 N.C. App. 660, 664 (1997) (“[I]t is clear that the trustee of a trust has a fiduciary obligation to the beneficiary of the trust. N.C. Gen. Stat. § 32-25[.]”)

61. JDPW has been damaged by the actions and omissions of Doug Harris, and Doug Harris has failed to properly account for his actions and omissions on behalf of JDPW Trust. As described above, Doug Harris undertook these actions solely for the benefit of himself and his brother and never held the Notes and related Loan Documents with the intent to exercise them for the benefit of JDPW. Nor did he take any action to ensure that the debt JDPW incurred to acquire the Notes was repaid.

62. In defiance of the Order to Account, and by way of summary of the above, Doug Harris did not include or address in his Accounting (i) the four Notes, (ii) the Loan Documents accompanying the Notes, (iii) the \$2.1 million loan from the Nivison Parties (despite filing with his Accounting an Unconditional Guaranty¹⁰⁹ and a Pledge Agreement,¹¹⁰ each of which reference a loan to JDPW by the Nivison Parties

¹⁰⁹ (Index Exs. Cited Harris Acct’g Rep. for JDPW Tr. Ex. 6, Unconditional Guar. of Payment, ECF No. 1512.6.)

¹¹⁰ (Index Exs. Cited Harris Acct’g Rep. for JDPW Tr. Ex. 7, Pledge Agreement, ECF No. 1512.7.)

and a promissory note provided by JDPW to the Nivison Parties),¹¹¹ or (iv) the monies loaned by Richard Harris to JDPW.¹¹²

63. To justify his actions, Doug Harris appears to claim that he arranged for JDPW to receive \$126,000 for its role in these transactions. But the basis for that claim is undocumented, and while Doug Harris and McDaniel now offer conflicting testimony on how that alleged fee was derived,¹¹³ at least until the Accounting Proceeding was initiated, it appears this figure was intended to reflect a “2 percentage point spread on the difference between the interest rate of money owed--borrowed by the trust and money that the trust was in effect lending to others.”¹¹⁴ The evidence

¹¹¹ Although Doug Harris now argues that “Dr. Epes and his related companies are the actual debtors rather than JDPW Trust” in connection with the Nivison loan, (D. Harris Acct’g ¶ I.D), he referenced in the claim he filed for JDPW in this action a “loan to JDPW Trust” by “Old Battleground Properties, Inc.” and included in the Accounting a closing statement from 12 September 2021 that states:

*\$2.1 from total payoff of \$6,744,546.75 due Nivison Family Investments LLC, which \$2.1 million is a loan from Nivison Family Investments LLC to . . . JDPW Trust . . . as evidenced by loan documents of even date herewith; \$1,834,35 from Seller’s Proceeds.

(Index Exs. Cited Harris Acct’g Rep. for JDPW Tr. Ex. 4, Old Republic Nat’l Title Ins. Co. Closing Statement, ECF No. 1512.4.) Doug Harris did not include in his Accounting any of the loan documents referenced in the closing statement quoted above or the Note that is referenced in the Unconditional Guaranty and in the Pledge Agreement.

¹¹² See *supra* ¶ 36.

¹¹³ Compare McDaniel’s testimony (Acct’g Proc. Tr. Day Two 321:23–322:4, 366:9–367:7, ECF No. 1666) and Doug Harris’s testimony (Acct’g Proc. Tr. Day One 94:25–18, 100:1–101:11) with Doug Harris’s Deposition (D. Harris Dep. 829:4–831:16.)

¹¹⁴ (D. Harris Dep. 829:4–831:16.)

shows, however, that JDPW already had the right to collect the interest rate spread, and the \$126,000 did not compensate JDPW for anything it did not already have.

64. Doug Harris also argues that he negotiated a limitation of liability concerning the three CCSEA Notes and that this, too, should absolve him of liability as to these three Notes in his Accounting.¹¹⁵ The Court has already concluded as a matter of law, however, that “[t]he conflict of interest that permeated the Nivison loan renders it a breach of trust without any need to assess the limitation of liability” and “a conflict of interest transaction is voidable regardless of its benefit—or as Doug Harris contends in this case, absence of harm—to the trust.”¹¹⁶ Doug Harris’s limitation of liability argument is therefore without merit.

65. The Receiver provided a spreadsheet to the Court that contains two theories of calculations of the damages incurred by JDPW as a result of Doug Harris’s actions and omissions.¹¹⁷ The first theory the Receiver advances maintains that the damages incurred by JDPW is equal to the outstanding amounts, plus interest and late charges, that should have been collected on the Notes on behalf of JDPW. The second theory, alternatively, maintains the damages incurred by JDPW is equal to the sum of JDPW’s liability to Nivison (\$2.1 million plus accrued interest; the “JDPW Allowed

¹¹⁵ (Index Exs. Supp. Mot. Partial Summ. J. by Receiver JDPW Tr. (*Old Battleground v. CCSEA*) Ex. 2, Agreement, ECF No. 1384.2.)

¹¹⁶ (Jan. 2022 Am. Order ¶ 97.)

¹¹⁷ (*See* Notice of Submission of Unsupported Files (.xlsx & .olm), ECF No. 1674.)

Claim”)¹¹⁸ and the expected benefit of the purchase of the discounted Notes to JDPW (\$1.3 million plus accrued interest; the “\$1.3 Million Discount”).¹¹⁹ Other than the assertions by McDaniel and Doug Harris that the Notes were satisfied, assertions the Court has rejected as discussed above,¹²⁰ no evidence has been offered by any party that undermines or contradicts the Receiver’s calculations under either theory advanced in the spreadsheet.

66. As stated above, as trustee of JDPW Trust during the relevant time period, Doug Harris bears the burden of production and persuasion in disclosing the assets and liabilities of JDPW Trust while he served as its trustee. *See, e.g., Pluciennik*, 2013 Ill. App. 3d 120026, ¶ 15; *Watson*, 144 Idaho at 219. Doug Harris failed to carry his disclosure burden and, in an accounting proceeding, “[a]ny doubt or uncertainty created by the lack of adequate records or by errors or omissions in the accounting

¹¹⁸ In the January 2022 Amended Order, this Court held that “JDPW’s liability to Nivison has been established at \$2.1 million plus accrued interest, attorney’s fees, and costs and, as a result, no issue concerning the amount of JDPW’s liability to Nivison remains for determination by a jury.” (*See* Order Setting Claims & Matters for Trial by Jury (*Old Battleground v. CCSEA*), ECF No. 1444.)

¹¹⁹ In the January 2022 Amended Order, this Court concluded that “[h]ad Doug Harris not committed a breach by transferring away the CM Note and Release Deed and failing to enforce JDPW’s rights to the CM Loan, JDPW would not only have been able to repay the Nivison Loan, but it would have also profited from the CM Loan by receiving the difference (\$1.3 million) between what JDPW could have collected on the CM Loan and what it owed on the Nivison Loan.” (Jan. 2022 Am. Order ¶ 143.)

¹²⁰ *See supra* ¶¶ 54–55. The Court also incorporates herein by reference its findings of fact and conclusions of law set forth in the Foreclosure Proceeding Judgment concluding that the CM Note was not satisfied at the time JDPW purchased the Note from the Bank. (*See* Foreclosure Proceeding Judgment ¶¶ 3–43, 46–49, 51–52, 58–61).

itself will be construed against the party whose burden it is to produce the accounting.” *Pluciennik*, 2013 Ill. App. 3d 120026, ¶ 15.

67. Since Doug Harris has failed to properly account for JDPW’s assets during the time he was its trustee, and because the Receiver’s calculations are based upon undisputed facts admitted into evidence, the Court, after careful review and in the exercise of its discretion, adopts the Receiver’s second theory of damages with the following exception.¹²¹ The Court declines to adopt the Receiver’s proposed interest rate of 15% on the \$1.3 Million Discount. The Receiver’s proposed interest rate on the \$1.3 Million Discount appears to be based on the default rate of interest on the CM Note. The Court finds that, because the value of the \$1.3 Million Discount is predicated on all four Notes and not merely on the CM Note, the interest rate should be calculated as a weighted average (which equals 13.6%) and elects to apply this interest rate to the \$1.3 Million Discount.

¹²¹ (*See supra* note 117.) The Court finds the second theory of damages advanced by the Receiver more accurately reflects the actual damages incurred by JDPW as a result of Doug Harris’s actions and omissions. This second theory is also consistent with the Court’s holdings in the January 2022 Amended Order (*see supra* note 107) and its Order Setting Claims & Matters for Trial by Jury (*see supra* note 118).

JDPW Allowed Claim \$2,100,000 See ECF 1444

Principal Balance as of Sept 21, 2012:	\$2,100,000.00
Interest (4473 days at 6%)	\$1,544,104.11
Total Due as of December 19, 2024	\$3,644,104.11

Value of \$1.3 million discount See ECF 1444

Principal Balance as of Sept 21, 2012:	\$1,300,000.00
Interest (4473 days at 13.6%)	\$2,166,647.67
Total Due as of December 19, 2024	\$3,466,647.67

Total Allowed Claim Plus Discount: \$7,110,751.78

68. Based on the above calculations, the Court hereby enters judgment against Doug Harris in the amount of \$7,110,751.78 (i.e, \$3,644,104.11 + \$3,466,647.67), as of 19 December 2024. Post-judgment interest shall accrue at the legal rate of 8.00% per annum from the date of this Order until this judgment is paid in full. ¹²²

69. **WHEREFORE**, the Court, hereby **ENTERS FINAL JUDGMENT** against Doug Harris in accordance with the findings of fact and conclusions of law set forth above. Pursuant to Rule 54(b), the Court enters this Order as a final judgment because there is no just reason for delay in entering the judgment as a final judgment

¹²² On 30 July 2024, the Receiver filed a Motion for Entry of Judgment Against Douglas Harris in favor of JDPW Trust under Rules 54 and 58 of the North Carolina Rules of Civil Procedure (the “Rule(s)”) with supporting brief (the “Rule 54/58 Motion”). (ECF No. 1605.) Based on the Court’s determination of the issues in the Accounting Proceeding and its entry of judgment against Harris as provided herein, which the Court concludes is identical to the judgment sought through the Receiver’s Rule 54/58 Motion, the Court will deny the Receiver’s Rule 54/58 Motion as moot.

and permitting appellate review of this Order and the other orders that the Court is entering contemporaneously herewith.¹²³

SO ORDERED, this 19th day of December 2024.

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

¹²³ On 3 December 2024, Doug Harris filed an Objection to Submission of New Data Not Previously Made Available to Defendant and Not Previously Filed in Court (the “Objection”). (ECF No. 1680.) The premise of Harris’s Objection is that the Receiver has attempted to provide to the Court 6.9 MB of electronic documents that were not admitted into evidence during the Hearing and therefore should not be considered in connection with the Accounting Proceeding. The Court has reviewed the documents the Receiver has submitted, however, and has determined that they are identical to those that were introduced into evidence at the Hearing. Since Harris’s Objection has no basis in fact, the Court hereby overrules Harris’s Objection.