

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

**ORDER ON HARRIS'S AND
MCDANIEL'S MOTIONS TO COMPEL
COMPLIANCE WITH ARTICLE 38**

GUILFORD COUNTY

12 CVS 11322

IN RE SOUTHEASTERN EYE
CENTER-JUDGMENTS

1. **THIS MATTER** is before the Court on (i) Douglas S. Harris's ("Harris") Motion to Compel the Examination of the Receiver and to Compel Compliance with Article 38, Receivers, § 1-501, et seq.¹ and (ii) James Mark McDaniel, Jr.'s ("McDaniel") Motion to Compel Compliance with Article 38, Receivers, Section 1-501, et seq., as to the Receiverships of JDPW Trust and the Epes' Corporations' Receivership,² (together, the "Motions"), each filed 21 March 2022 in the above-captioned action.

2. The Motions have been fully briefed, and a hearing was held on the Motions on 29 June 2022 (the "Hearing"), at which the Receiver; Central Carolina Surgical Eye Associates, P.A. ("CCSEA"); and Old Battleground Properties, Inc.; and Nivison Family Investments, LLC (together, the "Nivison Parties") were represented by

¹ (Harris's Mot. to Compel Examination of Receiver and Compel Compliance with Art. 38, Receivers, § 1-501, et seq., ECF No. 1461.) All ECF Nos. in this Order refer to the 15 CVS 1648 Pending Matters case number.

² (McDaniel's Mot. to Compel Compliance with Art. 38, Receivers, Sec. 1-501, et seq., as to the Receiverships of JDPW Trust and Epes' Corporations' Receivership, ECF No. 1463.)

counsel. Harris and McDaniel appeared at the Hearing *pro se*. Counsel for Richard Harris; Castle McCulloch, Inc.; and Historic Castle McCulloch, LLC (the “Castle McCulloch Defendants”) was present at the Hearing but did not participate in argument on the Motions either through briefing or at the Hearing. The Receiver was also present at the Hearing. The Motions are now ripe for resolution.

3. By way of relevant background, on 25 February 2015, the Court appointed Gerald A. Jeutter, Jr. (“Jeutter” or the “Receiver”) to serve as the receiver for CCSEA; HUTA Leasing, LLC; Southeastern Eye Management, Inc.; Southeastern Cataract Laser Center, PLLC; and EMS Partners, LLC.³ *See* 2015 NCBC LEXIS 19, at *25 (N.C. Super. Ct. Feb. 25, 2015).

4. Several months later, the Court appointed Jeutter to serve as the receiver for KEPES Newco, LLC; DRE Newco, LLC; Surgical Eye Center, Inc.; ME Greensboro, LLC; HUTA Leasing Company; and MEM of High Point, LLC.⁴

5. JDPW Trust (“JDPW”) was established on 8 June 2007 and placed in receivership on 28 April 2016.⁵ That same day, the Court appointed Jeutter to serve as the receiver for JDPW.⁶

³ (Order on Pl.’s Renewed Mot. for Temp. Restraining Order and Prelim. Inj. and for Inspection and Inventory of Collateral and Appointment of Receiver, ECF No. 20.)

⁴ (Order Approving Settlement Agreement and Appointing Receiver for KEPES Newco, LLC and DRE Newco, LLC and Restraining Order (All Matters), ECF No. 117.)

⁵ (*See generally* Order Approving Pls.’ Mot. for Appointment of Receiver for JDPW Trust (Old Battleground v. CCSEA – Consol.) (All Matters) [hereinafter “28 April 2016 Order”], ECF No. 472.)

⁶ (28 April 2016 Order.)

6. The Motions are substantially similar and seek to compel the Receiver to testify under oath at a hearing in response to questions from Harris and McDaniel concerning information Harris and McDaniel contend the Receiver was required by law to provide to interested parties, including Harris and McDaniel, in each of the above-referenced receiverships, but which the Receiver has failed to provide. Harris and McDaniel seek to compel the requested examination of the Receiver through Article 38, § 1-501, et seq. of the North Carolina General Statutes.

7. The Receiver opposes the Motions on numerous grounds, including because Harris and McDaniel lack standing to invoke Article 38 and because Article 38 does not provide for an examination of the Receiver, *see* N.C.G.S. §§ 1-507.3, 1-507.6, 1-507.7, requiring only that the Receiver make “a report of his proceedings to the superior court at such times as the court may direct.”⁷ N.C.G.S. § 1-507.3.

8. Setting aside the Receiver’s challenge to Harris’s and McDaniel’s standing,⁸ the Court agrees with the Receiver that the relief Harris and McDaniel seek—an oral examination of the Receiver under oath in open court—is not authorized by any provision of Article 38. Neither Harris nor McDaniel has offered argument or authority to the contrary. As a result, the Court assumes without deciding that

⁷ (Receiver’s Consol. Resp. to Harris and McDaniel Mot. to Compel Compliance with Article 38, ECF No. 1490.)

⁸ *See Royal v. State*, 153 N.C. App. 495, 496 (2002) (“In reaching its determination, the trial court assumed plaintiffs had standing and that it had subject matter jurisdiction. We shall make the same assumptions and address this case on the merits, although the issue of standing is far from certain.”); *see also Cnty. of Lancaster v. Mecklenburg Cnty.*, 334 N.C. 496, 504 (1993) (assuming standing to address the merits of a constitutional challenge to a zoning ordinance).

Harris and McDaniel have standing to proceed under Article 38 for the purposes of the Motions and hereby denies the Motions because Harris and McDaniel seek relief that is not authorized under the North Carolina law they have sought to invoke.

9. Nevertheless, the Court notes that the Receiver has periodically submitted reports documenting sales and other developments affecting the receivership⁹ and that, separately, the Court has ordered the Receiver to file a further interim report no later than 1 September 2022.¹⁰ While not concluding that the North Carolina Commercial Receivership Act, N.C.G.S. §§ 1-507.20–1-507.54 (the “Act”), which became effective on 1 January 2021, applies to this action, the Court has directed the Receiver to include in his interim report information consistent with the provisions of section 1-507.35(b) of the Act. Although the information the Receiver is expected to provide pursuant to the Court’s order is not as extensive as or in the format that Harris and McDaniel seek through the Motions, the Court anticipates that the information it has ordered the Receiver to include in the interim report will address at least some of the information that Harris and McDaniel intended to elicit from the Receiver through oral examination.

⁹ (See *e.g.*, Receiver’s Quarterly Rep. on Consignment Sales, ECF No. 1113; Receiver’s Quarterly Rep. on Consignment Sales, 1232)

¹⁰ (Order Requiring Receiver to File Interim Rep. (Old Battleground v. CCSEA), ECF No. 1500.)

10. **WHEREFORE**, for the foregoing reasons, the Court hereby **DENIES** the Motions.

SO ORDERED, this the 10th day of August, 2022.

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