

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 McDANIEL'S
RESPONSE AND OBJECTION
TO RECEIVER'S ACCOUNTING
FOR JDPW TRUST**

GUILFORD COUNTY

12 CVS 11322

IN RE SOUTHEASTERN EYE
CENTER-JUDGMENTS

1. **THIS MATTER** is before the Court on James Mark McDaniel's Response and Objections to the Receiver's Accounting for JDPW Trust (the "Objection").¹

2. On 18 July 2022, the Court ordered Gerald Jeutter, the Court-appointed receiver (the "Receiver") for JDPW Trust (the "Receivership"), to file an interim report by 1 September 2022 concerning the Receiver's activities since his last interim report, the Receivership's receipts, disbursements, and distributions, and the Receiver's fees and expenses (the "Report Order").² The Receiver timely filed the report on 1 September 2022,³ and McDaniel filed the Objection on 30 September 2022.

3. The Court ordered briefing on the Objection on 25 October 2022, which is now complete.⁴ The Objection, though virtually devoid of any citations to the record,

¹ (James Mark McDaniel's Resp. and Objs. to Receiver's Accounting [hereinafter "Objection"], ECF No. 1508.)

² (Order Requiring Receiver to File Interim Report (Old Battleground v. CCSEA) [hereinafter "Report Order"], ECF No. 1500.)

³ (Receiver's Interim Report Per Order of the Court Apr. 1, 2020 through June 30, 2022 (All Matters) [hereinafter "Receiver Report"], ECF No. 1505.)

⁴ (Order Setting Briefing Schedule, ECF No. 1515.)

claims that the Receiver has engaged in various forms of misconduct in a conspiracy with the Receiver's attorneys.⁵ The Receiver has responded that the Objection is unrelated to any matter in which McDaniel has a legal interest and is also inaccurate on the merits.⁶

4. After considering the Objection and the parties' briefs, the relevant evidence, and applicable law, the Court concludes that the Objection should be overruled.⁷ McDaniel lacks a legal interest in the administration of the Trust and the Receivership. McDaniel has never had any legal relationship with the trust and, under North Carolina law, only a beneficiary may sue to enforce a trust or to seek redress for an alleged breach of trust. *Yost v. Yost*, 213 N.C. App. 516, 521 (2011); *Scott v. United Carolina Bank*, 130 N.C. App. 426, 432–33 (1998).⁸ Nor can a party who merely “incidentally benefits” from a trust sue to enforce a trust's terms. *Id.*⁹ Much of the Objection is simply McDaniel's expression of his general dissatisfaction

⁵ (*See generally* Objection.)

⁶ (*See generally* Resp. to McDaniel Obj. to Receiver's Interim Report and Request for Hr'g (Old Battleground v. CCSEA) [hereinafter “Receiver Resp.”], ECF No. 1522.)

⁷ The Court elects, in the exercise of its discretion, to resolve the Objection without a hearing pursuant to Business Court Rule 7.4.

⁸ This rule has limited exceptions, but none is applicable here. *See Yost*, 213 N.C. App. at 521–22 (noting that co-trustees have standing to sue each other for alleged breaches of trust).

⁹ This approach also aligns with North Carolina law on third-party beneficiaries to contracts. *See, e.g., Raritan River Steel Co. v. Cherry, Bekaert, & Holland*, 329 N.C. 646, 650–54 (1991) (stating that an incidental, third-party beneficiary of a contract may enforce that contract *only* if the contracting parties had intended to directly benefit the third party). “It is not enough that the contract, *in fact*, benefits the plaintiff” unless the parties “*intend[ed] . . . to benefit the plaintiff directly.*” *Holshouser v. Shaner Hotel Grp. Props., One Ltd. P'ship*, 134 N.C. App. 391, 400 (1999) (emphasis added).

with the Receivership,¹⁰ but McDaniel is not a beneficiary of the Trust, and so lacks standing to object to its administration as a general matter.¹¹

5. Paragraphs 1 through 8 of the Objection therefore complain about alleged conduct in which McDaniel has no current interest, and for which he has no right to relief.¹²

6. In addition, some parts of the Objection are unrelated to the Receiver's report in question. Paragraph 7 of the Objection complains that the Receiver did not produce a balance sheet as part of his report and, without citation to the record, that certain statements from *other*, unnamed reports run afoul of the guidance of the Supreme Court of North Carolina.¹³ But the Report Order did not require the

¹⁰ (*See generally* Objection.)

¹¹ This is a “bedrock rule” of law, *McHale v. Boulder Cap. LLC (In re 1031 Tax Grp., LLC)*, 439 B.R. 47, 65 (Bankr. S.D.N.Y. 2010), recognized by courts throughout the country. *See, e.g., Rock Spring Land & Timber, Inc. v. Lore*, 75 P.3d 614, 625 (Wyo. 2003) (“no one other than the beneficiary or one suing on his behalf can maintain a suit against the trustee to enforce the trust”); *Brotman v. E. Lake Creek Ranch, LLP*, 31 P.3d 886, 894–95 (Colo. 2001) (“Only a beneficiary or one suing on his or her behalf can maintain a suit against the trustee to enforce trust responsibilities or to enjoin or obtain redress for a breach of trust.”); *Weaver v. Wood*, 680 N.E.2d 918, 922 (Mass. 1997) (“In the case of a private trust, only a named beneficiary, or one suing on his or her behalf, can maintain an action to enforce a trust.”); *Sergeson v. Del. Tr. Co.*, 413 A.2d 880, 882 (Del. 1980) (“persons . . . who are not trust beneficiaries but would nonetheless obtain an advantage from enforcing [the trust] cannot maintain an action to assert trust duties”); *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 469 (Pa. 1979) (expressing “grave doubt” whether a “stranger [could] object to the waste of trust assets”); *Naversen v. Gaillard*, 831 N.Y.S.2d 258, 258 (N.Y. App. Div. 2007) (holding that “since the defendants were not beneficiaries of the [trust], they lacked standing to challenge the actions of the plaintiff as its trustee”).

¹² (*See* Objection ¶¶ 1–8.)

¹³ (Objection ¶ 7.)

Receiver to produce a balance sheet,¹⁴ and McDaniel's complaints about unspecified other reports are unsupported. These objections are therefore without merit.

7. Because of the terms on which the Court permitted McDaniel to intervene and participate in these proceedings, however, McDaniel arguably has a legal interest in a narrow segment of the Objection that deals with Castle McCulloch.¹⁵ But these portions, (Objection ¶¶ 9–11), are an attempt to re-litigate matters this Court has already decided. In particular, McDaniel challenges the right of the Receiver to foreclose on Castle McCulloch, but the Court has already expressly approved this foreclosure.¹⁶ As a result, McDaniel's objection on this ground is without merit.

8. McDaniel also objects vehemently to a \$1.3 million dollar claim in the report which McDaniel construes as a Receivership claim against Harris. But McDaniel misreads the report. The Receiver's report merely notes that Harris had asserted a \$1.3 million claim *against* the Receivership earlier in these proceedings, which the Court dismissed and set aside in its second set of summary judgment rulings in this action on 26 April 2021 (the "2021 Opinion").¹⁷ *See In re Se. Eye Ctr. – Pending Matters*, 2021 NCBC LEXIS 43, at *84 (N.C. Super. Ct. Apr. 26, 2021).¹⁸ McDaniel's

¹⁴ (Report Order 2.)

¹⁵ (*See* Receiver Resp. 2 (discussing two paragraphs of the Objection on their merits in apparent contrast to the argument that the rest of the Objection is barred).)

¹⁶ (*See* Order on the Receiver's Mot. for an Order Authorizing Exercise of the Power of Sale (Old Battleground v. CCSEA) 9.)

¹⁷ (*See* Receiver Report 3.)

¹⁸ The Court amended the 2021 Opinion in January 2022, but the amendment did not affect the Court's entry of judgment dismissing and setting aside Harris's \$1.3 million claim. (*See* Order Am. Summ. J. Order, ECF No. 1442.)

vitriol against the Receiver based on the Receiver's supposed claims against Harris is therefore misplaced.

9. The Court therefore concludes that most of McDaniel's Objection is divorced from any matter in which he has a legal interest, and that the remainder either misreads the Receiver's report or constitutes an improper attempt to re-litigate issues the Court has already decided.

10. **WHEREFORE**, based on the above and in the exercise of the Court's discretion, McDaniel's Objection is hereby **OVERRULED**, and McDaniel's concurrent request for a hearing to examine the Receiver is hereby **DENIED**.

SO ORDERED, this the 9th day of March, 2023.

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