

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV001214-310

KELLY F. MOORE, individually and
as Executor of the ESTATE OF
DRUE A. MOORE; MILES MOORE,
individually and on behalf of his
minor brother, COLE MOORE; KMC
MOORE LLC, as Trustee of the
REDWOOD TRUST, u/a/d April 10,
2017; and RICK GRAVES, as Trustee
of the REDWOOD LIFE
INSURANCE TRUST u/a/d
November 15, 2018,

Plaintiffs,

v.

ROBERT SCOTT BROOKS;
WINTHROP INTELLIGENCE, LLC;
D. SCOTT ROBINSON; OPES
DIRECTED FIDUCIARY
SERVICES, LLC; ROBINSON LAW
GROUP LLC d/b/a OPES LAW;
REDWOOD WI HOLDINGS, LLC;
REDWOOD RE I, LLC; REDWOOD
RE II, LLC; TETON GLOBAL
VENTURES LLC; and DAC
WORLDWIDE LLC,

Defendants.

**ORDER ON MOTION TO COMPEL
ARBITRATION**

This matter is before the Court on the motion to compel arbitration filed by defendant Winthrop Intelligence, LLC on 28 May 2025. (ECF No. 40). The motion is fully briefed, and the Court held a hearing on 11 August 2025. Counsel for Plaintiffs and for Winthrop appeared at the hearing. As set forth below, the Court **DENIES** Winthrop's motion.

FINDINGS OF FACT

1. Plaintiffs assert claims against Winthrop in this case for, among other things, (i) a declaratory judgment that Winthrop has no ownership interest in certain real and personal property, (ii) a declaratory judgment that certain transfers made to Winthrop or its assignees are void and unenforceable, (iii) conversion (in the alternative), (iv) unjust enrichment, and (v) a constructive trust. (ECF No. 3 at 24, 26–28, 31).

2. Winthrop has not filed an answer or a motion to dismiss but, on 28 May 2025, filed its motion to compel arbitration of this matter. (ECF No. 40).

3. Plaintiffs oppose the motion to compel arbitration and have submitted a brief and an exhibit in opposition to the motion. (ECF No. 52, 52.1).

4. In its motion and related briefing, Winthrop contends that all of Plaintiffs' claims against Winthrop in this action are subject to an arbitration provision contained in several operating agreements that Winthrop asserts have been executed since 2017. (ECF No. 40, ¶¶ 8–9; *see also* ECF No. 41).

5. With its motion to compel arbitration, Winthrop initially submitted a brief in support, attaching five exhibits: (i) its Foreign Limited Liability Company Articles of Domestication filed with the Wyoming Secretary of State, (ECF No. 41.2), (ii) the purported Amended and Restated Operating Agreement of Winthrop Intelligence, LLC dated 1 August 2017, (ECF No. 41.3), (iii) the purported Amended and Restated Operating Agreement of Winthrop Intelligence, LLC dated 2 March 2020, (ECF No. 41.4), (iv) the purported Amended and Restated Operating Agreement of Winthrop

Intelligence, LLC dated 1 June 2024, (ECF No. 41.5), and (v) the purported Amended and Restated Operating Agreement of Winthrop Intelligence, LLC dated 8 August 2024, (ECF No. 41.6).

6. Three of the four purported Amended and Restated Operating Agreements contain purported arbitration provisions that Winthrop contends require this Court to compel Plaintiffs' claims against it to arbitration. (ECF No. 41.4, §§ 20.1–20.3; ECF No. 41.5, §§ 20.1–20.3; ECF No. 41.6, §§ 20.1–20.3).

7. While the Court may take judicial notice of the Articles of Domestication filed with the Wyoming Secretary of State,¹ Winthrop did not file with its motion or brief any verification, affidavit, or declaration concerning the authenticity of the exhibits to the brief, including the four purported Amended and Restated Operating Agreements. (*See generally* ECF Nos. 40, 41).

8. Similarly, with its reply brief, Winthrop also submitted an exhibit—a purported Assignment and Assumption of Membership Interests dated 14 February 2020. As before, the exhibit was not verified or otherwise accompanied by an affidavit or declaration. (ECF No. 60.2).

¹ See N.C. R. Evid. 201(b)–(c) (providing that a trial court may take judicial notice of facts that are “not subject to reasonable dispute” and that are either “generally known within the territorial jurisdiction of the trial court” or “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). Courts routinely take notice of filings and other information available on official government websites and in their records. *See, e.g., Truist Fin. Corp. v. Rocco*, 2024 NCBC LEXIS 62, at *24 n.62 (N.C. Super. Ct. Apr. 25, 2024); *Banc of Am. Merch. Servs., LLC v. Arby's Rest. Grp., Inc.*, 2021 NCBC LEXIS 60, at *5 nn.2–3 (N.C. Super. Ct. June 30, 2021); *Langley v. Autocraft, Inc.*, 2023 NCBC LEXIS 95, at *2 n.2 (N.C. Super. Ct. Aug. 7, 2023).

9. Plaintiffs and their counsel dispute the authenticity and validity of the exhibits upon which Winthrop relies in support of its contention that there is an arbitration agreement, (*e.g.*, ECF No. 52 at 8–10; *see also* ECF No. 51.2, ¶ 11), and during the hearing reiterated their objections to the Court’s potential consideration of the exhibits in addressing the motion to compel arbitration.

10. Thus, Winthrop’s motion to compel arbitration is premised primarily upon counsel’s written arguments in the motion and briefing, (ECF Nos. 40–41, 60), the unauthenticated documents attached to the briefing, (ECF Nos. 41.2–41.6, 60.2), and counsel’s oral arguments made during the hearing, (ECF No. 67).

11. Ultimately, there is no competent evidence in the record to support Winthrop’s contention of the existence of an agreement, much less one with a binding arbitration provision that would compel Plaintiffs to arbitrate their claims against Winthrop.

12. During the hearing on the motion to compel arbitration, Winthrop’s current counsel² conceded that the purported Amended and Restated Operating Agreements upon which Winthrop relies were not authenticated or properly presented for the Court’s consideration and requested that the Court either (i) allow Winthrop to submit an affidavit or declaration authenticating the documents after the hearing, if it could obtain such a document, or (ii) deny the motion to compel arbitration without prejudice.

² The Court notes that the attorneys who filed the motion to compel and submitted the briefing in support of the motion were permitted to withdraw as counsel of record before the hearing; Winthrop’s counsel at the hearing was not the counsel who filed the motion. (ECF Nos. 68, 70).

CONCLUSIONS OF LAW

13. “On motion of a person *showing an agreement to arbitrate* and alleging another person’s refusal to arbitrate pursuant to the agreement,” a court is required to “proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.” N.C. Gen. Stat. § 1-569.7(a) (emphasis added); *Terrell v. Kernersville Chrysler Dodge, LLC*, 252 N.C. App. 414, 418 (2017) (noting that arbitration of a dispute is required if “the parties had a valid agreement to arbitrate” and “the specific dispute falls within the substantive scope of that agreement” (quoting *Slaughter v. Swicegood*, 162 N.C. App. 457, 461 (2004))).

14. The party moving to compel arbitration “bear[s] the burden of demonstrating that the parties mutually agreed to arbitrate their dispute. *Sciolino v. TD Waterhouse Inv. Servs., Inc.*, 149 N.C. App. 642, 645 (2002) (citation omitted).

15. To meet this burden, in addition to other requirements, the movant necessarily must present competent evidence of the existence of an arbitration agreement—a “threshold requirement.” *Evangelistic Outreach Ctr. v. Gen. Steel Corp.*, 181 N.C. App. 723, 727, 729 (2007) (affirming trial court’s denial of motion to compel arbitration “on the grounds that proof of the very *existence* of an arbitration agreement was lacking”).

16. Thus, “[a] trial court may properly deny a motion to compel arbitration if it determines evidence of the ‘very *existence* of an arbitration agreement [i]s lacking.’” *JRM, Inc. v. HJH Cos., Inc.*, 287 N.C. App. 592, 597 (2023) (alteration in original) (quoting *Evangelistic*, 181 N.C. App. at 727).

17. Here, no competent evidence exists of *any* agreement between Plaintiffs and Winthrop or of any agreement by which Plaintiffs might otherwise be bound to arbitrate disputes with or related to Winthrop. Winthrop has failed to introduce any competent evidence—and there is otherwise no competent evidence in the record—of such an agreement or an arbitration provision that might be binding on Plaintiffs.

18. As to the oral and written arguments of Winthrop’s counsel, “it is axiomatic that the arguments of counsel are not evidence.” *State v. Collins*, 345 N.C. 170, 173 (1996). This includes “factual assertions” made in briefing. *Rogerson v. Fitzpatrick*, 121 N.C. App. 728, 736 (1996) (noting that a party’s “factual assertions” in a brief, while potentially binding on the party making the assertions, “are not evidence for summary judgment purposes as against the non-asserting party”).

19. Thus, the oral and written arguments of Winthrop’s counsel do not provide an evidentiary basis upon which the Court might determine that an arbitration agreement exists between Winthrop and any of Plaintiffs. *Collins*, 345 N.C. at 173; *Rogerson*, 121 N.C. App. at 736; *see also State v. Bare*, 197 N.C. App. 461, 476 (2009); *State v. Chamberlain*, 232 N.C. App. 246, 250 n.2 (2014) (discussing lack of competent evidence in the record and noting that counsel’s “statement” to the court did not constitute competent evidence).

20. As to the purported Amended and Restated Operating Agreements attached by Winthrop to its briefing, those documents likewise are not competent evidence for purposes of enabling Winthrop to meet its burden to show the existence of an

agreement, much less an arbitration agreement that applies to any of the parties in this case.

21. With limited exceptions, the North Carolina Rules of Evidence “apply to all actions and proceedings in the courts of this State.” N.C. R. Evid. 1101 (excluding questions of fact preliminary to admissibility, grand jury proceedings, certain other criminal proceedings, and summary contempt proceedings).

22. In turn, documents to be submitted into evidence must be properly authenticated “by evidence sufficient to support a finding that the matter in question is what its proponent claims.” N.C. R. Evid. 901(a); *Invs. Title Ins. Co. v. Herzig*, 330 N.C. 681, 693 (1992) (“Every writing sought to be admitted must be properly authenticated.”).

23. Here, as Winthrop has presented no evidence in support of the authenticity or other identification of the exhibits upon which it relies and as Plaintiffs dispute the authenticity of the exhibits, the purported Amended and Restated Operating Agreements are not competent evidence for the Court’s consideration in evaluating the motion to compel arbitration.

24. Without the unauthenticated purported Amended and Restated Operating Agreements, Winthrop has presented no competent evidence upon which the Court could reasonably determine that any relevant agreement exists, that it contains an arbitration provision, or that it contains an arbitration provision that would apply to and bind Plaintiffs and Winthrop.

25. Thus, based on the limited record before the Court, the Court determines that it is appropriate to deny the motion to compel arbitration and that Plaintiffs should not be compelled to arbitrate their claims against Winthrop.

26. Further, while Winthrop's counsel at the hearing sought leave to submit a belated affidavit or declaration to authenticate the documents, the Court identifies myriad problems with granting leave to do so.

27. As an initial matter, there is no guarantee that Winthrop or its counsel would be able to obtain such a confirmatory declaration, affidavit, or verification.

28. Even if they could do so, however, Winthrop has now already had at least two opportunities to submit authenticating evidence and has failed to do so with its opening brief in support of its motion or even its reply brief.

29. Rule 7.5 of the Business Court Rules provides that “[a]ll materials, including affidavits, on which a motion or brief relies must be filed with the motion or brief.” BCR 7.5. Rule 7.7 similarly permits a reply brief that is “limited to discussion of matters newly raised in the responsive brief.” BCR 7.7 (noting the Court's ability to strike noncompliant replies). In turn, “[a]bsent a showing of excusable neglect or as otherwise ordered by the Court, the failure to timely file a brief or supporting material waives a party's right to file the brief or supporting material.” BCR 7.11.

30. Winthrop could have submitted authenticating evidence with its motion and opening brief or even conceivably with its reply brief³—which it submitted after

³ In fact, as noted above, with its reply, Winthrop submitted another exhibit concerning the corporate interests at issue in the case, and, like the exhibits with its opening brief, the exhibit was unauthenticated in any way. (ECF No. 60.2).

Plaintiffs, in their response, challenged the authenticity and validity of the three purported Amended and Restated Operating Agreements containing alleged arbitration provisions. Yet Winthrop did not do so.

31. By failing to submit any such authenticating evidence, Winthrop waived its opportunity to submit such evidence, and there has been no showing of excusable neglect or other cause that would justify permitting a belated submission of such evidence at this stage.

32. For the same reasons, the Court concludes that denying the motion to compel arbitration without prejudice would effectively promote gamesmanship and dilatory tactics and would reward Winthrop for its failure to meet its evidentiary burden and otherwise to comply with the Business Court Rules. Such an outcome is not warranted.

33. Accordingly, the Court concludes that it is also appropriate to deny Winthrop's alternative request to deny the motion to compel arbitration without prejudice.

ORDER

Therefore, in the exercise of discretion, the Court **ORDERS** as follows:

1. Winthrop's motion to compel arbitration is **DENIED**;
2. Winthrop's request for leave to submit belated authenticating evidence is **DENIED**; and
3. Plaintiffs' pending claims against Winthrop in this action will **PROCEED** before this Court.

SO ORDERED, this 13th day of August 2025.

/s/ Matthew T. Houston

Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases