

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
11 CVS 449

BDM INVESTMENTS, )  
)  
Plaintiff, )  
)  
v. )  
)  
LENHIL, INC.; LENNON HILLS, )  
LLC; in her official capacity as )  
EXECUTRIX of the ESTATE OF )  
GLENN HOLLINGSWORTH; and )  
VIABLE CORP., )  
)  
Defendants. )  
)  
)  
\_\_\_\_\_ )

**ORDER REGARDING DEFENDANT  
HOLLINGSWORTH’S MOTION TO  
STRIKE**

THIS MATTER is before the Court on Defendant Hollingsworth’s Motion to Strike Certain Portions of Plaintiff’s Restated and Amended Complaint Filed April 2, 2014 (“Motion”), which was filed with supporting brief on June 2, 2016. Plaintiff filed its opposing brief on June 22, 2016. Defendant Estate of Glenn Hollingsworth did not file a reply. The Court elects to rule on the Motion without oral argument as provided by Business Court Rule 15.4(a).

Paragraph four of the Motion seeks to strike any allegations alleging that Glenn Hollingsworth (deceased) (“Hollingsworth”),<sup>1</sup> was at any material time “acting on behalf of Exit Homeplace Realty, or its management, including Martin Evans, or alleging that Defendant Hollingsworth’s decedent was at any such time acting as agent of, within the scope of his authority for, or on the business of, Exit Homeplace Realty or its management, including Martin Evans.” (Def. Hollingsworth’s Mot. Strike Restated & Am. Compl. ¶ 4.) While repeating that all

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<sup>1</sup> Though Defendant Glenn Hollingsworth is deceased, the Court refers to both Glenn Hollingsworth and the Estate of Glenn Hollingsworth as “Hollingsworth” in this Order.

claims against Exit Homeplace Realty<sup>2</sup> and J. Martin Evans (“Evans”) have been dismissed with prejudice and cannot be pursued absent Plaintiff’s success on appeal, the Court concludes that the Motion should be denied because the factual allegations that the Motion asks the Court to strike have potential relevance other than to any *respondeat superior* or agency claim against Exit Homeplace Realty or Evans, and, specifically, are relevant to the direct claims against Hollingsworth.

This case has a long and protracted procedural history. The current, narrowed list of Defendants is the result of Plaintiff’s dismissal of certain prior Defendants and the Court’s ruling on multiple motions. In particular, the Court’s January 18, 2012 Order dismissed all claims stated in Plaintiff’s Second Amended Complaint against Exit Homeplace Realty and its related entities and Exit Homeplace Realty’s principal, Evans, based on the Court’s conclusion that Plaintiff had failed to allege any factual basis for imposing liability against these Defendants.

The Second Amended Complaint, which was filed on August 8, 2011, alleged in paragraphs 86 and 110 that, at the time of the property sale to Plaintiff that is the subject of this action, Hollingsworth worked for Exit Homeplace Realty. Because several Rule 12 motions were pending when the Court issued its January 18, 2012 Order, Hollingsworth had not answered the allegations of the Second Amended Complaint by the time the Court issued its January 18, 2016 Order. Hollingsworth denied the allegations in his March 7, 2012 filing and in his subsequent Amended Answer on June 14, 2012.

The Court then issued its March 20, 2014 Order granting summary judgment against Plaintiff on certain claims, dismissing certain Defendants, and allowing Plaintiff “to amend its complaint *solely* to add a *respondeat superior* claim against

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<sup>2</sup> Homeplace Realty Associates, Inc. (“Homeplace Realty”), Exit Realty 1st, LLC, Exit Realty & Associates, Inc., and Exit Realty Seaside, LLC (collectively, “Former Exit Defendants”) were listed as separate Defendants in the earlier complaint in this matter, but are now referred to as “Exit Homeplace Realty” in the Third Amended Complaint. The Court assumes that “Exit Homeplace Realty” encompasses one or all of Homeplace Realty and the Former Exit Defendants.

Viable, Lenhil, and Lennon Hills, LLC.” *BDM Invs. v. Lenhil, Inc.*, No. 11 CVS 449, 2014 NCBC LEXIS 6, at 53–54 (N.C. Super. Ct. Mar. 20, 2014).

Plaintiff filed its Restated and Amended Complaint in Conformity with Order and Opinion Dated March 20, 2014, (“Third Amended Complaint”) on April 2, 2014. The Third Amended Complaint deleted many allegations. It also amended and included the allegations made in paragraphs 86 and 110 of the Second Amended Complaint and restated its claims against Hollingsworth with greater specificity, alleging that Hollingsworth had executed an agency contract with Exit Homeplace Realty. Hollingsworth answered the Third Amended Complaint on May 12, 2014, answering paragraph 86 and responding to paragraph 110 by incorporating the response from his answer to the Second Amended Complaint, which denied the allegations of paragraph 110. Hollingsworth’s response to paragraph 86 stated, “It is admitted that Hollingsworth was an independent contractor, under contract with Exit Homeplace Realty. In Hollingsworth’s real estate sales activities, Hollingsworth was under the supervision of Exit Homeplace Realty. To the extent not specifically admitted, the remaining allegations of Paragraph 86 are hereby denied.” (Answer to Restated & Am. Compl. ¶ 86.)

The Court’s January 18, 2012 Order dismissed all claims against Exit Homeplace Realty and Evans, based upon Plaintiff’s allegation that Hollingsworth was Exit Homeplace Realty’s agent. Plaintiff has no basis to restate those claims in the Third Amended Complaint. Plaintiff has no current basis to further pursue those claims or submit any claim to a jury for liability, either directly or under *respondeat superior*, against Exit Homeplace Realty or Evans.

Hollingsworth requests in the Motion that the Court strike paragraphs 86 and 110, as well as one sentence of paragraph 152<sup>3</sup> that contains a similar

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<sup>3</sup> The Motion requests that the Court strike “[t]he last sentence of Paragraph 153 beginning at the top of Page 16 of [the Third Amended Complaint].” (Def. Hollingsworth’s Mot. Strike Restated & Am. Compl. ¶ 3.) However, paragraph 153 simply alleges that “Hollingsworth, pursuant to the regulations contained within Chapter 93A and otherwise, qualified as a dual agent representing both the buyer and the seller in the BDM transaction.” (Pl.’s Restated & Amended Compl. ¶ 153.) Paragraph 152, however, which begins on page 15 and continues on page 16, and consists of two sentences, the second of which solely resides on page 16, states that

allegation as those earlier paragraphs, from Plaintiff's Third Amended Complaint on the basis that those allegations are precluded by the law of the case. Plaintiff contends, in part, that the Motion should be denied because Hollingsworth waived any right to move to strike when he answered those paragraphs without objection after the Court had issued the orders on which the Motion now relies. The Court need not further consider Plaintiff's waiver argument because the Court's ruling is based on other grounds.

Assuming, without deciding, that there has been no waiver, the Motion might have merit if the factual allegations in the relevant paragraphs were relevant only to supporting a liability claim against Exit Homeplace Realty or Evans. Plaintiff denies that it included paragraphs 86, 110, or 152 in the Third Amended Complaint for that purpose.

The Court has been and remains clear that claims against Exit Homeplace Realty and Evans have been dismissed. Lest there be any doubt, the Court notes that the claims were dismissed with prejudice and that the judgment dismissing those claims shall become final upon the resolution of the claims remaining in this action.

Paragraphs 86, 110, and 152 have potential relevance beyond supporting a claim against Exit Homeplace Realty or Evans. The factual allegations may be relevant to proving Hollingsworth's own direct liability, including his possible violation of obligations and duties imposed upon him because he was a licensed real-estate sales agent. The fact that he may have been operating outside the scope of his authority to represent Exit Homeplace Realty does not insulate him from his own possible liability.

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at all relevant times Hollingsworth was engaged in real estate activity as defined and described by Chapter 93A and the rules published by the North Carolina Real Estate Commission not only on behalf of plaintiff and the Lennon Hills defendants but also for Hollingsworth's real estate employer, Exit Homeplace Realty.

(Pl.'s Restated & Amended Compl. ¶ 152.) The Court believes the request to strike the second sentence of paragraph 153, which consists of only one sentence, was intended to be directed towards paragraph 152. The Court's analysis proceeds under that assumption.

