

STATE OF NORTH CAROLINA
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV003612-890

MICHAEL L. SEALY and ROBERT
D. DAVIS,

Plaintiffs,

v.

NWP HOLDINGS, LLC and
NORWOOD PLACE HOLDINGS I,
LLC,

Defendants.

**ORDER ON MOTION TO
CANCEL NOTICE OF LIS PENDENS**

1. Defendants NWP Holdings, LLC and Norwood Place Holdings I, LLC have moved to cancel a notice of lis pendens filed by Plaintiffs Michael Sealy and Robert Davis. In its discretion, the Court elects to decide the motion on the briefs. *See* BCR 7.4.

2. According to Sealy and Davis, this case “arises from [NWP] Holdings’ breach of a Limited Liability Company Interest Purchase Agreement.” (Am. Compl. p.1, ECF No. 51.) In the disputed contract, NWP Holdings agreed to buy Sealy’s and Davis’s membership interests in Norwood Place. Alleging fraud and failure of consideration, Sealy and Davis seek to rescind the agreement and reclaim their membership interests. At the outset of the lawsuit, they obtained a preliminary injunction that bars NWP Holdings from transferring any membership interest in Norwood Place for the duration of the lawsuit. The preliminary injunction also bars Norwood Place from encumbering—but not selling—three parcels of land that it owns in Mecklenburg County. (*See* ECF Nos. 20, 42.) After receiving this Court’s order clarifying the scope

of the preliminary injunction, Sealy and Davis filed a notice of lis pendens, asserting that their claims affect title to Norwood Place's land. (Pls.' Notice Ex. A, ECF No. 44.)

3. A "notice of *lis pendens* may not properly be filed except in an action, a purpose of which is to affect directly the title to the land in question or to do one of the other things mentioned in" N.C.G.S. § 1-116. *Cutter v. Cutter Realty Co.*, 265 N.C. 664, 668 (1965). "In determining whether a cause of action affects title to real property within the meaning of" section 1-116, "the nature of the action must be analyzed by reference to the facts alleged in the body of the complaint rather than by what is contained in the prayer for relief." *George v. Admin. Off. of the Cts.*, 142 N.C. App. 479, 483 (2001). A trial court may cancel a notice that does not meet the statutory requirements. *See* N.C.G.S. § 1-120.

4. Here, the causes of action asserted in the amended complaint do not directly affect title to Norwood Place's real property. Sealy and Davis concede that title properly belongs to Norwood Place. They do not claim to own the property themselves. Nor do they seek a judgment "transferring title, setting aside a deed, instrument or conveyance," or "correct[ing] a deed." *Gilley v. Shoffner*, 345 F. Supp. 2d 563, 566 (M.D.N.C. 2004) (canceling notice of lis pendens).

5. Although Sealy and Davis point to their claim for a constructive trust, that claim does not affect title to Norwood Place's land. What Sealy and Davis allege is that NWP Holdings wrongfully induced them to transfer their *membership interests* in Norwood Place. (*See* Am. Compl. ¶¶ 85, 86, 88.) If Sealy and Davis prevail, they

might regain control and ownership of Norwood Place, but they would not obtain title to its property. In other words, the claim for constructive trust affects only the ownership of the LLC. It does not affect title to the LLC's land. *See Zinn v. Walker*, 87 N.C. App. 325, 337 (1987) ("Plaintiff argues that she was attempting to impose a constructive trust on the property for her share in the resale profits; however, plaintiff only held a contractual interest in the resale profits. There was *no* real property interest which she could claim."); *Willard v. Barger*, 2020 NCBC LEXIS 117, at *9 (N.C. Super. Ct. Oct. 9, 2020) (canceling notice of lis pendens when plaintiffs did "not seek to transfer or otherwise directly affect the Estate's title to any *real property*" but instead "base[d] their claims and requested relief on" an interest in an LLC); *see also In re Huffines Retail Partners, L.P.*, 978 F.3d 128, 133 (5th Cir. 2020) (concluding, under Texas law, that a dispute about LLC membership interest "did not 'involve' title to real property and instead implicated the [LLC's] real property only 'collaterally' ").

6. For these reasons, the Court **GRANTS** the motion and **ORDERS** that Plaintiffs' "Notice of *Lis Pendens*" denominated Mecklenburg County File No. 25M004201-590 be canceled of record by the Mecklenburg County Clerk of Superior Court and that an endorsement to that effect be made on the margin of the record, which endorsement shall refer to this order.

SO ORDERED, this the 31st day of October, 2025.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases