STATE OF NORTH CAROLINA

PENDER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1033

DAVID G. KNOWLES, BRITTANY KNOWLES, NARVILE O. PARKS, SUSAN P. PARKS, ALLISON HAMRICK, CHAD K. PARKS, SUSAN M. PARKS, BILLY RAY RAMSEY, GAIL M. RAMSEY, BROOK HOLLEY, JACK BATTLEWELLS HOLLEY, WILLIAM CARR MATTHEWS, GINA MATTHEWS, LISA BROWN, JOSEPH BROWN, RANDY JONES, LYNNE JONES, PHILLIP R. SHOLAR, and AMY J. SHOLAR,

Plaintiffs,

v.

HOWARD JEFF CONERLY, as Executor of the Estate of William Paul Powell, Jr., and as Trustee of the William Paul Powell, Jr. Revocable Trust, CHAPEL BY THE BAY, INC., a North Carolina Corporation, and SEA MANOR ENTERPRISES, LLC, a North Carolina Limited Liability Company,

Defendants.

ORDER AND OPINION ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

1. This action arises from a controversy concerning the disposition of a mobile home park (the "Park") upon the death of William Paul Powell, Jr., formerly a resident of Surf City, North Carolina. Plaintiffs, each of whom rents a lot in the Park, assert that Mr. Powell intended to convey the Park, among other things, to them upon his death. However, after Mr. Powell's passing in September 2022, Plaintiffs were informed that Mr. Powell's church, Defendant Chapel by the Bay, Inc.

("the Church"), which inherited Mr. Powell's membership in a limited liability company, Defendant Sea Manor Enterprises, LLC ("the LLC"), now owns the Park. This action followed.

2. The case is before the Court on Defendants Chapel by the Bay, Inc. and Sea Manor Enterprises, LLC's Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure ("the Motion"), (ECF No. 15).

3. Having considered the Motion, the related briefs, the relevant pleadings, and the arguments of counsel at a hearing on the Motion held on 23 May 2024, the Court hereby **GRANTS in part** and **DENIES in part** the Motion.

Rountree Losee LLP, by Stephen D. Coggins and Michael A. Becker, for Plaintiffs David G. Knowles, Brittany Knowles, Narvile O. Parks, Susan P. Parks, Allison Hamrick, Chad K. Parks, Susan M. Parks, Billy Ray Ramsey, Gail M. Ramsey, Brook Holley, Jack Battlewells Holley, William Carr Matthews, Gina Matthews, Lisa Brown, Joseph Brown, Randy Jones, Lynne Jones, Phillip R. Sholar, and Amy J. Sholar.

Coastal Legal Counsel, by Aaron D. Lindquist, for Defendant Howard Jeff Conerly, as Executor of the Estate of William Paul Powell, Jr., and as Trustee of the William Paul Powell, Jr. Revocable Trust.

Ward and Smith, P.A., by Alex C. Dale and Isabelle M. Chammas, for Defendants Chapel by the Bay, Inc., a North Carolina Corporation and Sea Manor Enterprises, LLC, a North Carolina Limited Liability Company.

Earp, Judge.

I. FACTUAL AND PROCEDURAL BACKGROUND

4. On a motion for judgment on the pleadings, the Court does not find facts. It recites below the facts that are relevant to the Court's determination of the Motion as alleged in the pleadings. *See, e.g.*, *Erickson v. Starling*, 235 N.C. 643, 657 (1952).

5. The LLC was organized under North Carolina law on 13 August 1999. (Compl. ¶ 14, ECF No. 3.) Before his death, Mr. Powell was its sole member and manager. (Compl. ¶¶ 17, 21.) The LLC owns four parcels of land in Surf City, North Carolina. (Compl. ¶¶ 19–20, Exs. A–C.) The Park is situated on two of those parcels and was managed by Mr. Powell on behalf of his LLC. (Compl. ¶¶ 21–22.)

6. The Park is divided into nine separate mobile home lots. (Compl. ¶ 22.) For some time now, Plaintiffs have leased the lots pursuant to unwritten monthly leases. (Compl. ¶ 23.) The arrangement also afforded them use of an adjacent lot (the "Boat Trailer Storage Lot"), a boat ramp, and three docks. (Compl. ¶ 27.) One of the docks is on the LLC's property (the "Southern Dock"), and two more (the "Northern Docks") are located on a separate parcel owned by Mr. Powell personally (the "Powell Lot"). (Compl. ¶ 24.)

7. To access the boat ramp and the Southern Dock, Plaintiffs have to cross over the Boat Trailer Storage Lot. (Compl. ¶¶ 24–25, 37.) To access the Northern Docks, Plaintiffs must cross the Boat Trailer Storage Lot and then proceed along the shore edge of the Powell Lot. (Compl. ¶¶ 26, 37.)

8. Mr. Powell executed his will on 25 October 2011. (Compl. ¶ 39, Ex. E ["Will"].) The Will provides:

> A. Gift of Tangible Personal Property. All my tangible personal property that was not held by me solely for investment purposes, including, but not limited to, my automobiles, household furniture and furnishings, clothing, jewelry, collectibles and personal effects, shall be disposed of as follows:
>
> > 1. I give all such tangible personal property to my church, CHAPEL BY THE BAY, INC., Surf City, North Carolina.
>
> ****
>
> C. Gift of Residuary Estate. I give my residuary estate, being all my real and personal property, wherever located, not otherwise effectively disposed of, but without exercising any power of appointment over property that I may have, to the Trustee acting under that declaration of trust instrument previously executed by me on the September 28, 1999, to be added to and disposed of under the provisions of that trust instrument, including any amendments and restatements to it in effect at the time of my death.

(Will ¶¶ A(1), C.) The Church is the lone trust beneficiary. (Answ. ¶ 51, ECF No. 6.)

9. On 30 May 2013, Mr. Powell executed a codicil to the Will (the "Codicil").

(Compl. ¶ 42, Ex. F ["Codicil"].) The Codicil states:

> I, William Paul Powell, Jr., a resident of Pender County, North Carolina, declare that this is the codicil to my last will and testament which is dated October 25, 2011.
>
> I leave the following real property (real estate) to the mobile home owners that have a mobile home in my mobile home park known as Sea Manor Enterprises, LLC.
>
> They are to continue to have access to the boat ramp and three piers until they dispose of their mobile home, but this right will not pass to their heirs.[1]

[1] The Codicil also states: "Attached are copies of Sea Manor Enterprises, LLC Mobile Home Park information along with copies of the Pender County and Town of Surf City real property tax documents." However, Plaintiffs allege that these documents are not attached to the Codicil. (Compl. ¶ 49.)

10. Plaintiffs allege that they made extensive repairs and improvements to their mobile homes and to the Southern and Northern Docks because Mr. Powell assured them that "they had nothing to worry about and they would be taken care of." (Compl. ¶¶ 40–41, 44–45.) They allege that Mr. Powell executed the Codicil in accordance with his intent that Plaintiffs benefit from these improvements after his death. (Compl. ¶¶ 40, 42.) Thereafter, Plaintiffs allege that Mr. Powell continued to reassure them that they had nothing to worry about and they would not lose their investments. They allege that Mr. Powell told them he considered them to be like family and appreciated that they had helped him over the years. (Compl. ¶ 45.)

11. Mr. Powell passed away on 12 September 2022. (Compl. ¶ 47.) Following his death, Plaintiffs met with the executor of Mr. Powell's estate, Defendant Howard Jeff Conerly. (Compl. ¶ 51.) Plaintiffs allege that during this meeting, Mr. Conerly stated that Mr. Powell left the property owned by the LLC to Plaintiffs pursuant to the Codicil. (Compl. ¶ 51.) However, on 1 February 2023, counsel for the Estate, Aaron Lindquist, sent a letter to Plaintiffs (the "February 1 Letter") which stated:

> After further review of Mr. Powell's assets and holdings, I am writing to you to let you know that the Chapel By The Bay Church inherited Mr. William P. Powell, Jr.'s 100% ownership interest in Sea Manor Enterprises LLC.
>
> ****
>
> The Codicil stated that it was leaving the property to the mobile home owners, and not the ownership interest in the LLC. Mr. Powell's attempt to give this property to the mobile home owners through the Codicil failed because he did not own the property at the time of his death. His LLC did. Because the Church inherited the LLC, the Church

> is now the sole owner of the LLC, and, therefore, the sole owner of this real estate via the LLC.

(Compl. Ex. G.)

12. On 27 February 2023, Nathan Swartz ("Swartz"), the Senior Pastor of the Church, sent Plaintiffs a letter informing them of their options going forward. They could:

> Mail the signed enclosed Lease Agreement and payment by April 1, 2023 with the four month total payment due in ***advance*** at (**$250 per Month**) (April – July) by April 1, 2023 as described in the Lease Agreement.
>
> If a decision has been made to no longer be a Tenant . . . mail the signed enclosed Lease Agreement marked **Decline** and send 60 day payment by April 1, 2023.

(Compl. Ex. I (emphasis in original).) Because they contend they are the rightful owners of the Park, Plaintiffs have not entered lease agreements with the Church. They continue to have mobile homes in the Park, but they have not paid rent for some period of time now. (Answ. ¶ 28.)

13. Plaintiffs initiated this action by filing the Complaint on 28 September 2023. The Complaint purports to (a) assert claims for breach of contract (against both the LLC and Mr. Powell), unjust enrichment against the Church with respect to the Northern Docks, and breach of the LLC's operating agreement by the Church as its manager, (b) request a judgment declaring either that Plaintiffs own the LLC and have easement rights, or that the Codicil is ambiguous and should be construed as bequeathing the LLC to Plaintiffs, and that the Court quiet title with respect to an easement over the "riparian tracts," and (c) seek imposition of a trust, reformation of

Mr. Powell's Will, and treatment of the LLC—not as a separate entity—but as the alter ego of Mr. Powell.[2] (*See generally* Compl.)

14. The case was designated as a mandatory complex business case on 3 November 2023, (ECF No. 1), and assigned to the undersigned on 6 November 2023, (ECF No. 2).

15. Defendants filed the Motion on 15 March 2024. After full briefing, the Court held a hearing on the Motion on 23 May 2024. (Not. of Hr'g., ECF No. 22.) The Motion is now ripe for disposition.

II. LEGAL STANDARD

16. When ruling on a Rule 12(c) motion, the Court views the factual allegations and permissible inferences in the pleadings in the light most favorable to the nonmoving party:

> [a]ll well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false. All allegations in the nonmovant's pleadings, except conclusions of law, legally impossible facts, and matters not admissible in evidence at the trial, are deemed admitted by the movant for purposes of the motion.

Ragsdale v. Kennedy, 286 N.C. 130, 137 (1974) (citations omitted). "Legal conclusions, however, are not entitled to a presumption of validity." *Charlotte Motor Speedway, LLC v. Cnty. of Cabarrus*, 230 N.C. App. 1, 6 (2013) (quoting *Guyton v. FM Lending Servs., Inc.*, 199 N.C. App. 30, 33 (2009)).

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[2] Plaintiffs' ninth claim is not a claim for relief but is rather a "Motion for Preliminary Injunction." Business Court Rule ("BCR") 7.2 requires a motion to be set out in a separate document and accompanied by a brief. Because Plaintiffs have neither sought to be heard on their purported motion nor complied with BCR 7.2, the Court does not address the motion set forth as Plaintiffs' ninth claim for relief.

17. The Court may consider documents that are the subject of the complaint and to which the complaint specifically refers without converting the motion to one for summary judgment. *Weaver v. St. Joseph of the Pines, Inc.*, 187 N.C. App. 198, 204 (2007). This is true even if the document is presented by the defendant. *Erie Ins. Exch. v. Builders Mut. Ins. Co.*, 227 N.C. App. 238, 243 (2013) (holding that a Rule 12(c) motion was not converted into one for summary judgment when an insurance policy was attached to the defendant-insurer's pleading because the plaintiff referenced the policy in his complaint and it was the subject of the plaintiff's action). The Court may reject allegations contradicted by those documents. *Laster v. Francis*, 199 N.C. App. 572, 577 (2009).

18. Judgment on the pleadings is intended to dispose of baseless claims, not weak ones. *Huss v. Huss*, 31 N.C. App. 463, 469 (1976). Accordingly, "[t]he movant is held to a strict standard[.]" *Ragsdale*, 286 N.C. at 137. A Rule 12(c) motion should not be granted "unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law." *Carpenter v. Carpenter*, 189 N.C. App. 755, 761 (2008).

III. ANALYSIS

A. Standing and Alternative Pleading

19. In addition to arguing that Plaintiffs' pleading with respect to each claim is insufficient as a matter of law, Defendants contend that the Complaint should be dismissed in its entirety because (1) Plaintiffs lack standing, and (2) Plaintiffs' claims conflict with one another. (*See* Mem. Law Supp. Mot. for J. on Pleadings ["Defs.' Br.

Supp."] 10–13, ECF No. 16.) The Court addresses these preliminary arguments below before moving to an analysis of each claim.

1. Standing

20. With respect to standing, Defendants contend that Plaintiffs have not and cannot allege any injury. The Court disagrees.

21. "Standing refers to whether a party has a sufficient stake in an otherwise justiciable controversy such that he or she may properly seek adjudication of the matter." *Beachcomber Props., L.L.C. v. Station One, Inc.*, 169 N.C. App. 820, 823 (2005) (quoting *Street v. Smart Corp.*, 157 N.C. App. 303, 305 (2003)). Standing requires proof of an injury fairly traceable to the challenged action of the defendant that will be redressed by a favorable decision. *Id.* (citing *Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 114 (2002)).

22. Defendants argue that Plaintiffs do not have standing because they have not identified an injury. They contend that any improvements Plaintiffs made to their mobile homes have not been lost by virtue of not owning the real property on which the mobile homes are situated because "[m]obile homes are just that—mobile and fully capable of being moved when Plaintiffs choose." Therefore, Defendants conclude, Plaintiffs have suffered no injury. (Defs.' Br. Supp. 11.)

23. The Court is unconvinced. Plaintiffs allege that, upon Mr. Powell's death, Mr. Conerly, the executor, informed them that they owned the real property on which their mobile homes were parked. (Compl. ¶ 51.) Mr. Lindquist, the Estate's lawyer, later told them that they do not own the property. Plaintiffs brought this

action, asserting that they own the Park and are entitled to access the Boat Trailer Storage Lot and Docks. Whether their mobile homes are "movable" is immaterial.

24. Accordingly, Defendants' Motion on this basis is **DENIED**.

2. Rule 8(e)(2) and Alternative Pleading

25. Plaintiffs present alternative theories and claims regarding the document that is identified in the pleadings as the Codicil. At times Plaintiffs contend that the Codicil is a personal estate planning document, (Compl. ¶¶ 91–121 (sixth, seventh, and eighth claims)). At other times, Plaintiffs allege that the Codicil is a contract, (Compl. ¶¶ 55–68 (first and second claims)), or possibly an operating agreement, (Compl. ¶¶ 84–90 (fifth claim)). Defendants complain that "[a]ll of the twists and flips in the Complaint about the nature and effect of the Codicil" subject the Complaint to dismissal. (*See* Defs.' Br. Supp. 13.) Again, the Court disagrees.

26. "[A] plaintiff is only required to set forth a short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved showing that the pleader is entitled to relief." *Bandy v. Gibson*, 2017 NCBC LEXIS 66, at *12 (N.C. Super. Ct. July 26, 2017) (cleaned up); *see also* N.C. R. Civ. P. 8(a)(1).

27. Moreover, pursuant to Rule 8(e)(2) of the North Carolina Rules of Civil Procedure:

> A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be

> sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has *regardless of consistency* and whether based on legal or on equitable grounds or on both.

N.C. R. Civ. P. 8(e)(2) (emphasis added); *see also Concrete Serv. Corp. v. Invs. Grp., Inc.*, 79 N.C. App. 678, 684 (1986) ("There is no requirement that all claims be legally consistent."); *James River Eqip., Inc. v. Mecklenburg Utils., Inc.*, 179 N.C. App. 414, 419 (2006) ("It is well-established that liberal pleading rules permit pleading in the alternative, and that theories may be pursued in the complaint even if plaintiff may not ultimately be able to prevail on both." (cleaned up)). Furthermore, Rule 8(e)(2) does not "provide[ ] for any particular form of phrasing alternative claims." *Oxendine v. Bowers*, 100 N.C. App. 712, 716 (1990).

28. It is apparent from the Complaint that Plaintiffs argue that the Codicil is a key document but contend that its legal effect depends on whether it is an estate document or simply evidence of a contract to convey real property. Advancing these alternative theories is permitted by Rule 8. While Plaintiffs' pleading is not a model of clarity, "[t]he adoption of the notice theory of pleading indicated the legislature's intention that controversies be resolved on their merits . . . following an opportunity of discovery, rather than resolving them on technicalities of pleading." *Wentz v. Unifi, Inc.*, 89 N.C. App. 33, 38 (1988) (internal citation and quotation marks omitted). Therefore, Defendants' Motion on this basis is **DENIED**.

B. Breach of Contract (LLC)

29. Plaintiffs first allege that they entered into an agreement with the LLC, evidenced by the Codicil, "whereby in exchange for the Plaintiffs maintaining and improving their mobile homes located on the Park, and the Northern Docks and the Southern Dock, the LLC would arrange its affairs in such a way that the Plaintiffs would receive title to the Park, along with access and riparian rights to the Southern Dock." (Compl. ¶ 56.) They contend that the LLC breached this agreement. (Compl. ¶¶ 58–59.)

30. Defendants respond that this claim fails as a matter of law because (1) there was never a contract between Plaintiffs and the LLC, (2) there was never a breach of any contract or damages flowing from any alleged breach, and (3) the claim is barred by the statute of frauds. (Defs.' Br. Supp. 14–16.)

1. Existence of Contract and Breach

31. "In an action for breach of contract, the complaint must allege (1) the existence of a contract between the parties, (2) the specific provisions breached, (3) the facts constituting the breach, and (4) the damages resulting to the plaintiff[s] from the breach." *Thompson v. Bass*, 261 N.C. App. 285, 290 (2018) (citing *Cantrell v. Woodhill Enters., Inc.*, 273 N.C. 490, 497 (1968)).

32. As to the first element, Defendants argue that the Codicil was written and executed by Mr. Powell, individually, as an estate planning document and does not evidence a contract between his LLC and Plaintiffs. (Defs.' Br. Supp. 15.) However, Plaintiffs have alleged that they entered into an oral agreement with the

LLC that was then memorialized by Mr. Powell—as the sole member and manager of the LLC—in the Codicil. (Compl. ¶¶ 56–57.) Accordingly, it is Plaintiffs' position that when Mr. Powell executed the Codicil, he did so in his capacity as manager of the LLC, not in his individual capacity. Indeed, they point to Mr. Powell's reference in the Codicil to the Park as "my mobile home park known as Sea Manor Enterprises, LLC." The Court determines that, at this stage, Plaintiffs have satisfactorily pled this element of their claim.

33. As for the remaining elements, Plaintiffs have alleged that the LLC breached the agreement by failing to ensure that the Park and an easement granting access to the Southern Dock were distributed to Plaintiffs and that Plaintiffs have been damaged as a result.[3] (*See* Compl. ¶¶ 59, 62.) Accordingly, Plaintiffs have sufficiently stated a claim for breach of contract against the LLC. *Cf. Carolina Med. Partners, PLLC v. Shah*, 2024 NCBC LEXIS 86, at **5 (N.C. Super. Ct. June 27, 2024) ("The elements of a claim for breach of contract are the existence of a valid contract and breach of that contract's terms. When these elements are alleged, 'it is error to dismiss a breach of contract claim under Rule 12(b)(6).' " (quoting *Woolard v. Davenport*, 166 N.C. App. 129, 134 (2004))); *Vanguard Pai Lung, LLC v. Moody*, 2019 NCBC LEXIS 39, at *11 (N.C. Super. Ct. June 19, 2019) ("[S]tating a claim for breach of contract is a relatively low bar.").

[3] Plaintiffs do not mention the Boat Trailer Storage Lot in this claim.

2. Statute of Frauds

34. "It is settled law in North Carolina that an oral contract to convey or devise property is void by reason of the statute of frauds[.]" *Pickelsimer v. Pickelsimer*, 257 N.C. 696, 698 (1962). Accordingly, "[a]ll contracts to sell or convey any lands, tenements or hereditaments, or any interest in or concerning them . . . shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized." N.C.G.S. § 22-2. Although "[a] memorandum or note is, in its very essence, an informal and imperfect instrument . . . [i]t must contain a description of the land, the subject-matter of the contract, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the contract refers." *Lane v. Coe*, 262 N.C. 8, 12 (1964). "If the description is sufficiently definite for the court, with the aid of extrinsic evidence, to apply the description to the exact property intended to be sold, it is enough." *Id.*

35. In evaluating the written contract, "the only requisite, as to the certainty of the thing described, is that there shall be no patent ambiguity in the description by which it is designated." *Norton v. Smith*, 179 N.C. 553, 555 (1920). "There is a patent ambiguity when the terms of the writing leaves the subject of the contract, the land, in a state of absolute uncertainty, and refer to nothing extrinsic by which it might possibly be identified with certainty." *Lane*, 262 N.C. at 13. Conversely, "[a] description is said to be latently ambiguous if it is insufficient in

itself to identify the property but refers to something extrinsic by which identification might possibly be made." *Id.*

36. As explained by the Supreme Court of North Carolina in *Norton*,

> A house and lot, or one house and lot in a particular town, would not do, because [it is] too indefinite on the face of the instrument itself. But "my house and lot" imports a particular house and lot, rendered certain by the description that it is the one which belongs to me, and, upon the face of the instrument, is quite as definite as if it had been described as the house and lot in which I now live, which is undoubtedly good. Where the deed or will does not itself show that the grantor or devisor had more than one house and lot, it will not be presumed that he had more than one, so that there is no patent ambiguity, and if it be shown that he has more than one, it must be by extrinsic proof, and the case will then be one of a latent ambiguity, which may be explained by similar proof.

Norton, 179 N.C. at 555 (internal citation omitted); *see also Doe ex dem. Carson v. Ray*, 52 N.C. 609, 610 (1860) (holding the terms "my house and lot in the town of Jefferson" to be sufficient to identify the subject property).

37. Here, the Codicil states:

> I leave the following real property (real estate) to the mobile home owners that have a mobile home in my mobile home park known as Sea Manor Enterprises, LLC.
>
> They are to continue to have access to the boat ramp and three piers until they dispose of their mobile home, but this right will not pass to their heirs.
>
> ****
>
> Attached are copies of Sea Manor Enterprises, LLC Mobile Home Park information along with copies of the Pender County and Town of Surf City real property tax documents.

While the instrument is unclear as to whether Mr. Powell intended to convey the land on which the Park was situated or merely access rights to the boat ramp and three

piers historically used by Plaintiffs, the Codicil does not leave the identity of the property "in a state of absolute uncertainty[.]" *Lane*, 262 N.C. at 13. The Park is identified by name, and the Codicil specifies that it is *continued* access to the boat ramp and three piers that Plaintiffs are to receive, implicitly indicating that the boat ramp and three piers can be identified. Further, Mr. Powell references Park information and Pender County and Town of Surf City real property tax documents for additional information. Accordingly, the description of the property in the writing is not patently ambiguous, and there is no question that Mr. Powell signed the document. This is enough to satisfy the statute of frauds.

38. At this stage, Plaintiffs have adequately alleged a claim for breach of contract against the LLC. Therefore, Defendants' Motion with respect to this claim is **DENIED**.

C. <u>Breach of Contract (Estate of Powell)</u>

39. Plaintiffs next allege that they entered into an agreement with Mr. Powell that, in exchange for maintaining and improving the Northern Docks on the lot he owned individually, Mr. Powell would "arrange his affairs in such a way that the Plaintiffs would be conveyed, devised and bequeathed access and riparian rights to the Northern Docks." (Compl. ¶ 64.) Plaintiffs further allege that, if the Codicil failed to cause these access rights to be conveyed to Plaintiffs, then Mr. Powell breached their agreement. (Compl. ¶ 66.)

40. Defendants argue that this claim is barred by the non-claim statute for estate administration. The Court agrees.

41. The non-claim statute, which is found in Chapter 28A of the North Carolina General Statutes, prescribes time limitations for asserting claims against an estate. Claims against an estate that arise at or after the death of the decedent "are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent unless presented to the personal representative or collector" within six months after the date on which performance is due or within six months after the claim arises. N.C.G.S. § 28A-19-3(b)(1)(2).

42. Defendants contend that, at least by 1 February 2023, when Plaintiffs received the February 1 Letter from Mr. Lindquist, Plaintiffs were aware that the Estate had determined that the Church was the sole owner of the Park and other property owned by the LLC. (*See* Compl. Ex. G.) Therefore, they had until 1 August 2023 to present their claim. This action was not filed until 28 September 2023, and since Plaintiffs do not allege any earlier presentation of a claim,[4] Defendants argue that Plaintiffs' claim should be dismissed as time-barred.

43. In response, Plaintiffs challenge application of the non-claim statute to them by arguing that they are devisees, not creditors. (*See* Pls.' Resp. Br. Opp. Defs.'

[4] Claims against an estate that arose *before* the death of the decedent "are forever barred against the estate, the personal representative, the collector, the heirs, and the devisees of the decedent[ ]"unless "presented to the personal representative or collector . . . by the date specified in the general notice to creditors" or "within 90 days after the date of the delivery or mailing of the notice if the expiration of said 90-day period is later than the date specified in the general notice to creditors[.]" N.C.G.S. § 28A-19-3(a). To the extent Plaintiffs argue that their claim arose before Mr. Powell's death, then based on the notice to creditors, Plaintiffs must have presented their claim by 6 April 2023. (*See* Answ. p. 26 ["Notice to Creditors"].)

Mot. J. on Pleadings ["Pls.' Br. Opp."] 9–10, ECF No. 19.) Subsection (h) of the non-claim statute provides that "[t]he word 'claim' . . . does not apply to claims of heirs or devisees to their respective shares or interests in the decedent's estate in their capacity as such heirs or devisees." N.C.G.S. § 28A-19-3(h). " 'Devisee' means any person entitled to take real or personal property under the provisions of a valid, probated will." N.C.G.S. § 28A-1-1(1a).

44. Plaintiffs' claim, however, belies their argument. They have sued Mr. Powell for breach of contract, not his executor for breach of fiduciary duty. The claim is not "to [Plaintiffs'] respective shares or interests" as devisees but rather is for specific performance and damages resulting from an alleged breach of contract. Because this breach of contract claim was not presented to the Estate prior to the expiration of the 6-month period established by the non-claim statute, it is barred.[5]

45. Accordingly, as to Plaintiffs' claim for breach of contract against Mr. Powell, Defendants' Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.[6]

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[5] To the extent Plaintiffs' claim is predicated on Mr. Powell's promise that Plaintiffs "would be taken care of," such a promise is too vague to be enforced and, in any event, a commitment by Mr. Powell to perform a personal service (e.g. write a will bequeathing them the real property) ended upon Mr. Powell's death. *See Siler v. Gray*, 86 N.C. 566, 569 (1882) ("All contracts for personal service, which can be performed only during the life of the contracting party, are subject to the implied condition that he shall live to perform them, and should he die, his executor is not liable to an action for the breach of contract occasioned by his death." (citation omitted)).

[6] "The decision to dismiss an action with or without prejudice is in the discretion of the trial court[.]" *First Fed. Bank v. Aldridge*, 230 N.C. App. 187, 191 (2013).

D. Unjust Enrichment (Northern Docks)

46. Even if no express contract between Plaintiffs and Mr. Powell exists, Plaintiffs contend that Mr. Powell is liable to them because he was unjustly enriched by their improvements to the Northern Docks. (Compl. ¶¶ 77–83.) "The general rule of unjust enrichment is that where services are rendered and expenditures made by one party to or for the benefit of another, without an express contract to pay, the law will imply a promise to pay a fair compensation therefor." *Chisum v. Campagna*, 2017 NCBC LEXIS 102, at *31 (N.C. Super. Ct. Nov. 7, 2017) (quoting *Atl. C. L. R. Co. v. State Highway Comm'n*, 268 N.C. 92, 95–96 (1966)). "The doctrine . . . was devised by equity to exact the return of, or payment for, benefits received under circumstances where it would be unfair for the recipient to retain them without the contributor being repaid or compensated." *Id.* at *32 (quoting *Collins v. Davis*, 68 N.C. App. 588, 591 (1984)).

47. "In North Carolina, to recover on a claim of unjust enrichment, Plaintiff must prove: (1) that it conferred a benefit on another party; (2) that the other party consciously accepted the benefit; and (3) that the benefit was not conferred gratuitously or by an interference in the affairs of the other party." *Cty. of Wake PDF Elec. & Supply Co., LLC v. Jacobsen*, 2020 NCBC LEXIS 103, at *29 (N.C. Super. Ct. Sept. 9, 2020) (citing *Se. Shelter Corp. v. BTU, Inc.*, 154 N.C. App. 321, 330 (2002)). Plaintiffs have alleged these elements.

48. However, just as their claim against the Estate for breach of an express contract is barred by the non-claim statute, Plaintiffs' claim for breach of an implied

contract[7] against the Estate (or the Church as the devisee) is also time-barred. *See* N.C.G.S. § 28A-19-3(b) (Claims "are forever barred against the estate . . . and the devisees of the decedent unless presented to the personal representative" within the applicable time limitation).

49. Accordingly, as to Plaintiffs' claim for unjust enrichment with regard to the Northern Docks, Defendants' Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

E. Breach of Operating Agreement (LLC)

50. Plaintiffs contend that the Codicil acted as the LLC's operating agreement, and that the Church, as manager of the LLC, breached the operating agreement by not conveying the Park, access to the Southern Dock, and at least the right to use the Boat Trailer Storage Lot,[8] to Plaintiffs. (Compl. ¶¶ 86, 88.)

51. The North Carolina Limited Liability Company Act (the "Act") does not require that an LLC have an operating agreement, nor does it prescribe the form that an operating agreement must take. *See* N.C.G.S. § 57D-1-03(23) (defining "operating agreement" as "[a]ny agreement concerning the LLC or any ownership interest in the LLC to which each interest owner is a party or is otherwise bound as an interest owner[ ]" and stating that "the operating agreement may be in any form, including written, oral, or implied, or any combination thereof.").

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[7] A claim for unjust enrichment "is neither in tort nor contract but is described as a claim in quasi contract or a contract implied in law." *Booe v. Shadrick*, 322 N.C. 567, 570 (1988).

[8] At times, Plaintiffs allege that they inherited all of the LLC's property, which would include the Boat Trailer Storage Lot. At other times, Plaintiffs allege that they were promised only use of the lot for boat storage.

52. If one exists, the Act provides that "[t]he operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests and (ii) the company officials in relation to each other, the LLC, and the interest owners." N.C.G.S. § 57D-2-30(a).

53. In support of their position that the Codicil acted as the LLC's operating agreement, Plaintiffs argue that "Mr. Powell's Codicil clearly expressed his intent on what would happen to the assets in his LLC upon his death such that it governed what would happen to the LLC upon his death." (Pls.' Br. Opp. 21.) But the Codicil speaks only to the disposition of some, but not all, of the LLC's assets. There is no mention of the Boat Trailer Storage Lot, for example. There is also no mention of the disposition of the LLC's liabilities. Moreover, to the extent it references the Northern Docks, the Codicil includes direction regarding non-LLC property, content that is inconsistent with an argument that the Codicil is an operating agreement for the LLC. In sum, while Plaintiffs allege that the Codicil directs the disposition of some of the LLC's property, the Court concludes that it is an overstatement to characterize the Codicil as a document that governs the affairs of the LLC.

54. Accordingly, as to Plaintiffs' claim for breach of operating agreement, Defendants' Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

F. Declaratory Judgment

55. Plaintiffs request that the Court enter a judgment declaring that (a) the Codicil conveys ownership of the LLC and easement rights to Plaintiffs, or alternatively, that (b) the Codicil is ambiguous and was executed by Mr. Powell while mistakenly believing that by identifying the mobile home park real property as "Sea Manor Enterprises, LLC" and listing the Plaintiffs by name in his Codicil, he bequeathed his ownership interest in the LLC to them. (Compl. ¶¶ 108, 111–12.)

56. North Carolina's Uniform Declaratory Judgment Act empowers courts "to declare rights, status, and other legal relations, whether or not further relief is or could be claimed." N.C.G.S. § 1-253. Here, there are issues of fact with respect to Mr. Powell's intent and the legal effect of the Codicil. Plaintiffs have stated a claim for declaratory judgment sufficient to proceed to discovery.

57. Accordingly, with respect to Plaintiffs' claim for declaratory judgment, Defendants' Motion is **DENIED**.

G. Reformation of Will to Conform to Testator's Intent

58. Similarly, Plaintiffs request that the Court reform the ambiguous terms of the Codicil to reflect Mr. Powell's intent. (Compl. ¶¶ 113–16.) Defendants respond that the terms of the Codicil are clear, and Plaintiffs' dissatisfaction with the result is not a basis for reformation. (Defs.' Br. Supp. 21–24.)

59. Pursuant to N.C.G.S. § 31-61, "[t]he court may reform the terms of a will, if the terms of the will are ambiguous, to conform the terms to the testator's intent if it is proved by clear and convincing evidence what the testator's intent was

and that the terms of the will were affected by a mistake of fact or law, whether in expression or inducement."

60. However, reformation is a remedy, not a claim. *See Branch Banking & Tr. Co. v. Chi. Title Ins. Co.*, 214 N.C. App. 459, 463 (2011) ("Reformation is a well-established equitable remedy used to reframe written instruments[.]"); *Metro. Prop. & Cas. Ins. Co. v. Dillard*, 126 N.C. App. 795, 798 (1997) (same).

61. Therefore, as to Plaintiffs' claim for reformation, Defendants' Motion is **GRANTED**, and this claim is **DISMISSED**, but the Court's ruling is without prejudice to Plaintiffs' right to pursue reformation as a remedy should Plaintiffs show they are entitled to such relief.

H. <u>Unjust Enrichment, Resulting Trust, and Constructive Trust (LLC)</u>

62. With respect to the Park and the Southern Dock, Plaintiffs allege that the Church, now allegedly the sole member of the LLC, has been unjustly enriched because, but for Mr. Powell's breach of contract, it would not have received this property. (Compl. ¶¶ 71–72.) They allege that this unjust enrichment requires the imposition of either a constructive trust or a resulting trust over the property.

63. "A constructive trust is a duty, or relationship, imposed by courts of equity to prevent the unjust enrichment of the holder of title to, or of an interest in, property[.]" *Roper v. Edwards*, 323 N.C. 461, 464 (1988) (quoting *Wilson v. Dev. Co.*, 276 N.C. 198, 211 (1970)). While most commonly applied in cases involving breach of fiduciary duty or fraud, neither of which are alleged here, a constructive trust can

be a remedy in other circumstances where it would be inequitable not to impose one.[9] *Id.*

64. Plaintiffs allege that the Church is in possession of real property that belongs to them and that it would be inequitable not to impose a trust. However, a constructive trust is a remedy, not a claim. Therefore, the Court concludes that the claim seeking imposition of a constructive trust should be dismissed but without prejudice to Plaintiffs' right to pursue a constructive trust remedy should Plaintiffs show that one or more of their claims entitle them to such relief.

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[9] Plaintiffs also request the imposition of a resulting trust. As our Court of Appeals has explained:

> A resulting trust arises when a person becomes invested with the title to real property under circumstances which in equity obligate him to hold the title and to exercise his ownership for the benefit of another . . . . A trust of this sort does not arise from or depend upon any sort of agreement between the parties. It results from the fact that one man's money has been invested in land and the conveyance taken in the name of another.
>
> The classic example of a resulting trust is the purchase-money resulting trust. In such a situation, when one person furnishes the consideration to pay for the land, title to which is taken in the name of another, a resulting trust commensurate with his interest arises in favor of the one furnishing the consideration. The general rule is that the trust is created, if at all, in the same transaction in which the legal title passes, and by virtue of the consideration advanced before or at the same time the legal title passes.

Tuwamo v. Tuwamo, 248 N.C. App. 441, 447–48 (2016) (quoting *Bissette v. Harrod*, 226 N.C. App. 1, 12 (2013)). Our Supreme Court long ago observed that "[t]he rule has its foundation in the natural presumption, in the absence of all rebutting circumstances, that he who supplies the *purchase-money* intends the purchase for his own benefit, and not for another, and that the conveyance in the name of another is a matter of convenience and arrangement between the parties for collateral purposes." *Summers v. Moore*, 113 N.C. 394, 402 (1893) (emphasis added). In this case, where Plaintiffs did not provide the purchase money for the property, a resulting trust does not have direct application.

65. Accordingly, with respect to Plaintiffs' third claim for relief, styled as one for "Unjust Enrichment, Resulting Trust, and Constructive Trust with Respect to the Park," the Motion is **GRANTED**, and this Claim is **DISMISSED** with prejudice, but the Court's ruling is without prejudice to Plaintiffs' right to pursue a constructive trust as a remedy should Plaintiffs show that one or more of their claims entitle them to such relief.

I. Quiet Title to Rights of Easement Over Riparian Tracts

66. Plaintiffs assert that they each have a personal right of access to the Northern Docks by way of the Powell Lot shoreline until they either die or dispose of their mobile home, whichever comes first. (Compl. ¶ 118.) Accordingly, Plaintiffs request an order quieting title on an easement ensuring this access. (Compl. ¶ 120.) Defendants respond that (1) no easement was created by the Codicil, and (2) Plaintiffs have no interest in the Powell Lot where the Northern Docks are located. (Defs.' Br. Supp. 24–26.)

67. An action to quiet title "may be brought by any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claims[.]" N.C.G.S. § 41-10. Thus, "[a]n action for quiet title has two essential elements: (1) the plaintiff must own or have some interest in the property at issue, and (2) the defendant must have a claim adverse to the plaintiff's title or interest in the property." *MTGLQ Inv'rs., L.P. v. Curnin*, 263 N.C. App. 193, 195 (2018) (citing *Wells v. Clayton*, 236 N.C. 102, 107–08 (1952)). Here, Plaintiffs' interest is a purported easement allowing access to the Northern Docks.

68. "An easement is a right to make some use of land owned by another without taking a part thereof." *Butler Drive Prop. Owners Ass'n v. Edwards*, 109 N.C. App. 580, 584 (1993) (quoting *Builders Supplies Co. of Goldsboro, N.C., Inc. v. Gainey*, 282 N.C. 261, 266 (1972)). "An express easement must be 'sufficiently certain to permit the identification and location of the easement with reasonable certainty.' " *Wiggins v. Short*, 122 N.C. App. 322, 327 (1996) (quoting *Adams v. Severt*, 40 N.C. App. 247, 249 (1979)). "The description must either be certain in itself or capable of being reduced to a certainty by a recurrence to something extrinsic to which it refers." *Thompson v. Umberger*, 221 N.C. 178, 180 (1942) (citation omitted). As with the requirements necessary to satisfy the statute of frauds generally:

> An ambiguity in the grant or reservation of an easement does not necessarily make the conveyance void and ineffectual. Indeed, if the description of an easement is in a state of absolute uncertainty, and refers to nothing extrinsic by which it might possibly be identified with certainty, the agreement is patently ambiguous and therefore unenforceable. However, a description is latently ambiguous if it is insufficient in itself to identify the property but refers to something extrinsic by which identification might possibly be made. If there is a latent ambiguity in an easement description, parol evidence will be admitted to fit the description to the thing intended. For, while a patent ambiguity raises a question of construction, a latent ambiguity raises a question of identity.

Edwards v. Hill, 208 N.C. App. 178, 182 (2010) (cleaned up) (citations omitted).

69. In *Edwards*, the Court of Appeals found the following language in the grant of an easement to be ambiguous:

> [t]ogether with the non-exclusive perpetual Right-of-Way and Easement (45 feet in width) which runs in a generally northeasterly direction to Carpenter's Grove Church road as described in Deed Book 1391 at Page 1653; Deed Book 1370 at Page 725; Deed Book 1387 at Page 954; and

> Deed Book 1412 at Page 709 which Easement is incorporated by reference as if fully set out herein.

Edwards, 208 N.C. App. at 183. The Court found that this latent ambiguity, however, was capable of being aided by parol evidence. *See id.* ("[A]lthough the Defendants' Deed leaves the parties' agreement as to the location of the 45 foot easement undisclosed, the easement description does expressly incorporate the description thereof provided in these four deeds. Accordingly, the Defendants' Deed does point to extrinsic evidence by which identification of the easement might possibly be made[.]").

70. Here, the Codicil provides: "[Plaintiffs] are to continue to have access to the boat ramp and three piers[.]" Thus, the writing assumes that Plaintiffs already have these access rights and that they will continue to have the same access. Further, the Codicil references "Sea Manor Enterprises, LLC Mobile Home Park Information" and "Pender County and Town of Surf City real property tax documents." Whether these documents provide the missing detail regarding the location of the easement across both property owned by the LLC, as well as the Powell Lot now owned by the Church, remains to be seen. At this stage, however, Plaintiffs' claim to quiet title survives Defendants' Motion.

71. Accordingly, as to Plaintiffs' claim to quiet title, the Motion is **DENIED**.

J. <u>Alter Ego</u>

72. Plaintiffs' tenth claim is titled: "The LLC is an Alter Ego of Mr. Powell." Plaintiffs allege that "as sole member and manager of the LLC, Mr. Powell maintained complete control not only over LLC finances, but also over policy and

business practices of the LLC when it related to transactions of the LLC such that the LLC was not operating on its own, but as an extension of Mr. Powell." (Compl. ¶ 127.)[10] In addition, Plaintiffs allege upon information and belief that Mr. Powell did not maintain corporate formalities for the LLC. (Compl. ¶ 128.)

73. Given his "domination and control over the LLC" and his "non-compliance with corporate formalities," Plaintiffs request that the Court pierce the corporate veil and treat the LLC as an alter ego of Mr. Powell. (Compl. ¶ 129.)

74. In their opening brief, Defendants argue that piercing the corporate veil[11] is not a claim and, in any event, is inappropriate here because there are no allegations of nefarious activity on the part of Mr. Powell. (Defs.' Br. Supp. 26–27.) The Court agrees.

75. "To pierce the corporate veil is to set aside the corporate form and the protections that go along with it." *Harris v. Ten Oaks Mgmt.*, 2022 NCBC LEXIS 62, at **5 (N.C. Super. Ct. June 20, 2022). "[V]eil piercing 'allows a plaintiff to impose legal liability for a corporation's obligations . . . upon some other company or individual that controls and dominates a corporation.' " *Id.* (quoting *Green v. Freeman*, 367 N.C. 136, 145 (2013)). "The doctrine of piercing the corporate veil applies to LLCs as well as to corporations." *Gurkin v. Sofield*, 2020 NCBC LEXIS 49,

[10] The Complaint contains two paragraphs numbered 127. The Court references the second paragraph 127 here.

[11] In their responsive brief, Plaintiffs agree that they are requesting that the Court pierce the LLC's corporate veil. (*See* Pls.' Br. Opp. 29.)

at *23 (N.C. Super. Ct. Apr. 15, 2020) (citing *Estate of Hurst v. Moorehead I, LLC*, 228 N.C. App. 571, 576 (2013)).

76. Here, Plaintiffs appear to assert the less common form of veil piercing known as reverse piercing. *See id.* (Reverse piercing is used, "to make the corporate entity liable for the dominating shareholder's actions rather than piercing the veil to make the dominating shareholder personally liable for the corporate entity's obligations." (quoting *Strategic Outsourcing, Inc. v. Stacks*, 176 N.C. App. 247, 254 (2006) (cleaned up))); *see also Fischer Inv. Cap., Inc. v. Catawba Dev. Corp.*, 200 N.C. App. 644, 650 (2009) ("[W]here one entity is the alter-ego, or mere instrumentality, of another entity, shareholder, or officer, the corporate veil may be pierced to treat the two entities as one and the same, so that one cannot hide behind the other to avoid liability.").

77. To plead reverse piercing, Plaintiffs "must, at a minimum, begin by pleading the same elements that are necessary to establish traditional piercing." *Harris*, 2022 NCBC LEXIS 62, at *6. Plaintiffs must show "that the [LLC] is so operated that it is a mere instrumentality or alter ego of [Mr. Powell] and a shield for his activities in violation of the declared public policy or statute of the State." *Cold Springs Ventures, LLC v. Gilead Scis., Inc.*, 2015 NCBC LEXIS 1, at *15–16 (N.C. Super. Ct. Jan. 6, 2015) (quoting *Green*, 367 N.C. at 145).

78. The Court looks for three elements:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this

> transaction had at the time no separate mind, will or existence of its own; and
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of [a] plaintiff's legal rights; and
>
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Id. at *16 (citation omitted).

79. Plaintiffs' claim fails at the second element. There are no allegations in Plaintiffs' Complaint that Mr. Powell engaged in fraud or that he used the LLC to perpetrate dishonest or unjust acts. Plaintiffs merely allege that Mr. Powell promised that "they had nothing to worry about" and "they would be taken care of," and then signed a Codicil purporting to transfer to them real property—some of which was owned by the LLC and not by him individually. *See Best Cartage, Inc. v. Stonewall Packaging, LLC*, 219 N.C. App. 429, 440 (2012) (rejecting the argument that a breach of contract, "in itself, can amount to a wrongdoing[.]"); *cf. Harris*, 2022 NCBC LEXIS 62, at **9 ("The allegations must show some 'indicia of fraudulent or inequitable conduct' apart from the breach: 'a showing for example, that the puppet entity was created for the purpose of entering into the relevant contract or used as a means to unjustly insulate another from liability.' "). No such allegations have been made here.

80. Therefore, as to Plaintiffs' tenth claim for relief (Alter Ego), Defendants' Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

IV. CONCLUSION

81. **WHEREFORE**, Defendants' Motion for Judgment on the Pleadings is **GRANTED in part** and **DENIED in part** as follows:

a. As to Plaintiffs' First Claim for Relief (Breach of Contract by and between the LLC and Plaintiffs), the Motion is **DENIED**.

b. As to Plaintiffs' Second Claim for Relief (Breach of Contract between Mr. Powell and Plaintiffs), the Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

c. As to Plaintiffs' Third Claim for Relief (Unjust Enrichment, Resulting Trust, and Constructive Trust with Respect to the Park), the Motion is **GRANTED**, and this claim is **DISMISSED** without prejudice to Plaintiffs' right to seek a constructive trust as a remedy should Plaintiffs show that they are entitled to such relief.

d. As to Plaintiffs' Fourth Claim for Relief (Unjust Enrichment with Regards to Northern Docks), the Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

e. As to Plaintiffs' Fifth Claim for Relief (Breach of Operating Agreement), the Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

f. As to Plaintiffs' Sixth Claim for Relief (Request for Declaratory Judgment), the Motion is **DENIED**.

g. As to Plaintiffs' Seventh Claim for Relief (Reformation of Will to Conform to Testator's Intent), the Motion is **GRANTED**, and this claim is **DISMISSED** without prejudice to Plaintiffs' ability to seek reformation as a remedy should Plaintiffs show that they are entitled to such relief.

h. As to Plaintiffs' Eighth Claim for Relief (Quiet Title to Rights of Easement over Riparian Tracts), the Motion is **DENIED**.

i. As to Plaintiffs' Tenth Claim for Relief (The LLC is an Alter Ego of Mr. Powell), the Motion is **GRANTED**, and this claim is **DISMISSED** with prejudice.

SO ORDERED, this the 3rd day of October, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases