

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

15CVS001648-910

IN RE SOUTHEASTERN EYE
CENTER-PENDING MATTERS

GUILFORD COUNTY

12CVS011322-400

IN RE SOUTHEASTERN EYE
CENTER-JUDGMENTS

ORDER AND OPINION ON DEFENDANT DOUGLAS S. HARRIS'S MOTION TO DISMISS PURSUANT TO N.C. R. CIV. P. RULES 12(b)(1) AND 12(h)(3)

1. **THIS MATTER** is before the Court upon Defendant Douglas S. Harris's ("Harris") Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(h)(3) of the North Carolina Rules of Civil Procedure (the "Rule(s)") in the above-captioned case (the "Motion").¹

2. Having considered the Motion, the parties' briefs in support of and in opposition to the Motion, the relevant pleadings, and the arguments of counsel at the hearing on the Motion, the Court, in the exercise of its discretion, hereby **DENIES** the Motion for the reasons set forth below.

Smith Debnam Narron Drake Saintsing & Myers, LLP, by Byron L. Saintsing, for Plaintiff Nivison Family Investments, LLC, Plaintiff Old Battleground Properties, Inc., and Arthur Nivison.

Oak City Law LLP, by Robert E. Fields III and Samuel Pinero II, for Gerald A. Jeutter, Jr., as Receiver for JDPW Trust U/T/A Dated June 8, 2007, Central Carolina Surgical Eye Associates, P.A., HUTA Leasing LLC, Southeastern Eye Management, Inc., Southeastern Cataract Laser

¹(Douglas S. Harris's Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3), ECF No. 1575.) For ease of reference, all ECF citations in this Order and Opinion are to the Court's electronic docket in Wake County 15 CVS 1648 unless otherwise specified.

Center, PLLC, EMS Partners, LLC, KEPES Newco, LLC, and DRE Newco, LLC.

Douglas S. Harris, Pro se.

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

3. This action represents part of a large group of cases before this Court that have been consolidated into two files: *In re Se. Eye Ctr.-Pending Matters* (Wake County 15 CVS 1648) and *In re Se. Eye Ctr.-Judgments* (Guilford County 12 CVS 11322). The extensive background of these cases is set forth in previous orders and opinions.² The Court recites only the factual background relevant to the issues presented in this Motion.

4. In July 2014, Plaintiff Nivison Family Investments LLC (“NFI”) filed suit against Harris, individually and as trustee of JDPW Trust (“JDPW”), and NewBridge Bank.³ Seven months later, Plaintiff Old Battleground Properties, Inc. and NFI (together, “Plaintiffs,” and with Arthur Nivison, the “Nivison Parties”) filed suit against Defendant Central Carolina Surgical Eye Associates, P.A. (“CCSEA”),

² See *In re Southeastern Eye Center—Pending Matters*, 2019 NCBC LEXIS 29, *3–23 (N.C. Super. Ct. May 7, 2019) [hereinafter, the “May 2019 Order”]; *In re Southeastern Eye Center—Pending Matters*, 2021 NCBC LEXIS 43, *3–18 (N.C. Super. Ct. Jan. 6, 2022) [hereinafter, the “Jan. 2022 Am. Order”] (reciting additional procedural background and citing prior orders).

³ (Compl., *Nivison Family Invs., LLC v. Douglas S. Harris*, ECF No. 1 (Wake County 14 CVS 9564).)

various CCSEA-affiliated entities, Dr. Richard Epes and his wife (together, the “Epeses”), and Mark McDaniel and his wife.⁴

5. In the second lawsuit, and upon the parties’ joint request, the Court appointed Gerald A. Jeutter, Jr. as the receiver (the “Receiver”) for CCSEA and several of its affiliated entities (the “Receivership Entities”).⁵ *See generally Old Battleground Props., Inc. v. Cent. Carolina Surgical Eye Assocs., P.A.*, 2015 NCBC LEXIS 19 (N.C. Super. Ct. Feb. 25, 2015). Following his appointment, the Receiver investigated and asserted claims and demands on behalf of the Receivership Entities against the Epeses. As litigation in these two cases progressed, the number of entities in receivership and the number of cases related to CCSEA and other parties expanded.

6. In June 2015, the Court consolidated the two designated lawsuits with a number of other related pending cases and directed that all subsequent filings be made in the two designated “master” cases reflected in the caption above.⁶ The Court also required all persons asserting claims against CCSEA or its affiliated entities to file their claims with the Receiver.⁷

⁴ (Compl., *Nivison Family Invs., LLC v. Douglas S. Harris.*)

⁵ (Order Pl.’s Renewed Mot. TRO & Prelim. Inj. & Inspection & Inventory Collateral & Appointment Receiver, ECF No. 20.)

⁶ (Order Mot. Consolidate (All Matters) 8–9, ECF No. 76.)

⁷ (Case Mgmt. Order 5–8, ECF No. 82.)

7. In July and August 2015, Plaintiffs sought leave to amend their complaints in each of their lawsuits. The Court ordered the two actions consolidated for future proceedings and directed Plaintiffs to file a single amended consolidated complaint in this case (the “Amended Consolidated Complaint”).⁸ Plaintiffs filed their Amended Consolidated Complaint in September 2015, which added Defendants Castle McCulloch, Inc., Historic Castle McCulloch, LLC, and Richard Harris (together, the “CM Defendants”).⁹ The Amended Consolidated Complaint also contained Plaintiffs’ claim against JDPW for breach of the terms of the JDPW Trust Promissory Note (“Count Four”).¹⁰

8. On 28 April 2016, and upon Plaintiffs’ and the Receiver’s various motions, the Court entered its Order Approving Plaintiffs’ Motion for Appointment of Receiver for JDPW Trust (the “JDPW Receivership Order”),¹¹ and its Order Approving Nivison Settlement and Related Transactions Including Release of CEA Sale Proceeds (the “Settlement Approval Order”).¹²

9. In the Settlement Approval Order, the Court approved a settlement negotiated between NFI and the Receiver (the “Settlement Agreement”) which,

⁸ (Order Pls.’ Mot. Amend Compl. & Consolidation (*Nivison v. Harris*) (*Old Battleground Props., Inc. v. Ctr. Carolina Surgical Eye Assocs., P.A.*), ECF No. 168.)

⁹ (Am. Consol. Compl., ECF No. 179.)

¹⁰ (Am. Consol. Compl. ¶¶ 112–17.)

¹¹ (*In re Se. Eye Ctr. —Pending Matters*, 2016 N.C. Super. LEXIS 43 (N.C. Super. Ct. Apr. 28, 2016) [hereinafter, the “JDPW Receivership Order”].)

¹² (*In re Se. Eye Ctr. —Pending Matters*, 2016 N.C. Super. LEXIS 34 (N.C. Super. Ct. Apr. 28, 2016) [hereinafter, the “Settlement Approval Order”].)

among other things, “provide[d] for an allowed claim against CCSEA, DRE and KEPES¹³ of \$4 million [] and an allowed claim against JDPW Trust of \$2.1 million, plus accrued interest and attorney’s fees, *if the JDPW Trust is placed into Receivership with Gerald A. Jeutter, Jr. appointed as the Receiver.*”¹⁴

10. At the same time, the Court entered the JDPW Receivership Order, which appointed the Receiver as the receiver of JDPW Trust “[p]ursuant to the Court’s inherent authority to appoint receivers[,]” and “pursuant to [N.C.G.S.] §§ 1-501, -502, -507.1, and 39-23.7,” and “authorized [the Receiver] to allow the claim of NFI against the receivership estate of JDPW Trust in the amount of \$2.1 million” (“NFI’s Claim” or the “Claim”).¹⁵ The Court did so after finding and concluding, for the limited purposes of the JDPW Receivership Order, that, among other things, (i) “[Doug] Harris [had] a conflict of interest in remaining in control of JDPW Trust as its trustee and making decisions on its behalf”; (ii) “[Doug] Harris [was] unlikely to investigate and pursue possible claims of JDPW Trust against his brother Richard Harris and the other CM Defendants”; and (iii) “[t]he Court perceive[d] no conflict of interest in the Receiver of the CCSEA Entities serving as the receiver for JDPW Trust, provided

¹³ DRE and KEPES “were established to receive and hold substantially all of the assets of the Epeses by Order of this Court.” Settlement Approval Order ¶ 2; *see* Order Joint Mot. Approve Settlement Agreement & Release (All Matters), ECF No. 117.)

¹⁴ (Settlement Approval Order ¶ 19 (emphasis added).)

¹⁵ (JDPW Receivership Order, Findings Fact ¶¶ 8–12.)

that NFI is allowed a \$2.1 million claim . . . against the receivership estate of JDPW Trust.”¹⁶

11. Doug Harris filed the Motion on 2 July 2024, seeking dismissal of NFI’s Claim for lack of subject matter jurisdiction over eight years after the Court approved the settlement of that Claim.¹⁷ After full briefing, the Court held a hearing on the Motion on 31 July 2024 via Webex videoconference, at which the Receiver and the Nivison Parties were represented by counsel and Harris appeared *pro se*. The Motion is now ripe for resolution.

II.

LEGAL STANDARD

12. “A Rule 12(b)(1) motion to dismiss represents a challenge to the trial court’s subject matter jurisdiction over a plaintiff’s claims.” *Marlow v. TCS Designs, Inc.*, 288 N.C. App. 567, 572 (2023). Rule 12(h)(3) provides that “[w]hensoever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”

13. “[A] trial court need not confine its evaluation of a Rule 12(b)(1) motion to the face of the pleadings, but may review or accept any evidence, such as affidavits, or it may hold an evidentiary hearing.” *Marlow*, 288 N.C. App. at 572 (citation omitted); *see also Tart v. Walker*, 38 N.C. App. 500, 502 (1978) (“A motion to dismiss

¹⁶ (JDPW Receivership Order, Findings Fact ¶¶ 8–12.)

¹⁷ (Douglas S. Harris’s Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3); *see also* Def. Douglas S. Harris’s Br. Supp. Def.’s Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3) [hereinafter, “Harris’s Br. Supp.”], ECF No. 1576.)

for lack of subject matter jurisdiction is not viewed in the same manner as a motion to dismiss for failure to state a claim upon which relief can be granted. In our view, matters outside the pleadings [] may be considered and weighed by the court in determining the existence of jurisdiction over the subject matter.”).

14. “Subject matter jurisdiction refers to the power of the court to deal with the kind of action in question[]” and “is conferred upon the courts by either the North Carolina Constitution or by statute.” *Harris v. Pembaur*, 84 N.C. App. 666, 667 (1987). “[E]xcept for areas specifically placing jurisdiction elsewhere (such as claims under the Worker's Compensation Act) the trial courts of North Carolina have subject matter jurisdiction over ‘all justiciable matters of a civil nature.’” *Id.* at 668.

15. N.C.G.S. § 7A-240 sets forth the civil jurisdiction for a Superior Court in North Carolina:

Except for the original jurisdiction in respect of claims against the State which is vested in the Supreme Court, original general jurisdiction of all justiciable matters of a civil nature cognizable in the General Court of Justice is vested in the aggregate in the superior court division and the district court division as the trial divisions of the General Court of Justice. Except in respect of proceedings in probate and the administration of decedents’ estates, the original civil jurisdiction so vested in the trial divisions is vested concurrently in each division.

16. “[T]he general rule is that the jurisdiction of a court depends upon the state of affairs existing at the time it is invoked.” *In re Peoples*, 296 N.C. 109, 144 (1978). “Once jurisdiction of a court attaches it exists for all time until the cause is fully and completely determined. Jurisdiction is not a light bulb which can be turned off or on during the course of the trial. Once a court acquires jurisdiction over an action it

retains jurisdiction over that action throughout the proceeding.” *Id.* at 146 (cleaned up).

III.

ANALYSIS

A. Subject Matter Jurisdiction Over NFI’s \$2.1 Million Claim

17. Harris contends first that the Court lacked subject matter jurisdiction to approve NFI’s \$2.1 million Claim against JDPW because jurisdiction for receivership claims is conferred by statute and NFI has not satisfied the statutory requirements to assert its claim.¹⁸ Harris argues that, although the Court approved the Claim in 2016, it did so before the Receiver was appointed as receiver for JDPW, and that once the Receiver was appointed, NFI had a duty to re-assert its Claim against JDPW under N.C.G.S. § 1-507.6.¹⁹ Consequently, Harris asserts that because NFI did not re-assert its Claim, the Court never obtained jurisdiction over NFI’s Claim and the Court’s approval of the Claim in the Settlement Approval Order is void and without legal effect.²⁰ Harris also contends that the Court could not approve NFI’s Claim because JDPW did not enter into the Settlement Agreement.²¹ The Court disagrees.

18. Section 1-501 sets forth the jurisdiction of a receivership court:

¹⁸ (Harris’s Br. Supp. 6–11.)

¹⁹ Harris relies on the portion of N.C.G.S. § 1-507.6 which provides: “All claims against an insolvent corporation must be presented to the receiver in writing[.]” (Harris’s Br. Supp. 2.)

²⁰ (Harris’s Br. Supp. 11.)

²¹ (Harris’s Br. Supp. 11–15.)

Any judge of the superior or district court with authority to grant restraining orders and injunctions has like jurisdiction in appointing receivers . . . Any resident judge of the Superior Court Division [] who appoints receivers pursuant to the authority granted hereby while holding court in that district may, in his discretion, retain jurisdiction and supervision of the original action, of the receivers appointed therefor and of any other civil actions pending in the same district involving the receivers, following his rotation out of the district.²²

19. North Carolina law provides that a creditor may assert a claim against an entity in receivership in one of two ways: by asserting a claim in the action in which the receiver has been appointed or by petitioning the receivership court for leave to file an independent action against the entity in receivership. *See Nat'l Surety Corp. v. Sharpe*, 232 N.C. 98, 101 (1950) (“The law contemplates the settlement of all claims against the insolvent debtor in the original action in which the receiver is appointed, except in the infrequent instances where the appointing court, for good cause shown, grants leave to a claimant to bring an independent action against the receiver.”).²³

20. Here, NFI asserted a breach of contract claim against JDPW in Count Four of the Amended Consolidated Complaint for breach of the JDPW Promissory Note.²⁴

²² N.C.G.S. §§ 1-507.20–1-507.54 became effective on 1 January 2021 as the North Carolina Commercial Receivership Act (the “Receivership Act”) and now controls the operation of receiverships in this State. N.C.G.S. §§ 1-501.1–1-507.11, which were repealed when the Receivership Act was passed, were effective as of the date the Receiver was appointed the receiver for JDPW on 28 April 2016. The Court has previously determined that these now-repealed provisions continue to govern the JDPW receivership. (*See* Order on Receiver’s Mot. for Order Authorizing Exercise of Power of Sale (*Old Battleground v. CCSEA*) ¶¶ 5–8, ECF No. 1504.)

²³ There is no dispute that NFI did not petition the Court for permission to file, and the Court did not otherwise allow, an independent action for the assertion of Count Four. Thus, the Court will limit its determination to whether a claim was properly asserted in the action in which the Receiver was appointed, i.e., in this action.

²⁴ (Am. Consol. Compl. ¶¶ 112–17.)

As noted above, the trial courts of North Carolina have subject matter jurisdiction over “all justiciable matters of a civil nature.” N.C.G.S. § 7A-240. NFI, as the promisee on the promissory note at issue, asserted Count Four for breach of the note against JDPW, as the promisor.²⁵ As such, “[t]he contract dispute between the parties in this case constitutes a ‘justiciable matter’ that is ‘cognizable’ in our trial courts.” *Harris v. Pembaur*, 84 N.C. App. 666, 668 (1987) (reversing the trial court’s determination that there was no subject matter jurisdiction).

21. Thus, there can be no dispute that this Court had subject matter jurisdiction over Count Four when this action was filed, *see generally, e.g., Comm. to Elect Dan Forest v. Employees Political Action Comm.*, 376 N.C. 558, 596 (2021), or that it has retained jurisdiction over Count Four ever since, *see, e.g., In re Peoples*, 296 N.C. at 146 (cleaned up) (“Once a court acquires jurisdiction over an action it retains jurisdiction over that action throughout the proceeding.”).

22. Although this alone requires denial of the Motion, the Court will nonetheless address Harris’s other contentions in anticipation of his likely appeal. As made obvious by their contents and the timing of their filing, the Receiver’s motion to approve the Settlement Agreement and his motion to appoint the Receiver as receiver for JDPW were presented to the Court at the same time, and each was filed in contemplation of the other being granted. NFI’s Claim under the Settlement Agreement is substantially lower than the damages NFI sought on its breach of contract claim against JDPW in Count Four. That claim was vigorously disputed by

²⁵ (Am. Consol. Compl., Ex. DD, Promissory Note, ECF No. 187.)

NFI and the Receiver, and the damages NFI sought substantially exceeded the \$2.1 million settlement the Receiver ultimately negotiated.

23. With Count Four still pending against JDPW, and after a full hearing on both motions, including consideration of Harris's opposition to each, the Court entered its order appointing the Receiver as the receiver for JDPW—immediately vesting title to all of JDPW's assets in the Receiver—and at the same time entered its order authorizing the Receiver to allow NFI's reduced claim in the amount of \$2.1 million, which the Receiver later reported to the Court and all parties that he had allowed.²⁶ The Court entered these orders in part so that the Receiver could take control of JDPW's assets to satisfy the valid claims of creditors:

It appears to the Court, in the exercise of its discretion, that the appointment of a receiver for JDPW Trust is fair and reasonable to the beneficiary and creditors of JDPW Trust. It appropriately balances competing interests, disputed facts, risks and uncertainties and provides a reasonable means of providing for the orderly disposition of the debts of JDPW Trust, to the extent of available assets, under all the facts and circumstances. The appointment of a receiver for JDPW Trust does not unfairly hinder or delay creditors of JDPW Trust. To the contrary, it protects such creditors from disorderly liquidation and a number of litigation inefficiencies.²⁷

24. Neither the appointment of the Receiver as receiver for JDPW or the Court's approval of NFI's claim impacted in any way the Court's existing subject matter jurisdiction over NFI's Count Four against JDPW. Harris's contention that the Court of Appeals' decision in *First Citizens Bank & Trust Co. v. Berry*, 2 N.C. App. 547

²⁶ (*See, e.g.*, Receiver's Resp. Opp'n Harris Mot. Stay (All Matters), ECF No. 608.)

²⁷ (JDPW Receivership Order, Findings Fact ¶ 11.)

(1968), required NFI to re-assert its Claim against JDPW after the Receiver was appointed and the Claim was allowed is without merit.²⁸ *First Citizens* involved claims asserted in two cases, not one, and the Court of Appeals rejected the plaintiff's contention—in the case in which the receiver was appointed—that the complaint it filed against the defendant in an earlier action was sufficient to assert a claim against the receivership estate in the pending case. *Id.* at 551–52. In stark contrast, NFI's Count Four was asserted, and the Settlement Agreement resolving NFI's Claim was approved, in the same action in which the Receiver was appointed, so *First Citizens* is inapposite.

25. Harris cites no North Carolina decision, nor has the Court's research revealed one, which holds that a claimant must re-assert a claim previously asserted in the same action against an entity which is placed into receivership, after appointment of a receiver. Moreover, the Court's Case Management Order, entered on 22 June 2015 in this action,²⁹ plainly stated that “[p]arties to lawsuits currently pending,” which included NFI and Harris in the *Old Battleground* action in which Count Four was pending, did “not need to file Claims and each such pending matter . . . shall be deemed to be among the Claims filed . . . without the necessity of including them on a filed claims list.”

26. Accordingly, for the reasons set forth above, the Court finds Harris's “statutory requirements” arguments to be without merit and concludes that the

²⁸ (Harris's Br. Supp. 6–11.)

²⁹ (Case Mgmt. Order 6–7.)

statutory requirements for settling and approving NFI's Claim against JDPW have been met.

27. Harris also contends that the Court never "approved" NFI's claim against the Receivership because the "Court did not use the phrase 'approve the \$2.1 million claim.'"³⁰ This argument, however, exalts form over substance, as the Court clearly stated in the JDPW Receivership Order that "[t]he Receiver of JDPW Trust is authorized to allow the claim of NFI against the Receivership Estate of JDPW Trust in the amount of \$2.1 million," thus approving the claim without further Court action.³¹ *In re Southeastern Eye Center-Pending Matters*, 2016 N.C. Super. LEXIS 43, at *26 (N.C. Super. Ct. Apr. 28, 2016). Accordingly, the Court rejects Harris's challenge to the Court's subject matter jurisdiction on this ground.

28. Finally, Harris contends that the Receiver and counsel for NFI "have a blatant lack of standing" because there is a conflict of interest arising from the Settlement Agreement.³² The Court, however, has already concluded that there is no conflict of interest in the circumstances of the Receiver's appointment as receiver for JDPW.³³ The Court, therefore, declines to conclude that it lacks subject matter jurisdiction on this ground.

³⁰ (Harris's Br. Supp. 9.)

³¹ (JDPW Receivership Order, Orders ¶ 5.)

³² (Harris's Br. Supp. 18–19.)

³³ (JDPW Receivership Order, Findings Fact ¶ 12.)

B. JDPW Trust's Liability to NFI

29. Harris separately contends that the Court lacks jurisdiction to hold JDPW Trust liable on NFI's Claim because the Court "[l]acks [j]urisdiction [u]nder Rule 12(b)(1) to [a]lter [c]ontracts[.]"³⁴ Harris contends that JDPW cannot be held liable for NFI's approved Claim because, to approve that Claim, the Court was required to "rewrite" six contracts.³⁵ The Receiver, in opposition, contends that "[t]he rules of contract interpretation upon which Doug Harris relies are rules of decision, not rules of jurisdiction."³⁶ The Court agrees with the Receiver. In essence, Harris seeks reconsideration of the Court's decisions as to the interpretation of these six contracts in the Court's earlier orders and opinions.³⁷ After careful consideration, the Court finds no error in its earlier rulings that would affect the Court's subject matter jurisdiction and therefore denies Harris's Motion on this ground as well.

IV.

CONCLUSION

30. **WHEREFORE**, for the reasons stated above, the Court hereby **DENIES** the Motion.

31. Pursuant to Rule 54(b), the Court enters this Order as a final judgment because there is no just reason for delay in entering the judgment as a final judgment

³⁴ (Harris's Br. Supp. 22–28.)

³⁵ (Harris's Br. Supp. 22–28.)

³⁶ (Receiver's Resp. Opp'n Mot. Dismiss Pursuant to Rules 12(b)(1) & 12(h)(3) 13, ECF No. 1600.)

³⁷ (See Jan 2022. Am. Order ¶¶ 92-99; May 2019 Order.)

and permitting appellate review of this Order and the other orders that the Court is entering contemporaneously herewith.

SO ORDERED, this the 19th day of December, 2024.

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