

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 88.

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15CVS001648-910

IN RE SOUTHEASTERN EYE  
CENTER-PENDING MATTERS

GUILFORD COUNTY

12CVS011322-400

IN RE SOUTHEASTERN EYE  
CENTER-JUDGMENTS

**ORDER AND OPINION ON  
CROSS MOTIONS FOR SUMMARY JUDGMENT  
ON RECEIVER’S REMAINING CROSS CLAIMS AGAINST  
THE CASTLE McCULLOCH DEFENDANTS**

1. **THIS MATTER** is before the Court upon (i) Defendants Richard Harris, Historic Castle McCulloch, LLC, and Castle McCulloch, Inc.’s (collectively, the “Castle McCulloch Defendants” or the “CM Defendants”) Motion for Summary Judgment on Paragraph 504 of the Receiver’s Eighth Cross Claim (the “CM Defendants’ Motion”),<sup>1</sup> and (ii) JDPW Trust’s (“JDPW”) Motion for Summary Judgment as to the Castle McCulloch Defendants (“JDPW’s Motion”; together with the CM Defendants’ Motion, the “Cross Motions”),<sup>2</sup> each brought pursuant to Rule 56

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<sup>1</sup> (CM Defs.’ Mot. Summ. J. [hereinafter, “CM Defs.’ Mot.”], ECF No. 1347.)

<sup>2</sup> (JDPW Tr. Mot. Summ. J. re CM Defs. (*Old Battleground v. CCSEA/Nivison v. Harris*) [hereinafter, “Receiver’s Cross Mot.”], ECF No. 1648.)

of the North Carolina Rules of Civil Procedure (the “Rule(s)”) in the above-captioned cases.<sup>3</sup>

2. Having considered the Cross Motions, the parties’ briefs in support of and in opposition to the Cross Motions, the relevant pleadings, and other appropriate matters of record, the Court hereby **GRANTS** the CM Defendants’ Motion, **DENIES** JDPW’s Motion, and **DISMISSES** the Receiver’s Eighth Cross Claim with prejudice as set forth below.

*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, Central Carolina Surgical Eye Associates, P.A., HUTA Leasing LLC, Southeastern Eye Management, Inc., Southeastern Cataract Laser Center, PLLC, EMS Partners, LLC, KEPES Newco, LLC, and DRE Newco, LLC.*

*Pinto Coates Kyre & Bowers, PLLC, by Richard L. Pinto and Kenneth Kyre for Defendants Richard Harris, Historic Castle McCulloch LLC, and Castle McCulloch Inc.*

Bledsoe, Chief Judge.

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

3. This dispute arises within a large group of cases before this Court that have been consolidated into two files: *In re Se. Eye Ctr.—Pending Matters* (Wake County 15 CVS 1648) and *In re Se. Eye Ctr.—Judgments* (Guilford County 12 CVS 11322).

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<sup>3</sup> Unless otherwise defined, the capitalized terms in this Order and Opinion refer to those terms as used in the Court’s judgment in the Foreclosure Proceeding, filed contemporaneously herewith. (See Findings Fact, Conclusions L. & Final J. on Foreclosure Appeal, ECF No. 1686.)

The extensive background of these cases is set forth in previous orders and opinions of this Court.<sup>4</sup>

4. As relevant here, on 16 October 2016, Gerald A. Jeutter, Jr. (the “Receiver”), as Receiver for JDPW Trust U/T/A Dated June 8, 2007, Central Carolina Surgical Eye Associates, P.A. (“CCSEA”), HUTA Leasing LLC, Southeastern Eye Management, Inc., Southeastern Cataract Laser Center, PLLC, EMS Partners, LLC, KEPES Newco, LLC, and DRE Newco, LLC (“DRE”), filed his Answer to the CM Defendants’ cross claims. In that Answer, the Receiver asserted cross claims against Douglas (“Doug”) Harris and the CM Defendants on behalf of JDPW, DRE, and CCSEA (the “Cross Claims”).<sup>5</sup>

5. The Receiver’s Fourth, Sixth, and Eighth Cross Claims, reproduced below, are at issue on the Cross Motions. Those claims for relief allege:

#### FOURTH CLAIM FOR RELIEF—BREACH OF TRUSTEE DUTIES

484. The allegations of JDPW, DRE and CCSEA set forth above are re-alleged and incorporated here by reference.

485. The conduct described above constitute breach of Douglas Harris’ duties as Trustee of JDPW. These breaches were knowing, willful and wanton with conscious disregard for his duties and with intent to cause injury to JDPW by exposing it to liability and damages when it had

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<sup>4</sup> See *In re Se. Eye Ctr.—Pending Matters*, 2019 NCBC LEXIS 29, at \*3–23 (N.C. Super. Ct. May 7, 2019) [hereinafter, the “May 2019 Order”]; *In re Se. Eye Ctr.—Pending Matters*, 2021 NCBC LEXIS 43, at \*3–18 (N.C. Super. Ct. Jan. 6, 2022) [hereinafter, the “Jan. 2022 Am. Order”]; Order & Op. Def. Douglas S. Harris’s Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3) ¶¶ 3–10, ECF No. 1683 (each reciting procedural background and citing prior orders).

<sup>5</sup> (Receiver’s Br. Supp. Mot. Clarification Alt. Reconsider 1, ECF No. 1612; see Receiver’s Answer to Cross-cls. of CM Entities & Cross-cls. against Douglas Harris [hereinafter, the “Cross Claims”], ECF No. 716.)

insufficient assets to pay debts that he incurred and when he subsequently further reduced and diminished the assets of JDPW.

486. As a direct and proximate result of the conduct of Douglas Harris, JDPW has incurred an allowed claim of \$2.1 million for which it lacks the resources to pay.

487. Douglas Harris undertook the described breaches of fiduciary duty as an express trustee in whole or in part to benefit himself. Accordingly, his conduct constitutes constructive fraud. Based upon this constructive fraud and upon his willful and wanton conduct, punitive and exemplary damages are appropriate and are demanded.

#### SIXTH CLAIM FOR RELIEF—EQUITABLE RELIEF

495. The allegations of JDPW, DRE and CCSEA set forth above are re-alleged and incorporated here by reference.

496. JDPW, DRE and CCSEA are entitled to equitable relief to return each of them, or any of them, as near as possible to the position they occupied before the breaches of duty by Douglas Harris, including but not limited rescission, restitution, an accounting, and voiding of illegal and inequitable transactions. All such relief is requested.

#### SEVENTH CLAIM FOR RELIEF—SETTING ASIDE THE RELEASE DEED AND THE ASSIGNMENT OF NOTE TO CASTLE MCCULLOCH

497. The allegations of JDPW, DRE and CCSEA set forth above are re-alleged and incorporated here by reference.

498. Douglas Harris, purportedly acting on behalf of, and in the name of JDPW, provided Castle McCulloch a release deed and a partial assignment of the Castle McCulloch note to NewBridge. No consideration or value, or inadequate consideration and value, was provided to JDPW for this release deed or this partial assignment of the note.

499. The release deed and assignment were executed and delivered by Douglas Harris in breach of his duties to JDPW and its creditor. At the time of the release of the deed of trust by Douglas Harris, Castle McCulloch was in breach of the note and the deed of trust was subject to foreclosure to obtain performance of the note's payment obligations. It was the duty of Douglas Harris to foreclose on the deed of trust for the

benefit of JDPW and its creditor or to obtain equivalent value. Douglas Harris did neither.

500. Castle McCulloch and Douglas Harris knew, or in the alternative, should have known, that it was not in the best interests of JDPW, and was not entirely fair and equitable to JDPW, for Castle McCulloch to be released from its deed of trust to NewBridge, subsequently assigned to JDPW. Castle McCulloch and Douglas Harris knew, or in the alternative, should have known, that depriving JDPW of the deed of trust and the portion of the note assigned to Castle McCulloch, would render JDPW insolvent or would otherwise damage JDPW and operate to its detriment in ways that could not be adequately compensated. Castle McCulloch was not an innocent purchaser or a purchaser for fair and adequate value of either the release deed or the assignment of the note.

501. JDPW does not have an adequate remedy at law for the wrongful release of its deed of trust and partial transfer of its note to Castle McCulloch.

502. In fairness and equity, the assignment of the Castle McCulloch note and the release deed for the Castle McCulloch deed of trust, executed and delivered by Douglas Harris in breach of his duty as trustee should be set aside and declared null and void. Furthermore, the release deed should be stricken from the public record or should be marked null and void. All further equitable relief in aid of remedying the wrongful conduct of Douglas Harris in transferring and impairing these assets of JDPW without receiving fair and adequate consideration is sought by JDPW.

#### EIGHTH CLAIM FOR RELIEF—OTHER CAUSES OF ACTION

503. Having been directly and proximately damaged in excess of \$25,000 as described above, JDPW, CCSEA and DRE seek recovery under all other causes of action allowed by North Carolina or federal law based upon the facts, transactions and occurrences as alleged above and proven at trial.

504. JDPW, CCSEA and DRE, further seek recovery from Castle McCulloch for aiding and abetting the wrongs set forth above through the conduct of its attorney Douglas Harris, Castle McCulloch having knowingly accepted the benefits thereof. Such conduct by Castle McCulloch in aid and encouragement of Douglas Harris and in accepting the benefits of the wrongful conduct of Douglas Harris has directly and

proximately damaged JDPW, CCSEA and DRE in an amount in excess of \$25,000. Such conduct also constitutes unfair and deceptive trade practices and otherwise entitles JDPW, CCSEA and DRE to equitable relief.<sup>6</sup>

6. The Receiver seeks summary judgment on behalf of JDPW against the CM Defendants on JDPW's: (i) Fourth, Sixth and Seventh Cross Claims seeking equitable remedies; (ii) Fourth Cross Claim for monetary damages; and (iii) for relief in aid of this Court's 6 January 2022 Amended Order and Opinion on Motions for Summary Judgment or Partial Summary Judgment (*Old Battleground v. CCSEA*) (the "January 2022 Amended Order"), which granted summary judgment to JDPW on its Fourth Claim for Relief and set aside the release deed and partial assignment of the CM Note.<sup>7</sup>

7. For his relief, the Receiver seeks:

- a) A determination that any verbal or other modification of the Note Purchase and Sale Agreement to accomplish the satisfaction of the CM Note and partial satisfaction of the CCSEA Notes is void;
- b) A determination that the Castle McCulloch Defendants are estopped to assert statutes of limitations or any other delay by JDPW in seeking to collect on the CM Note, in seeking to exercise JDPW's rights under the CM Deed of Trust or in otherwise exercising JDPW's rights under the CM Collateral assigned to JDPW by NewBridge Bank;
- c) An order that the Castle McCulloch Defendants cease and desist in their efforts to evade enforcement of the CM Collateral by JDPW; and
- d) A monetary judgment against the Castle McCulloch Defendants in favor of JDPW for the amount necessary to put JDPW in the

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<sup>6</sup> (Cross Claims ¶¶ 485–87, 496–504.)

<sup>7</sup> (Receiver's Cross Mot. 1–2; Jan. 2022 Am. Order ¶¶ 137–39.)

position it would have been but for the breach of trustee duties by their attorney Doug Harris undertaken for the benefit of the Castle McCulloch Defendants.<sup>8</sup>

8. The CM Defendants move for summary judgment as to Paragraph 504 of the Receiver's Eighth Cross Claim and oppose all relief sought by the Receiver on JDPW's Motion.<sup>9</sup>

9. In its Order and Opinion on Motions for Summary Judgment dated 7 May 2019, the Court granted summary judgment dismissing the Receiver's Cross Claim against Doug Harris set forth in paragraph 503.<sup>10</sup> The CM Defendants subsequently moved for summary judgment to the extent the Eighth Claim for Relief sought recovery against the CM Defendants.<sup>11</sup> In the Court's January 2022 Amended Order, the Court granted the CM Defendants' motion on the same grounds it granted judgment in favor of Doug Harris.<sup>12</sup>

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<sup>8</sup> (JDPW Br. Supp. Mot. Summ. J. re CM Defs. 2, ECF No. 1651.)

<sup>9</sup> (*See* Br. Supp. CM Defs.' Mot. Summ. J., ECF No. 1654.)

<sup>10</sup> (*See* May 2019 Order ¶¶ 311–15 (concluding that because “[t]he Receiver’s eighth crossclaim asserts nothing more than a general right to recover under ‘all other causes of action allowed by North Carolina or federal law[,]’ [t]he crossclaim does not make out any legally cognizable claim against Doug Harris and is not sufficiently stated to allow an adverse party in Doug Harris’s position to understand the nature of the claim brought against him.”).)

<sup>11</sup> (CM Defs.’ Br. Supp. 2d Mot. Summ. J. 9, ECF No. 1375.)

<sup>12</sup> (*See* Jan. 2022 Am. Order ¶ 151 (concluding “that just as the Receiver failed to state a claim under this count against Doug Harris, so too has the Receiver failed to state a claim against the CM Defendants in his eighth crossclaim. The Court therefore grants the CM Defendants’ motion for summary judgment as to the Receiver’s eighth crossclaim.”).)

10. On 5 August 2024, the Receiver filed a Motion for Clarification, and in the Alternative to Reconsider, Pursuant to Rule 54 (the “Motion for Clarification”),<sup>13</sup> seeking reconsideration of the Court’s January 2022 Amended Order to the extent that Order dismissed JDPW’s claims for relief against the CM Defendants for “monetary and equitable relief associated with the misconduct of Doug Harris as described in JDPW [Trust’s] Cross Claims other than its Eighth (ECF No. 716 ¶ 503) Claim for Relief.”<sup>14</sup>

11. More specifically, the Receiver’s Motion for Clarification sought to determine whether the Cross Claim set forth in paragraph 504 of the Receiver’s Cross Claims survived the Court’s summary judgment rulings. The Receiver argued that the Court’s dismissal of the Receiver’s Eighth Claim for Relief in the January 2022 Amended Order extended only to the allegations in paragraph 503, but not to the allegations in paragraph 504. The CM Defendants argued in opposition that the Court’s January 2022 Amended Order dismissed the Eighth Claim for Relief in its entirety, including the allegations in both paragraphs 503 and 504.

12. After full briefing and hearing, the Court concluded in its Order resolving the Motion for Clarification (the “Clarification Order”), filed 16 September 2024, as follows:

(i) [T]he CM Defendants sought the dismissal of paragraph 504 in their summary judgment motion without substantive argument, (ii) the Receiver did not address paragraph 504 in his response or at the hearing on the motion, and (iii) the Court thereafter dismissed the allegations

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<sup>13</sup> (Mot. Clarification Alt. Reconsider, ECF No. 1611.)

<sup>14</sup> (Receiver’s Br. Supp. Mot. Clarification Alt. Reconsider 1.)



against the CM Defendants in paragraph 503 but did not consider or rule on the CM Defendants' motion for summary judgment on the allegations against them in paragraph 504.

Accordingly, the Court concludes that the CM Defendants have sought summary judgment on paragraph 504 of the Eighth Cross Claim, that the CM Defendants' motion on that claim remains pending, and that briefing on the motion by the CM Defendants and the Receiver is appropriate and in the interests of justice in the context of this case.<sup>15</sup>

13. The Court also noted in the Clarification Order that the Receiver had indicated his intent to seek summary judgment on paragraph 504 by way of cross motion under Rule 56(b). As a result, the Court ordered further briefing<sup>16</sup> and hearing on the CM Defendants' Motion and the Receiver's forecasted Motion.<sup>17</sup> The Receiver timely filed his Motion, and the Cross Motions are now ripe for determination.<sup>18</sup>

## II.

### LEGAL STANDARD

14. Under Rule 56(c), “[s]ummary judgment is appropriate ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

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<sup>15</sup> (Order on Receiver's Mot. Clarification Alt. Reconsider ¶¶ 10–11 [hereinafter, “Clarification Order”], ECF No. 1641.)

<sup>16</sup> (Clarification Order ¶ 13(a)–(d).) At the parties' request, the Court consolidated briefing on the Cross Motions with post-hearing briefing in *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”).

<sup>17</sup> (Clarification Order ¶ 13(e).)

<sup>18</sup> At the second day of the Accounting Proceeding on 7 November 2024 (*see* Order on Acct'g, ECF No. 1687), the parties agreed that a hearing on the Cross Motions was unnecessary. Accordingly, the Court elects to decide the Cross Motions without a hearing as permitted under Business Court Rule 7.4.

affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.’” *Da Silva v. WakeMed*, 375 N.C. 1, 10 (2020) (quoting N.C. R. Civ. P. 56(c)). “A genuine issue of material fact is one that can be maintained by substantial evidence.” *Curlee v. Johnson*, 377 N.C. 97, 101 (2021) (cleaned up). “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[.]” *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681 (2002) (cleaned up). “An issue is material if, as alleged, facts ‘would constitute a legal defense, or would affect the result of the action or if its resolution would prevent the party against whom it is resolved from prevailing in the action.’” *Bartley v. City of High Point*, 381 N.C. 287, 292 (2022) (quoting *Koontz v. City of Winston-Salem*, 280 N.C. 513, 518 (1972)). “When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.” *Belmont Ass’n v. Farwig*, 381 N.C. 306, 310 (2022) (quoting *Dalton v. Camp*, 353 N.C. 647, 651 (2001)).

15. “The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact.” *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579 (2002). The movant may meet this burden either (1) “by proving 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 (2) “by showing through discovery that the opposing party cannot produce evidence to support an essential element of [its] claim[.]” *Dobson v. Harris*, 352 N.C. 77, 83 (2000)

(cleaned up). If the movant meets its burden, “the burden shifts to the nonmoving party to produce a forecast of evidence demonstrating that the nonmoving party will be able to make out at least a prima facie case at trial[.]” *Cummings v. Carroll*, 379 N.C. 347, 358 (2021) (cleaned up); *see also* N.C. R. Civ. P. 56(e) (“[A]n adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.”).

### III.

#### ANALYSIS

16. The Receiver seeks the entry of summary judgment against the CM Defendants on JDPW’s Fourth, Sixth, Seventh, and Eighth Cross Claims and all equitable, monetary, and other relief the Court deems appropriate. The Receiver’s core contention is that the CM Defendants should be liable for the actions of their attorney Doug Harris because Doug Harris’s breach of fiduciary duty as trustee of JDPW was perpetrated with their knowledge and assistance, and for their benefit.<sup>19</sup>

17. As an initial matter, the Court notes that the Receiver’s Seventh Cross Claim requests the Court to set aside the Release Deed and Assignment of Note to the CM Defendants.<sup>20</sup> This is relief the Court has already granted,<sup>21</sup> however, and

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<sup>19</sup> (Br. Supp. CM Defs.’ Mot. Summ. J. 7–9, 18–19.)

<sup>20</sup> (*See* Cross Claims ¶ 502.)

<sup>21</sup> (Jan. 2022 Am. Order ¶¶ 137–39.)

the Court therefore will deny the Receiver's Motion for summary judgment on this Cross Claim as moot.

18. The Receiver's Fourth and Sixth Cross Claims present a pleading problem. Under North Carolina law, "it is axiomatic that a defendant must be put on notice of what it is defending against in order to avoid being ambushed." *B&D Software Holdings, LLC*, 2024 NCBC LEXIS 103, at \*16 (N.C. Super. Ct. Aug. 1, 2024). Indeed, our courts have recognized that "a claimant's . . . pleading must adequately inform the responding party of what it is alleged to have done wrong so that it can defend itself accordingly." *Id.* at \*17. "This principle is undermined in cases where, as here, a party seeks to assert a new theory of recovery for the first time at the summary judgment stage." *Id.* at \*17–18. *See, e.g., Bradshaw v. Maiden*, 2020 NCBC LEXIS 106 (N.C. Super. Ct. Sep. 15, 2020) (holding an amended complaint did not assert a separate negligence claim against a hedge fund administrator as it pleaded facts only in support of a gross negligence claim), *aff'd*, 2022 N.C. App. LEXIS 950 (N.C. Ct. App. Dec. 29, 2022); *aff'd per curiam by a divided court*, 385 N.C. 642 (2024).

19. Here, the Receiver's Fourth Cross Claim does not mention the CM Defendants and requests relief based solely on Doug Harris's breach of duty as trustee, "in whole or in part to benefit himself."<sup>22</sup> Similarly, the Receiver's Sixth Cross Claim requests equitable relief returning JDPW to the position it would have had but for Doug Harris's breach, again without mentioning the CM Defendants or

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<sup>22</sup> (See Cross Claims ¶¶ 484–87.)

asserting a theory of agency liability based on Doug Harris's conduct.<sup>23</sup> Indeed, the only Cross Claim allegations that even potentially suggest that the CM Defendants are liable for Doug Harris's conduct appear in the Eighth Cross Claim. Unlike many of the Receiver's other Cross Claims,<sup>24</sup> however, the Eighth Cross Claim does not incorporate the Receiver's allegations supporting the Fourth or Sixth Cross Claims. As a result, those Cross Claims cannot be read to incorporate any purported agency theory advanced in the Eighth Cross Claim as the Receiver contends. Having failed to plead the CM Defendants' liability based on Doug Harris's conduct in either the Fourth or Sixth Cross Claims, the Receiver's Motion for summary judgment in his favor on those Cross Claims must necessarily fail. *See, e.g., B&D Software Holdings, LLC, supra, Bradshaw, supra.*

20. Finally, as to the parties' Cross Motions on Paragraph 504 of the Receiver's Eighth Cross Claim, the Court first notes that Paragraph 504 contains three sentences.

21. The first sentence states that "JDPW, CCSEA and DRE, further seek recovery from Castle McCulloch for aiding and abetting the wrongs set forth above through the conduct of its attorney Douglas Harris, Castle McCulloch having knowingly accepted the benefits thereof." This Court has ruled, however, that "the Supreme Court of North Carolina will not recognize the claim of aiding and abetting breach of fiduciary duty." *Sykes v. Blue Cross & Blue Shield*, 2018 NCBC LEXIS 28,

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<sup>23</sup> (See Cross Claims ¶¶ 495–96.)

<sup>24</sup> (Cross Claims ¶¶ 484, 495, 497 ("The Allegations of JDPW, DRE, and CCSEA set forth above are re-alleged and incorporated here by reference.").)

at \*32 (N.C. Super. Ct. Apr. 5, 2018). *See also Hill v. Ewing*, 2024 N.C. App. LEXIS 954, at \*7 (2024) (“In another case, though we recognized a claim for breach of fiduciary duty, we refused to recognize a cause of action for *aiding and abetting* this breach) (*citing BDM Invs. V. Lenhil, Inc.*, 264 N.C. App. 282, 302 (2019) (“[T]he North Carolina Supreme Court has not recognized a cause of action for aiding and abetting breach of fiduciary duty, nor do we recognize it here.”).<sup>25</sup> The Court shall therefore deny the Receiver’s Motion and grant the CM Defendants’ Motion as to the first sentence of the Receiver’s Eighth Cross Claim alleging a claim against the CM Defendants for aiding and abetting Doug Harris’s breach of fiduciary duty as JDPW’s trustee.

22. The second and third sentences of the Eighth Cross Claim read as follows:

Such conduct by Castle McCulloch in aid and encouragement of Douglas Harris and in accepting the benefits of the wrongful conduct of Douglas Harris has directly and proximately damaged JDPW, CCSEA and DRE in an amount in excess of \$25,000. Such conduct also constitutes unfair and deceptive trade practices and otherwise entitles JDPW, CCSEA and DRE to equitable relief.

23. Although the Receiver argues that these allegations advance an agency theory of liability against the CM Defendants, the Court disagrees. To aid an actor, and to accept benefits from that actor, does not, without more, allege or create an agency relationship. *See, e.g., American Tours, Inc. v. Liberty Mut. Ins. Co.*, 315 N.C.

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<sup>25</sup> (*See also Bottom v. Bailey*, 238 N.C. App. 202, 211 (2014) (stating that it is undisputed that the Supreme Court of North Carolina has never recognized a cause of action for aiding and abetting a breach of fiduciary duty); *Noble Bottling, LLC v. Gora LLC*, No. 3:20-CV-00363-KDB-DCK, 2023 U.S. Dist. LEXIS 128383, at \*6 (W.D.N.C. July 24, 2023) (“There is no dispute that Plaintiffs’ claims for aiding and abetting breach of fiduciary duty . . . are not cognizable under North Carolina law.”).)

341, 349 (“an agent is one who acts for or in the place of another by authority from the other”). As such, the Court will deny the Receiver’s Motion and grant the CM Defendants’ Motion as to the Receiver’s Eighth Cross Claim. Considering that the Receiver pleaded the Eighth Cross Claim in 2016, discovery has long since closed, and the primary summary judgment rulings in this case were issued in 2019, 2021, and 2022, the Court concludes that permitting amendment to the Eighth Cross Claim would work a substantial and unfair prejudice on the CM Defendants. As a result, the Court will dismiss the Receiver’s Eighth Cross Claim against the CM Defendants with prejudice.

#### IV.

#### CONCLUSION

24. **WHEREFORE**, for the reasons set forth above, the Court hereby **DENIES** the Receiver’s Motion, **GRANTS** the CM Defendants’ Motion, and hereby **DISMISSES** the Receiver’s Eighth Cross Claim against the CM Defendants with prejudice.<sup>26</sup>

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<sup>26</sup> Notwithstanding the above, the Court concludes that the Receiver’s requests for “a determination that any verbal or other modification of the Note Purchase and Sale Agreement to accomplish the satisfaction of the CM Note and partial satisfaction of the CCSEA Notes is void”; “a determination that the Castle McCulloch Defendants are estopped to assert statutes of limitations or any other delay by JDPW in seeking to collect on the CM Note, in seeking to exercise JDPW’s rights under the CM Deed of Trust or in otherwise exercising JDPW’s rights under the CM Collateral assigned to JDPW by NewBridge Bank”; and “[a]n order that the Castle McCulloch Defendants cease and desist in their efforts to evade enforcement of the CM Collateral by JDPW” are now moot in light of the Court’s judgment in the Foreclosure Proceeding, filed contemporaneously herewith, authorizing the Substitute Trustee to sell the Castle McCulloch Property in accordance with the provisions of Article 2A of Chapter 45. (See Findings Fact, Conclusions L. & Final J. on Foreclosure Appeal.)

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

**SO ORDERED**, this the 19th day of December, 2024.

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