

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  
THE RECEIVER’S MOTION FOR  
DOUGLAS S. HARRIS TO ACCOUNT  
(OLD BATTLEGROUND V. CCSEA)**

GUILFORD COUNTY

12 CVS 11322

IN RE SOUTHEASTERN EYE  
CENTER-JUDGMENTS

1. **THIS MATTER** is before the Court on the Receiver’s Motion for Douglas S. Harris (“Doug Harris”) to Account (the “Motion”) filed 21 March 2022 in the above-captioned case.<sup>1</sup>

2. The Motion has been fully briefed, and a hearing was held on the Motion on 29 June 2022 (the “Hearing”), at which the Receiver; Central Carolina Surgical Eye Associates, P.A. (“CCSEA”); Old Battleground Properties, Inc.; and Nivison Family Investments, LLC (together, the “Nivison Parties”) were represented by counsel. Doug Harris and James Mark McDaniel, Jr. (“McDaniel”) appeared at the Hearing *pro se*. Counsel for Richard Harris; Castle McCulloch, Inc.; and Historic Castle McCulloch, LLC (together, the “Castle McCulloch Defendants”) attended the Hearing but did not participate in argument either through briefing or at the Hearing. The Motion is now ripe for resolution.

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<sup>1</sup> (Mot. for Order for Douglas S. Harris to Acct. [hereinafter “Mot.”], ECF No. 1465.) All ECF Nos. in this Order refer to the 2015 CVS 1648 Pending Matters case file.

3. By way of relevant background, JDPW Trust (“JDPW”) was established on 8 June 2007 and placed in receivership on 28 April 2016,<sup>2</sup> at which time the Court appointed Jeutter to serve as the receiver for JDPW.<sup>3</sup> Prior to Jeutter’s appointment, Doug Harris served as trustee for JDPW from 8 June 2007 through 28 April 2016.<sup>4</sup>

4. In deciding various motions for summary judgment in this action 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.”<sup>5</sup>

5. In that same order, the Court found as an undisputed fact that NewBridge Bank assigned to JDPW various loan documents on either 21 or 24 September 2012, including a deed of trust dated 30 September 2004 (the “Deed of Trust”)<sup>6</sup> granted by Historic Castle McCulloch, LLC that included a power of sale and secured a promissory note in the amount of “\$2,145,000.00 in the name of Historic Castle

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<sup>2</sup> (*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.)

<sup>3</sup> (28 April 2016 Order at 7 ¶ 2.)

<sup>4</sup> (28 April 2016 Order at 2 ¶ 3.)

<sup>5</sup> (Order and Op. on Mot. for Summ. J. (Old Battleground v. CCSEA) ¶ 293 [hereinafter “7 May 2019 Order and Op.”], ECF No. 1148 (citations omitted).)

<sup>6</sup> (Ex. UU, ECF No. 191 (showing that the Deed of Trust was assigned to JDPW on 21 September 2012).)

McCulloch, LLC” (“the Castle McCulloch Note”),<sup>7</sup> on which the Court found that the amount due and owing as of 21 September 2012 was \$1,692,430.39.<sup>8</sup> The Court also found as an undisputed fact that NewBridge Bank assigned the Castle McCulloch Note to JDPW.<sup>9</sup>

6. The Court further found that evidence in the record tended to show that Doug Harris breached his fiduciary duties to JDPW and used JDPW for transactions that personally benefitted himself, including by causing JDPW to pay at least \$25,000 in furtherance of a settlement agreement between NewBridge Bank and various debtors<sup>10</sup> as well as to attempt to “remove the assets associated with the Castle McCulloch Defendants from JDPW’s possession in order to provide relief to his brother and his brother’s entities.”<sup>11</sup>

7. The Court noted in its ruling that “Doug Harris admits that he took steps, including the execution of the March 15, 2013 Release Deed, to remove collateral belonging to the Castle McCulloch Defendants from th[e] pool of assets available to JDPW.”<sup>12</sup> More specifically, the Court found the following to be undisputed in its 26

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<sup>7</sup> (Ex. VV, ECF No. 192 (showing that the Castle McCulloch Note was assigned to JDPW on 21 September 2012).)

<sup>8</sup> (7 May 2019 Order and Op. ¶¶ 18–19, 280 n.25.)

<sup>9</sup> (7 May 2019 Order and Op. ¶¶ 11–19.)

<sup>10</sup> These debtors included Historic Castle McCulloch, LLC; Castle McCulloch, Inc.; NSITE Management, LLC; CCSEA; HUTA Leasing, LLC; Southeastern Eye Management, Inc.; McDaniel; and Richard Epes. (7 May 2019 Order and Op. ¶ 296.)

<sup>11</sup> (7 May 2019 Order and Op. ¶ 296.)

<sup>12</sup> (7 May 2019 Order and Op. ¶ 280.)

April 2021 order and opinion resolving the parties' second round of summary judgment motions:

Then in March 2013, Doug Harris, acting as JDPW's trustee, effectively transferred the CM Loan, Note, and Collateral to his brother, Richard Harris. (See Harris Dep. 34:1–11.) Specifically, he signed over to Historic Castle a deed (the "CM Release Deed") that released the CM Collateral: both the real property encumbered by the CM Deed and the rights to leases and rents under the CM Assignment. (See ECF No. 1385.4; Harris Dep. 866:19–868:25; see also Am. Consolidated Compl. Ex. YY, ECF No. 192.) He also assigned to Richard Harris all of JDPW's rights under the CM Note. (See Harris Dep. 628:12–635:25.) In Doug Harris's own 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 assigned to NewBridge Bank. It was my purpose to cancel each and every one of those rights because that was the deal." (Harris Dep. 633:1–5.) With those transfers effected, JDPW lost all rights to the CM Loan, Note, and Collateral but remained obligated on the Nivison Loan.<sup>[13]</sup>

8. At the same time, the Court found, as a matter of law, that:

Doug Harris never took any action to leverage JDPW's rights to the CM Loan. He never sought to collect on the CM Note or foreclose on the CM Collateral, and JDPW never received any payments from Dr. Epes or McDaniel and his companies, contrary to Doug Harris's personal arrangements under the Epes and McDaniel Agreements.<sup>[14]</sup>

9. Based on this and other undisputed evidence, the Court concluded as a matter of law in its April 26 Order that "Doug Harris[ had a] clear, unambiguous personal interest in the transactions he caused JDPW to enter into, including the Nivison Loan, JDPW's purchase of the CM Loan, and Doug Harris's transfers of the

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<sup>13</sup> (Order and Op. on Mot. for Summ. J. or Partial Summ. J. (Old Battleground v. CCSEA) ¶ 21 [hereinafter 26 April 2021 Order and Op.], ECF No. 1413 (footnote omitted).)

<sup>14</sup> (26 April 2021 Order and Op. ¶ 20.)

CM Note to Richard Harris and the CM Release Deed to Historic Castle,”<sup>15</sup> that Doug Harris “subordinated JDPW’s interests to those of others, including his own,”<sup>16</sup> that “Doug Harris did not choose JDPW for the contemplated transactions to benefit the trust or out of loyalty to the trust,”<sup>17</sup> that Doug Harris’s “admitted purpose in involving JDPW in these transactions was to benefit himself and his brother, not JDPW,”<sup>18</sup> that “any possible benefit to JDPW [from these transactions] was incidental and unintentional,”<sup>19</sup> that “Doug Harris did not act in the best interests of JDPW and its beneficiaries,”<sup>20</sup> and, thus, that “Doug Harris committed a breach of trust” against JDPW.<sup>21</sup>

10. There is no dispute that Doug Harris served as JDPW’s trustee, received property in that capacity, and disposed of JDPW’s property as its trustee.

11. The Receiver contends that these facts “establish a case for an equitable accounting proceeding in which Doug Harris as Trustee is required to present evidence as to the disposition of the assets, income and expenses of JDPW during his

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<sup>15</sup> (26 April 2021 Order and Op. ¶ 81.)

<sup>16</sup> (26 April 2021 Order and Op. ¶ 82.)

<sup>17</sup> (26 April 2021 Order and Op. ¶ 83.)

<sup>18</sup> (26 April 2021 Order and Op. ¶ 84.)

<sup>19</sup> (26 April 2021 Order and Op. ¶ 84.)

<sup>20</sup> (26 April 2021 Order and Op. ¶ 84.)

<sup>21</sup> (See 26 April 2021 Order and Op. ¶¶ 85–91.)

service as Trustee and the Court is authorized to make findings and enter judgment as to the proper balance owed by the Trustee to the Trust.”<sup>22</sup>

12. The Nivison Parties filed a brief in support of the Motion, and Doug Harris and McDaniel filed briefs and offered argument at the Hearing in opposition to the Motion.<sup>23</sup>

13. After careful review and consideration, the Court concludes that principles of equity and the interests of the administration of justice require that the Receiver’s Motion should be granted.

14. 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:

(5) 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.

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<sup>22</sup> (Mot. ¶ 6.)

<sup>23</sup> Doug Harris argued in his response brief that JDPW never existed and that the Court must dismiss this action for lack of jurisdiction over the non-existent trust. (Doug Harris’s Resp. Opp’n to Receiver’s Mot. for Order for Doug Harris to Acct. 5, ECF No. 1486.) However, the Court expressly rejected this argument on grounds of judicial estoppel in its 26 April 2021 order and opinion. (26 April 2021 Order and Op. ¶ 43.)

15. 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, 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).

16. 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, 557 (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[.]”).

17. These considerations have been established here. Indeed, as the Court noted above, it is an undisputed fact that Doug Harris received property while acting as trustee for JDPW<sup>24</sup> and that Doug Harris breached his fiduciary duty as trustee of JDPW.<sup>25</sup>

18. 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 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 IL App (3d) 120026-U, ¶ 15 (citations omitted); *accord Watson v. Watson*, 144 Idaho 214, 219 (2007) (“The party called upon to render an accounting bears the burdens of production and persuasion.”).

19. Accordingly, based on the above, the Court concludes, in the exercise of its discretion and for good cause shown, that (i) the Receiver’s Motion should be granted; (ii) Doug Harris should be ordered to account for the assets, income, and expenses of

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<sup>24</sup> (7 May 2019 Order and Op. ¶¶ 18–19; 26 April 2021 Order and Op ¶ 21.)

<sup>25</sup> (26 April 2021 Order and Op. ¶¶ 81–95.)



JDPW during his service as its trustee; (iii) all interested parties, including the Receiver, CCSEA, the Nivison Parties, McDaniel, and the Castle McCulloch Defendants, should be afforded the opportunity to object to Doug Harris's accounting; and (iv) the Court should thereafter sit as a master in equity to resolve any objections to Doug Harris's accounting in accordance with the law and the evidence.

20. **WHEREFORE**, the Court hereby **GRANTS** the Receiver's Motion and hereby **ORDERS** as follows:

- a. Doug Harris is hereby ordered to file an accounting no later than sixty (60) days after the entry of this Order setting forth the assets, income, and expenses of JDPW during his service as its 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. Doug Harris shall submit or make available original source documents (vouchers, bills, cancelled checks, etc.) so that the items listed in the accounting may be verified.
- b. All interested parties, including the Receiver, CCSEA, the Nivison Parties, McDaniel, and the Castle McCulloch Defendants, may file objections to Doug Harris's accounting no later than thirty (30) days after the accounting is filed.
- c. Doug Harris shall have fifteen (15) days to file his response to any objection to the accounting.

- d. 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 in accordance with procedures to be determined.

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

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