Moore v. Brooks, 2026 NCBC Order 30.

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 and WINTHROP INTELLIGENCE, LLC,

Defendants.

ROBERT SCOTT BROOKS and WINTHROP INTELLIGENCE, LLC

Crossclaim Plaintiffs,

v.

REDWOOD WI HOLDINGS, LLC

Crossclaim Defendant.

ORDER AND MEMORANDUM OF DECISION ON PLAINTIFFS' MOTION TO STRIKE DEFENSES

1. This matter is before the Court on Plaintiffs' motion filed pursuant to Rule 12(f) and BCR 7.2, (ECF No. 100), to strike certain putative "defenses" raised by

defendant Winthrop Intelligence, LLC in its answer to Plaintiffs' amended complaint, (ECF No. 85 at 2, 29–31).[1]

2. With their motion, Plaintiffs request that the Court strike the following purported defenses: (i) First Defense – Lack of Subject Matter Jurisdiction (Rule 12(b)(1)), (ii) Second Defense – Failure to State a Claim (Rule 12(b)(6)), (iii) Third Defense – Failure to Join a Necessary Party (Rule 12(b)(7), Rule 19, N.C. Gen. Stat. § 1-260 and Wyo. Stat. Ann. § 1-37-113), (iv) Fifth Defense – Standing, (v) Seventh Defense – Breach of Operating Agreement, and (vi) Twelfth Defense – Failure to Plead Fraud and Duress with Particularity (Rule 9(b)). (ECF No. 100).[2]

3. With each of its purported defenses, Winthrop largely asserts that Plaintiffs' causes of action "should be dismissed" or "are barred in whole or in part" or that Plaintiffs have otherwise "failed to plead" their claims adequately. Winthrop then references the rule or statute upon which it relies, in each instance providing little, if any, substantive argument, analysis, or other notice of the basis for the defenses. (ECF No. 85 at 2, 29–31). Indeed, the full text of each putative defense at issue is as follows:

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[1] The Court notes that, while certain matters are on appeal in this action, (ECF Nos. 135, 157), the appeals at issue concern defendants other than Winthrop, and this Order addresses matters not embraced by or otherwise within the scope of the Orders on appeal. *See* N.C. Gen. Stat. § 1–294 (establishing scope of appellate stay).

[2] Plaintiffs filed their motion to strike as part of a motion to dismiss and not as a separate motion as required by Rule 7.2 of the Business Court Rules. (ECF No. 100); BCR 7.2. Plaintiffs' motion to dismiss was subsequently mooted by Winthrop's amended counterclaim, however, (ECF No. 116), and Winthrop "does not object to Plaintiffs having combined their motion to dismiss with a motion to strike in the same filing supported by a combined brief," (ECF No. 117 at 2). Accordingly, in the exercise of judicial discretion, the Court addresses the merits of Plaintiffs' motion to strike.

FIRST DEFENSE
(Lack of Subject Matter Jurisdiction)

The Amended Complaint should be dismissed pursuant to N.C. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

SECOND DEFENSE
(Failure to State a Claim)

The Amended Complaint should be dismissed pursuant to N.C. R. Civ. P. 12(b)(6) for failure to state a claim against Winthrop for which relief may be granted.

THIRD DEFENSE
(Failure to Join a Necessary Party)

The Amended Complaint's first claim for relief seeking a declaration regarding membership rights in Winthrop should be dismissed pursuant to N.C. R. Civ. P. 12(b)(7) and 19, N.C. Gen. Stat. § 1-260 and/or Wyo. Stat. Ann. § 1-37-113 for failure to join Sine Nominee, LLC, a Wyoming LLC which is the member of Winthrop and over which, upon information and belief, the Court does not have jurisdiction.

. . .

FIFTH DEFENSE
(Standing)

Plaintiffs' claims should be dismissed in whole or in part due to a lack of standing.

. . .

SEVENTH DEFENSE
(Breach of Operating Agreement)

Plaintiffs' claims are barred in whole or in part by the late Drue Moore's violations of Winthrop's Operating Agreement (as amended and restated most recently on August 8, 2024) which included, but were not limited to, violations of §§ 1.7, 2.8, 3.2, 3.3, and 3.5, violations from which Plaintiffs benefitted and for which they are liable.

. . .

TWELFTH DEFENSE
(Failure to Plead Fraud and Duress With Particularity)

> To the extent Plaintiffs allege that any of the transfers to Winthrop were the result of fraud and/or duress, Plaintiffs have failed to plead such claims with particularly [sic] as required by N.C. R. Civ. P. 9(b).

(ECF No. 85 at 2, 29–31).

4. Plaintiffs contend that these purported defenses were intended to be raised as motions to dismiss, (ECF No. 100, ¶¶ 5, 7; ECF No. 101 at 14–16), and that they therefore do not comply with Rule 7.2 of the Business Court Rules, pursuant to which "[e]ach motion must be filed as a separate document," BCR. 7.2. Accordingly, Plaintiffs ask the Court to strike them. (ECF No. 100, ¶ 6).

5. Winthrop concedes that the defenses would not comply with BCR 7.2 if they were raised as motions to dismiss but argues that it listed the defenses for the purposes of "giv[ing] notice of and preserv[ing] such defenses," not "to initiate a motion to dismiss[.]" (ECF No. 117 at 2). Accordingly, Winthrop contends that nearly all of the challenged defenses should remain, except that Winthrop has withdrawn without prejudice its purported seventh defense (breach of the operating agreement). (ECF No. 117 at 2–3).

I. Rule 7.2 of the Business Court Rules

6. Under Rule 7.2 of the Business Court Rules, "[e]ach motion must be set out in a separate document" and, absent certain exceptions not at issue here, "must be accompanied by a brief." BCR 7.2; *see also* BCR 7.10 (setting forth exceptions to the

briefing requirement in BCR 7.2). Absent a properly filed motion and brief, the Court generally disregards and does not consider noncompliant filings, though the Court may also summarily deny or strike a noncompliant filing in its discretion. BCR 7.1(c); BCR 7.2.

7. "A motion is 'a written or oral application requesting a court to make a specified ruling or order.'" *Holland v. Holland*, 299 N.C. App. 362, 365 (2025) (quoting *Motion,* Black's Law Dictionary (12th ed. 2024)).

8. A "defense" in the civil context, however, generally refers to "[a] defendant's stated reason why the plaintiff . . . has no valid case." *Defense,* Black's Law Dictionary (12th ed. 2024); *see also State v. Alexander*, 380 N.C. 572, 589 (2022) (recognizing, in a criminal case, the foregoing as one of several potential meanings of the term "defense").

9. Each of Winthrop's putative defenses is expressly labeled as a "defense." (ECF No. 85 at 2, 29–31). Winthrop does not "move" for relief or otherwise affirmatively request relief with those defenses, instead asserting, as noted above, that the "claims should be dismissed" or "are barred in whole or in part" or that Plaintiffs have otherwise "failed to plead" their claims adequately. (ECF No. 85 at 2, 29–31).

10. Considering the language in context, it is apparent that, as explained in its briefing, Winthrop did not intend to assert the putative defenses as motions or other affirmative requests for relief and instead attempted to raise them as defenses.

11. Accordingly, to the extent that Plaintiffs argue that the putative defenses are improper motions that fail to comply with BCR 7.2, the Court disagrees and declines to strike them on this basis.[3]

II. Rule 12(f) of the North Carolina Rules of Civil Procedure

12. The Court's inquiry does not end there, however.

13. Under Rule 8(b), "[a] party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies." N.C. R. Civ. P. 8(b). For "[a]ffirmative defenses," a party must provide "a short and plain statement of any matter constituting an avoidance or affirmative defense sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved." N.C. R. Civ. P. 8(c).

14. "Rule 8 was intended to liberalize pleading requirements by adopting the concept of 'notice pleading,' thereby abolishing the more strict requirements of 'fact pleading.'" *Smith v. N.C. Farm Bureau Mut. Ins. Co.*, 84 N.C. App. 120, 123 (1987) (citation omitted).

15. In the event of a noncompliant defense, under Rule 12(f), "the judge may order stricken from any pleading any insufficient defense or any redundant, irrelevant, immaterial, impertinent, or scandalous matter." N.C. R. Civ. P. 12(f).

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[3] The Court notes that, while several Rule 12(b) defenses are waived if not raised in a motion prior to pleading, "[a] defense of failure to state a claim upon which relief can be granted" and "a defense of failure to join a necessary party" may be raised in a subsequent pleading, "motion for judgment on the pleadings, or at the trial on the merits." N.C. R. Civ. P. 12(h)(2); N.C. R. Civ. P. 12(g).

16. A motion under Rule 12(f) is an "analogue" to a Rule 12(b)(6) motion to dismiss, "and the same tests apply" to each. *Mozingo v. N.C. Nat'l Bank*, 31 N.C. App. 157, 163 (1976) (citation omitted).

17. "Thus, a defense that is 'conclusory,' 'contextually [in]comprehensible,' 'not well-grounded in fact,' 'speculative,' or otherwise devoid of any factual support may be stricken pursuant to Rule 12(f), since such a defense will ordinarily fail to give a party sufficient notice of the nature of the defense as required by Rule 8." *Merrell v. Smith*, 2020 NCBC LEXIS 126, at *6–7 (N.C. Super. Ct. Oct. 22, 2020) (alteration in original) (citations omitted); *see also Nat'l Fin. Partners Corp. v. Ray*, 2014 NCBC LEXIS 50, at *18–19 (N.C. Super. Ct. Oct. 13, 2014) ("[T]o survive a motion to strike, a defendant must offer more than a 'bare-bones conclusory allegation which simply names a legal theory but does not indicate how the theory is connected to the case at hand.'" (alteration in original) (citations omitted)).

18. "In addition, the North Carolina Court of Appeals has sometimes evaluated whether a defense could have a 'possible bearing upon the litigation' when reviewing a Rule 12(f) ruling." *Merrell*, 2020 NCBC LEXIS 126, at *7 (citations omitted). However, as the Business Court has recognized, this standard generally applies in the context of striking scandalous or impertinent matters as opposed to striking a defense. *Id.* at *7 n.4.

19. Ultimately, "Rule 12(f) motions are viewed with disfavor and are infrequently granted," *Daily v. Mann Media, Inc.*, 95 N.C. App. 746, 748–49 (1989) (internal quotation marks and citation omitted), but the decision whether to

grant or deny a Rule 12(f) motion to strike is left to the trial court's discretion. *Reese v. City of Charlotte*, 196 N.C. App. 557, 567 (2009). Thus, in its discretion, the Court addresses each putative defense in turn.

20. **Subject Matter Jurisdiction—Rule 12(b)(1)**. For its first purported defense, Winthrop contends that "[t]he Amended Complaint should be dismissed pursuant to N.C. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction." (ECF No. 85 at 2). This sentence is purely conclusory and provides no explanation or notice of *why* Winthrop contends that the Court lacks subject matter jurisdiction. Thus, Winthrop's putative defense is deficient and fails to provide adequate notice, such that it is appropriate to grant Plaintiffs' motion.

21. The Court notes, however, that "[a] court's lack of subject matter jurisdiction is not waivable and can be raised at any time." *In re N.P.*, 376 N.C. 729, 731 (2021) (citation omitted). As a result, the Court might reasonably conclude that "striking the defense at this juncture would serve no real purpose." *Villa v. Ally Fin., Inc.*, 2014 U.S. Dist. LEXIS 25624, at *7 (M.D.N.C. Feb. 28, 2014) (citation omitted) (collecting cases and "agree[ing] with this . . . perspective"); *see also Merrell*, 2020 NCBC LEXIS 126, at *6; *Nat'l Fin. Partners*, 2014 NCBC LEXIS 50, at *18–19 (both approvingly citing *Villa*).

22. However, in evaluating Winthrop's perfunctory defense versus Plaintiffs' motion that will leave the parties in substantially the same position regardless of whether it is granted, the Court determines that Winthrop should not, in effect, be rewarded for its deficient shotgun pleading approach, even if the defense may be

raised by other means and Plaintiffs' motion serves no apparent practical purpose. *See Villa*, 2014 U.S. Dist. LEXIS 25624, at *15 (striking defective defenses without prejudice).

23. Accordingly, in the exercise of judicial discretion, the Court **GRANTS** the motion and **STRIKES** this defense to the extent that it is insufficiently raised in Winthrop's pleading, without prejudice to any party's (and the Court's) ability to raise the issue of subject matter jurisdiction in a procedurally proper manner at any time if appropriate.

24. **Failure to State a Claim—Rule 12(b)(6)**. For its second purported defense, Winthrop contends that "[t]he Amended Complaint should be dismissed pursuant to N.C. R. Civ. P. 12(b)(6) for failure to state a claim against Winthrop for which relief may be granted." (ECF No. 85 at 2).

25. Unlike dismissal for lack of subject matter jurisdiction, dismissal for failure to state a claim, by its very nature, is premised on a deficiency that is—or should be—apparent on the face of the amended complaint, along with any incorporated documents and matters subject to judicial notice. *See Krawiec v. Manly*, 370 N.C. 602, 606 (2018) (addressing pleading standards). As with Winthrop's first putative defense, however, Winthrop's putative defense is conclusory and devoid of factual support. It does not provide notice of any specific pleading deficiencies in Plaintiffs' amended complaint, such as particular unpleaded elements of a claim or other such deficiencies that might be revealed on the face of the complaint.

26. Of course, the Court may evaluate the sufficiency of the allegations in a

complaint *sua sponte* and, regardless of the timing, may ultimately dismiss causes of action or an entire case where the plaintiff fails to state a claim or where it is otherwise appropriate. *See Tuwamo v. Tuwamo*, 248 N.C. App. 441, 445 (2016) ("This Court has found that '[c]ourts have continuing power to supervise their jurisdiction over the subject matter before them, including the power to dismiss *ex mero motu*.'" (alteration in original) (quoting *Narron v. Union Camp Corp.*, 81 N.C. App. 263, 267 (1986))); *Maola Ice Cream Co. of N.C., Inc. v. Maola Milk & Ice Cream Co.*, 238 N.C. 317, 324 (1953) ("If the cause of action, as stated by the plaintiff, is inherently bad, why permit him to proceed further in the case, for if he proves everything that he alleges he must eventually fail in the action." (citations omitted)).

27. Further, regardless of its putative defense here, Winthrop also would be permitted to raise "[a] defense of failure to state a claim upon which relief can be granted" in a subsequent pleading, "motion for judgment on the pleadings, or at the trial on the merits." N.C. R. Civ. P. 12(h)(2); N.C. R. Civ. P. 12(g).

28. Nonetheless, for substantially the same reasons discussed above and in the exercise of judicial discretion, the Court **GRANTS** the motion and **STRIKES** this defense to the extent that it is insufficiently raised in Winthrop's pleading, without prejudice to any party's (and the Court's) ability to subsequently raise the issue of whether Plaintiffs have adequately stated a claim upon which relief can be granted in a procedurally proper manner.

29. **Failure to Join a Necessary Party—Rule 12(b)(7)**. For its third purported defense, Winthrop provides slightly more information in support of its

defense by at least identifying the party that Winthrop contends should have been joined in the case and asserting as follows:

> The Amended Complaint's first claim for relief seeking a declaration regarding membership rights in Winthrop should be dismissed pursuant to N.C. R. Civ. P. 12(b)(7) and 19, N.C. Gen. Stat. § 1-260 and/or Wyo. Stat. Ann. § 1-37-113 for failure to join Sine Nominee, LLC, a Wyoming LLC which is the member of Winthrop and over which, upon information and belief, the Court does not have jurisdiction.

(ECF No. 85 at 2).

30. As with the first two, this putative defense is scant on detail. Winthrop does, however, (i) identify the third party at issue (Sine Nominee, LLC), (ii) assert that the entity is a "member of Winthrop" over which the Court lacks jurisdiction, and (iii) specify that its defense is specific to Plaintiffs' "first claim for relief seeking a declaration regarding membership rights in Winthrop." (ECF No. 85 at 2).

31. Though Winthrop does not expound on these largely conclusory assertions, the Court discerns (and thus Plaintiffs reasonably could be expected to discern) that Winthrop's contention is that Sine Nominee, LLC is a member in Winthrop whose membership rights would or could be adversely affected by a declaratory ruling concerning membership rights in Winthrop. (*See* ECF No. 85 at 2). This sufficiently provides notice of the defense within the requirements of Rule 8. *See Merrell*, 2020 NCBC LEXIS 126, at *5–7, 11–12 (discussing the liberal notice pleading nature of Rule 8).

32. Even if it did not do so, however, Winthrop would otherwise be permitted to raise "a defense of failure to join a necessary party" in a subsequent pleading,

"motion for judgment on the pleadings, or at the trial on the merits." N.C. R. Civ. P. 12(h)(2); N.C. R. Civ. P. 12(g).

33. Thus, in the exercise of judicial discretion, the Court **DENIES** Plaintiffs' motion as to this putative defense.

34. **Standing**. With its fifth putative defense, Winthrop asserts that "Plaintiffs' claims should be dismissed in whole or in part due to a lack of standing." (ECF No. 85 at 29). Winthrop includes no further detail about the basis for an alleged lack of standing, whether one or all Plaintiffs allegedly lack standing, or any other information in support of this putative defense. (ECF No. 85 at 29). Thus, as is a recurring theme throughout Winthrop's filing, this putative defense is conclusory and fails to provide notice of the nature of the defense under Rule 8. *Merrell*, 2020 NCBC LEXIS 126, at *6–7.

35. However, as standing is a "necessary prerequisite to a court's proper exercise of subject matter jurisdiction," lack of standing also implicates subject matter jurisdiction, which may be raised at any time during the case, as explained above. *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 649 (2022) (citations omitted); *In re N.P.*, 376 N.C. at 731.

36. Thus, for the reasons noted above and in the exercise of its discretion, the Court **GRANTS** the motion and **STRIKES** this defense to the extent that it is insufficiently raised in Winthrop's pleading, without prejudice to any party's (and the Court's) ability to raise the issue of subject matter jurisdiction in a procedurally proper manner at any time if appropriate.

37. **Breach of Operating Agreement**. With its seventh putative defense, Winthrop asserts that "Plaintiffs' claims are barred in whole or in part by the late Drue Moore's violations of Winthrop's Operating Agreement (as amended and restated most recently on August 8, 2024) which included, but were not limited to, violations of §§ 1.7, 2.8, 3.2, 3.3, and 3.5, violations from which Plaintiffs benefitted and for which they are liable." (ECF No. 85 at 30).

38. Though it points to the contractual provisions at issue, Winthrop once again fails to provide any supporting facts, leaving a bare-bones, conclusory allegation without any support.

39. Regardless, because Winthrop has withdrawn it without prejudice, the Court need not, and does not, further address the issue further and **DENIES as moot** Plaintiffs' motion as to this putative defense.

40. **Failure to Plead Fraud and Duress With Particularity**. Finally, with its twelfth defense, Winthrop asserts that "[t]o the extent Plaintiffs allege that any of the transfers to Winthrop were the result of fraud and/or duress, Plaintiffs have failed to plead such claims with particularly [sic] as required by N.C. R. Civ. P. 9(b)." (ECF No. 85 at 31); *see* N.C. R. Civ. P. 9(b) ("In all averments of fraud, duress or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.").

41. As failure to comply with the Rule 9(b) particularity requirement constitutes a failure to state a claim upon which relief can be granted, dismissal under Rule 9(b) is generally made in conjunction with dismissal under Rule 12(b)(6). *See*

generally, e.g., *Provectus Biopharmaceuticals, Inc. v. RSM US LLP*, 2018 NCBC LEXIS 101 (N.C. Super. Ct. Sept. 28, 2018) (analyzing Rule 9(b) compliance in conjunction with review of Rule 12(b)(6) motion); *Tiller v. Phillips*, 2025 NCBC LEXIS 141 (N.C. Super. Ct. Oct. 15, 2025) (same); *Tillery Env't. LLC v. A&D Holdings, Inc.*, 2018 NCBC LEXIS 13 (N.C. Super. Ct. Feb. 9, 2018) (same).

42. The bar to plead a defense and to put a party on notice of deficiencies in a complaint is a low one. *Smith*, 84 N.C. App. at 123. Nonetheless, Winthrop's putative twelfth defense fails to clear that bar. It lacks any facts, fails to identify any particular deficiency that it contends exists, and otherwise is purely conclusory. *Merrell*, 2020 NCBC LEXIS 126, at *6–7.

43. The Court therefore **GRANTS** the motion and **STRIKES** this defense to the extent that it is insufficiently raised in Winthrop's pleading. As set forth above, however, the Court does so without prejudice to any party's (and the Court's) ability to subsequently raise, in a procedurally proper manner, the issue of whether Plaintiffs have adequately and particularly stated a claim.

44. Plaintiffs' motion is therefore **GRANTED IN PART** and **DENIED IN PART** as set forth above.

SO ORDERED, this 13th day of March 2026.

/s/ Matthew T. Houston

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