In re Se. Eye Ctr. (Pending Matters); In re Se. Eye Ctr. (Judgments), 2024 NCBC 84.

STATE OF NORTH CAROLINA — IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY — SUPERIOR COURT DIVISION

IN RE SOUTHEASTERN EYE CENTER-PENDING MATTERS — 15CVS001648-910

GUILFORD COUNTY

IN RE SOUTHEASTERN EYE CENTER-JUDGMENTS — 12CVS011322-400

ORDER AND OPINION ON DEFENDANT DOUGLAS S. HARRIS'S MOTION TO RECONSIDER

1. **THIS MATTER** is before the Court on Defendant Douglas S. Harris's ("Harris") Motion to Reconsider (the "Motion")[1] pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure (the "Rule(s)") filed on 2 August 2024 in the above-captioned matters. The Motion seeks the Court's reconsideration and revision or rescission of the following rulings as constituting clear error:[2]

[1] (Def. Harris's Mot. Reconsider Ct.'s Am. Order & Op. Mots. Summ. J.; Order Setting Claim & Matters for Trial by Jury; Am. Order & Op.; Order Approving Nivison Settlement & Related Transactions; Order Approving Pl's. Mot. Apptmt. Receiver for JDPW Tr. [hereinafter, "Harris Mot. Reconsider"], ECF No. 1608.) 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.

[2] Unless otherwise defined, the capitalized terms in this Order and Opinion refer to those terms as used in the Court's Amended Order and Opinion on Motions for Summary Judgment or Partial Summary Judgment (*Old Battleground v. CCSEA*) entered on 6 January 2022. *See In re Se. Eye Ctr.—Pending Matters*, 2021 NCBC LEXIS 43, at *3–18 (N.C. Super. Ct. Jan. 6, 2022) (hereinafter, the "Jan. 2022 Am. Order").

a. Paragraphs 27, 140, and 142 of the Court's 6 January 2022 Amended Order and Opinion on Motions for Summary Judgment or Partial Summary Judgment (*Old Battleground Properties, Inc.* ("Old Battleground") *v. Central Carolina Surgical Eye Associates, P.A.* ("CCSEA") (the "January 2022 Amended Order")[3];

b. Paragraph 5 of the Court's 6 January 2022 Order Setting Claims and Matters for Trial by Jury (*Old Battleground v. CCSEA*) (the "Jury Trial Order")[4];

c. Paragraph 19 of the Court's 28 April 2016 Order Approving Nivison Settlement and Related Transactions Including Release of CEA Sale Proceeds (All Matters) (the "Settlement Approval Order")[5]; and

d. Paragraph 12 of the Court's 28 April 2016 Order Approving Plaintiffs' Motion for Appointment of Receiver for JDPW Trust ("JDPW") (*Old Battleground v. CCSEA* – Consolidated) (All Matters) (the "JDPW Receivership Order").[6]

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[3] (Jan. 2022 Am. Order; *see* Harris Mot. Reconsider ¶¶ 1, 3 (misciting the Jan. 2022 Am. Order as ECF No. 1648).)

[4] (ECF No. 1444 [hereinafter, the "Jury Trial Order"]; *see* Harris Mot. Reconsider ¶ 2.)

[5] (*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"]; *see* Harris Mot. Reconsider ¶ 4.)

[6] (*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"]; *see* Harris Mot. Reconsider ¶ 5.)

2. Gerald A. Jeutter, Jr. (the "Receiver") and the Nivison Parties[7] contend in opposition that none of the Court's rulings reflects clear error or manifest injustice and thus that reconsideration is not warranted.[8]

3. Having considered the Motion, the parties' briefs in support of and in opposition to the Motion, the appropriate matters of record, and the arguments of counsel at the hearing on the Motion, the Court, in the exercise of its discretion, hereby **DENIES** Harris's Motion for the reasons set forth below.

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

4. This dispute arises within 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

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[7] The Nivison Parties are, collectively, Plaintiff Nivison Family Investments, LLC ("NFI"), Plaintiff Old Battleground Properties, Inc. ("Old Battleground"), and Arthur Nivison.

[8] (*See* Receiver's Resp. Br. Opp'n Doug Harris Mot. Pursuant Rule 54 (*Old Battleground v. CCSEA/Nivison v. Harris*), ECF No. 1627; Nivison Parties' Resp. Opp'n Douglas S. Harris's Mot. Reconsider, ECF No. 1624.)

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 of this Court.[9]

5. To provide context for the Court's analysis and resolution of the Motion, the Court finds it necessary to reproduce certain findings and conclusions from prior orders and opinions in these actions which are now at issue.

6. As relevant here, on 28 April 2016, and upon Plaintiffs' and the Receiver's various motions, the Court entered the Settlement Approval Order and the JDPW Receivership Order. The Settlement Approval Order provided, in relevant part, as follows:

> 19. The Receiver has negotiated a settlement of the claim by the Nivison Parties. The terms of the Settlement provide for an allowed claim against CCSEA, DRE and KEPES[10] of $4 million (the "Allowed Claim") and an allowed claim against the 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. Both of these allowed claims are less than half of the total amount sought by the Nivison Parties against the Receivership Entities, Dr. Epes, Ms. Epes, and the JDPW Trust.[11]

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[9] *See In re Se. Eye Ctr.—Pending Matters*, 2019 NCBC LEXIS 29, at *3–23 (N.C. Super. Ct. May 7, 2019); Jan. 2022 Am. Order, at *3–18; Order & Op. Def. Douglas S. Harris's Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3) ¶¶ 3–10, ECF No. 1683 (each reciting procedural background and citing prior orders).

[10] DRE and KEPES "were established to receive and hold substantially all of the assets of Dr. Richard Epes and his wife by Order of this Court." (Settlement Approval Order ¶ 2; *see* Order Joint. Mot. Approve Settlement Agreement & Release (All Matters), ECF No. 117.)

[11] (Settlement Approval Order ¶ 19.)

Harris argues that the Court's approval of the Settlement permitting a $2.1 million claim against JDPW was clearly erroneous and should be revised or rescinded because a "settlement between two parties basing their settlement upon the use of a third party's legal rights and property is not permitted by law."[12]

7. The Settlement Approval Order further provided, in relevant part, as follows:

> 38. Doug Harris objects that the joint prosecution aspects of this Settlement result in a conflict of interest for the Receiver, if the Receiver is appointed as the Receiver of the JDPW Trust, and that the claims may be circular due to indemnity claims by those from whom relief is sought in the joint prosecution. In the event of such an appointment, the Settlement provides for allowance of a claim against the JDPW Trust in the amount of $2.1 million, plus accrued interest and attorney's fees. This amount is a substantial reduction in the amount sought from the JDPW Trust by the Nivison Parties. The Settlement further provides that the allowed claim will be assigned to KEPES. As a result, upon entry of this Order approving the Settlement, the Receiver will not be in a position to assert claims against the JDPW Trust while acting as Receiver for the JDPW Trust. To the extent that Doug Harris or the Castle McCulloch Parties assert claims against Receivership Entities based upon claims asserted by the JDPW Trust, any issues presented by those claims can be addressed at that time in the context of actual, instead of hypothetical, disputes. These objections are OVERRULED in the exercise of the Court's discretion.
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> 40. The Receiver is free to settle these disputed claims in the manner that is most favorable to the Receivership Entities and those with valid legal interests in the Receivership Entities and in the Receivership Entities' assets. The Receiver is not required to settle in the manner that is most beneficial to other persons and entities who may be liable in whole or in part for the loan to the JDPW Trust or for damage that occurred in connection with that transaction. To the contrary, the approach taken here seeks to maximize the recovery available to the creditors of the Receivership Entities and represents sound business

[12] (Harris Mot. Reconsider ¶ 4.)

judgment. This objection is OVERRULED in the exercise of the Court's discretion.

41. Doug Harris and Mr. McDaniel further object to the entire Settlement on the grounds of "bad math" and a litany of other reasons why an allowed claim of $4 million dollars is not justified on the facts as they see them. These objections reflect one side of the many disputed factual contentions surrounding the transactions with the Nivison Parties since 2012. Disputes exist as to which version of the 3 September 21, 2012 contract, if any, is a binding contract, whether a contract was ever formed, whether consideration was provided for modifications, whether material facts were misrepresented, whether disclosures were full and adequate, whether property was owned by Dr. Epes or Ms. Epes, whether documents were signed by the person whose signature purports to be on the documents, and many other similar issues. These are the types of heavily contested disputes, filled with uncertainties and complexities, from which settlements are born. As a result, these objections are OVERRULED in the exercise of the Court's discretion.

42. The Nivison Parties are pursuing their claims against the Receivership Entities with vigor and determination. The proposed Settlement appears to the Court to be a better alternative than the continued expenditure of Receivership resources in an effort to determine each and every one of these disputed factual and legal claims. The resolution reached is a reasonable middle ground among the multiple potential outcomes. Given that the Nivison Parties undisputedly provided several million dollars of value to the Receivership Entities and the JDPW Trust, for which they have not been repaid, the result does not appear inequitable to the Court. Accordingly, this Objection is OVERRULED in the exercise of the Court's discretion.[13]

8. The JDPW Receivership Order provided, in relevant part, as follows:

4. The Motion seeks appointment of a receiver to administer the assets that JDPW Trust had in the past or which it currently has, citing the fact that JDPW Trust does not appear to be operating for the benefit of its beneficiary or its creditors. As recited in the Motion, on September 21, 2012, NFI loaned the sum of $2.1 million to JDPW Trust and these funds were used to acquire, at a discount, loans and various instruments from NewBridge Bank. These loans were made by NewBridge Bank or

[13] (Settlement Approval Order ¶¶ 38, 40–42.)

its predecessor in interest to both the CCSEA Entities and HCM and CM. Defendant Richard Harris is the brother of Defendant Doug Harris. Defendant Richard Harris is the primary owner of HCM and CM. Doug Harris negotiated with NewBridge Bank on behalf of the Castle McCulloch Defendants, in particular his brother, Richard Harris, for sale of the loan documents to a third party purchaser, later identified as Arthur Nivison, the principal of NFI, for settlement of the total outstanding balance owed for a loan extended to HCM and CM (the "Castle McCulloch Loan") and three loans extended to the CCSEA Entities by NewBridge Bank (the "CCSEA Loans"). It appears to the Court that, upon receipt of $2.1 million, NewBridge Bank transferred its interest in all four loans to JDPW Trust, but JDPW Trust did not assign any of the loan documents from any of the four loans to NFI as NFI contends JDPW Trust promised to do. It is undisputed that as of September 21, 2012, the date the four loans were assigned by NewBridge Bank to JDPW Trust, the total amount owed to NewBridge Bank on all four loans was approximately $3.4 million. It is further undisputed that of the $3.4 million owed to NewBridge Bank, approximately $1.6 million was the outstanding balance on the Castle McCulloch Loan.

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7. It appears to the Court that the Castle McCulloch Defendants benefited from the acquisition by JDPW Trust of the NewBridge Bank notes because the notes were in default and Doug Harris, the Trustee of JDPW Trust, agreed to, and in fact did, forbear from collection of the notes. In sworn testimony, Doug Harris and JDPW Trust acknowledged the indebtedness which it owes to NFI. (Transcript – September 14, 2014 hearing before the Honorable Paul C. Ridgeway.) JDPW Trust claims it has no assets to pay this debt, and appears to have been insolvent at all relevant times. Yet, Doug Harris has testified under oath that JDPW Trust assigned the Castle McCulloch Loan documents to Defendant Richard Harris shortly after the September 21, 2012 closing. In addition, a release deed dated March 15, 2013, prepared by Doug Harris and recorded in the Guilford County Registry on April 14, 2015, purports to release all of the Castle McCulloch real property from the Castle McCulloch Deed of Trust and Assignment of Rents and Profits granted to NewBridge Bank. (Exhibit YY – Amended Consolidated Complaint.) It appears to the Court that these actions demonstrate that Doug Harris, as Trustee of JDPW Trust, has taken affirmative steps to rid JDPW Trust of substantial assets which would otherwise have been available to pay the debt of JDPW Trust to NFI. It further appears that such transactions benefitted Doug Harris, the

> Trustee of JDPW Trust, as well as his brother, Richard Harris, and his related companies. It appears to the Court that, at the same time that Doug Harris was representing his brother, Richard Harris and JDPW Trust in these transactions with NewBridge Bank and Nivison and adverse to Dr. Epes, Mark McDaniel and CCSEA, Doug Harris also was simultaneously representing Dr. Epes and CCSEA in litigation with Dr. Harriott.
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> 12. The Court perceives no conflict of interest in the Receiver of the CCSEA Entities serving as receiver for the JDPW Trust, provided that NFI is allowed a $2.1 million claim, plus interest and attorney's fees, against the receivership estate of JDPW Trust. Further, the Receiver already has substantial knowledge regarding the facts and circumstances regarding the transactions at issue, and therefore judicial economy would be served by having him appointed as the receiver for JDPW Trust.[14]

Harris argues that the first sentence of paragraph 12 above is clear error and must be revised or rescinded.[15]

9. The JDPW Receivership Order further provided 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, together with accrued interest, attorney's fees and costs."[16]

10. In its Amended Order and Opinion of 6 January 2022, the Court described the comprehensive settlement between the Receiver and the Nivison Parties and the allowance of the claim against JDPW as follows:

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[14] (JDPW Receivership Order, Findings Fact ¶¶ 4, 7, 12.)

[15] (Harris Mot. Reconsider ¶ 5.)

[16] (JDPW Receivership Order, Order for Relief ¶ 5.)

> 27. Along with placing JDPW into receivership, the Court also approved a settlement agreement between Plaintiffs, the Receivership Entities, and JDPW. Among other things, the settlement allowed Plaintiffs a $2.1 million claim against JDPW, arising out of the Nivison Loan for the same amount. (*See* Ord. Approving Nivison Settlement & Related Transactions ["Ord. Approving Nivison Agrmt."] at 8, ECF No. 471.) This represented a substantial reduction from the amount originally sought by Plaintiffs against JDPW. (*See* Ord. Approving Nivison Agrmt. 8.).[17]

Harris argues that the inclusion of JDPW at the end of the first sentence of this paragraph is clear error and should be revised or rescinded.[18]

11. In its Jury Trial Order also issued on 6 January 2022, the Court determined that "JDPW's liability to Nivison has been established at $2.1 million plus accrued interest, attorney's fees, and costs and, as a result, no issue concerning the amount of JDPW's liability to Nivison remains for determination by a jury."[19] Harris argues that this determination constituted clear error and should be revised or rescinded because it conflicts with the Court's footnote 1 in its Order Amending Summary Judgment Order,[20] which was also entered on 6 January 2022 and reads as follows: "The Court notes that both the Receiver, (*see* ECF No. 1386 at 1–2), and the Court assumed for purposes of the Receiver's motion for partial summary judgment that

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[17] (Jan. 2022 Am. Order ¶ 27.)

[18] (Harris Mot. Reconsider ¶ 1.)

[19] (Jury Trial Order ¶ 5.)

[20] (Harris Mot. Reconsider ¶ 2.)

the Assignment Agreement document favored by Doug Harris was the operative Assignment Agreement."[21]

12. Also relevant to Harris's Motion are the following provisions of the Court's January 2022 Amended Order:

> 140. Monetary Judgment Against Doug Harris. Second, the Court grants JDPW's request to enter a money judgment in JDPW's favor against Doug Harris for: (i) the full amount JDPW owes to Plaintiffs on the Nivison Loan and (ii) the $1.3 million due and payable on the CM Note over and above the $2.1 million JDPW borrowed under the Nivison Loan. As already observed, the Court may "[c]ompel the trustee to redress a breach of trust by paying money, restoring property, or other means[.]" N.C.G.S. § 36C-10-1001(b)(3); *see also id.* § 36C-10-1002(a) ("A trustee who commits a breach of trust is liable for the greater of: (1) [t]he amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or (2) [t]he profit the trustee made by reason of the breach."); *id.* § 36C-10-1010(b) ("A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property . . . if the trustee is personally at fault.").
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> 142. In addition, JDPW is entitled to a monetary judgment against Doug Harris for the $1.3 million due and payable on the CM Note over and above the amount JDPW borrowed from Plaintiffs via the Nivison Loan. Had Doug Harris not committed a breach by transferring away the CM Note and Release Deed and failing to enforce JDPW's rights to the CM Loan, JDPW would not only have been able to repay the Nivison Loan, but it would have also profited from the CM Loan by receiving the difference ($1.3 million) between what JDPW could have collected on the CM Loan and what it owed on the Nivison Loan. But instead, Doug Harris arranged to receive that amount for himself personally through other channels, pursuant to the Epes and McDaniel Agreements. Thus, even absent a breach of trust, Doug Harris may be held personally liable for that amount. *See* N.C.G.S. § 36C-10-1003(a) ("A trustee is

[21] (Order Am. Summ. J. Order (*Old Battleground v. CCSEA*) ¶ 7 n.1, ECF No. 1442.)

> accountable for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.”).[22]

Harris argues that the Court’s conclusions in these two paragraphs that $1.3 million was due and payable on the Castle McCulloch Note (“CM Note”) was clear error and should be revised or rescinded.[23]

13. Finally, also relevant to Harris’s Motion is the claim he submitted to the Receiver seeking $1.3 million for himself based upon his agreements with Dr. Epes and Mark McDaniel.[24] The claim stated, in relevant part, as follows:

> WHEREAS, NewBridge Bank has made four loans, numbers 06846670101, 06846679001, 06846679002 to CCSEA and 04753419001 to Historic Castle McCulloch, LLC, Castle McCulloch, Inc., and NSITE (all Newbridge Bank documents incorporated by reference), and Newbridge has offered to discount equity in these loans of $3,350,139.30 to $2,026,834.35 which offer these parties wish to effectuate.
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> McDaniel and the corporations in consideration of said waiver agree that the money owed on NewBridge loan number 04753419001, $1.3 million, will be paid to Harris with eight percent annual interest in a lump sum, two years from the date of this agreement.[25]

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[22] (Jan. 2022 Am. Order ¶¶ 140, 142.)

[23] (Harris Mot. Reconsider ¶ 3.)

[24] (*See* 2d Index Exs. Supp. Mot. Partial Summ. J. by Receiver for JDPW Tr. (*Old Battleground v. CCSEA*), Ex. 1385.8, Claim of Douglas S. Harris against the entities within the receivership, joint & severally (*Old Battleground v. CCSEA* – Consol.), ECF No. 1385.8; Index Exs. Supp. Mot. Partial Summ. J. by Receiver for JDPW Tr. (*Old Battleground v. CCSEA*), Ex. 1384.4, Agreement re $1.3MM by Dr. Epes; Ex. 1384.5, Agreement re $1.3MM by Companies, ECF Nos. 1384.4, 1384.5.)

[25] (*See* Index Exs. Supp. Mot. Partial Summ. J. by Receiver for JDPW Tr. (*Old Battleground v. CCSEA*), Ex. 1384.5, Agreement re $1.3MM by Companies 1–2.)

14. After full briefing, the Court held a hearing on the Motion on 11 September 2024, at which the Receiver and the Nivison Parties were represented by counsel and Douglas S. Harris appeared *pro se*.[26] The Motion is now ripe for resolution.

II.

LEGAL STANDARD

15. Under Rule 54(b), interlocutory orders are "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." N.C. R. Civ. P. 54(b). That said, "[a] motion for reconsideration is not a vehicle to identify facts or legal arguments that could have been, but were not, raised at the time the relevant motion was pending." *Reynolds v. Burks*, 906 S.E.2d 508, at *12 (N.C. Ct. App. Sept. 3, 2024) (quoting *Julianello v. K-V Pharm. Co.*, 791 F.3d 915, 923 (8th Cir. 2015)). "The limited use of a motion to reconsider serves to ensure that parties are thorough and accurate in their original pleadings and arguments presented to the Court." *Id.* (quoting *Wiseman v. First Citizens Bank & Tr. Co.*, 215 F.R.D. 507, 509 (W.D.N.C. 2003)). But "[t]o allow motions to reconsider offhandedly or routinely would result in an unending motions practice." *Id.*

16. As a result, "[m]otions to reconsider rarely succeed because the grounds that merit reconsideration rarely exist." *Gvest Real Est., LLC v. JS Real Est. Invs., LLC*, 2024 NCBC LEXIS 42, *3–4 (N.C. Super. Ct. Mar. 7, 2024). As Judge Conrad of this Court has explained, "[i]t isn't enough to polish up old arguments and try them again or to spin out new arguments that could've been raised but weren't. A party must

[26] (*See* Am. Not. Hr'g, ECF No. 1632.)

point to a true game changer: 'new evidence,' a 'change in the controlling law,' or 'the need to correct a clear error or prevent manifest injustice.'" *Id.* (quoting *Pender v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 1838, at *7 (W.D.N.C. Jan. 7, 2011)).[27] Since "[s]uch problems rarely arise," a "motion to reconsider should be equally rare." *W4 Farms, Inc. v. Tyson Farms, Inc.*, 2017 NCBC LEXIS 99, at *5 (N.C. Super. Ct. Oct. 19, 2017) (quoting *Harson Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985)).

III.

ANALYSIS

17. In his attempt to meet the high bar for reconsideration, Harris cites no new evidence or change in relevant law and instead relies entirely on purported instances of "clear error" in the Court's challenged orders. As will be shown below, however, rather than show "clear error" or "manifest injustice," Harris merely repackages a series of previously rejected arguments into a new Motion under Rule 54 that fails to provide a basis for reconsideration. The Court will address each of Harris's contentions in turn.

A. The Court's finding that the Settlement Agreement between the Nivison Parties and the Receiver bound JDPW—Paragraph 27 of the January 2022 Amended Order.

18. Harris argues that since he was the Receiver of JDPW at the time of the settlement negotiations between the Receiver and the Nivison Parties and did not

[27] *See, e.g.*, *United Therapeutics Corp. v. Liquidia Techs.*, 2023 NCBC LEXIS 107, at *3–4 (N.C. Super. Ct. Aug. 31, 2023) ("Absent guidance from North Carolina's appellate courts on the standard to apply when considering a motion to reconsider an interlocutory ruling under Rule 54(b), the Court turns to federal case law addressing similarly worded portions of the Federal Rule 54(b).").

participate in those discussions, the Court could not have approved a settlement binding JDPW. Harris therefore contends that the Court's recitation that the Settlement Approval Order is binding on JDPW constitutes clear error.[28] This is precisely the same argument Harris raises in his Motion to Dismiss under Rules 12(b)(1) and 12(h)(3),[29] however, which the Court has rejected by its Order on that motion which is filed contemporaneously herewith (the "12(b)(1) Order"). The Court incorporates by reference its analysis in the 12(b)(1) Order here and therefore denies Harris's Motion as to paragraph 27 of the January 2022 Amended Order.[30]

B. The Court's finding that JDPW's liability to the Nivison Parties is $2.1 million—Paragraph 5 of the Jury Trial Order.

19. Next, Harris seeks reconsideration of the Court's recognition in the Jury Trial Order that "JDPW's liability to Nivison has been established at $2.1 million plus accrued interest, attorney's fees, and costs, and, as a result, no issue concerning the amount of JDPW's liability to Nivison remains for determination by a jury."[31]

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[28] (Harris Mem. L. Supp. Mot. Reconsider Ct.'s Am. Order & Op. Mots. Summ. J.; Order Setting Claim & Matters for Trial by Jury; Am. Order & Op.; Order Approving Nivison Settlement & Related Transactions; Order Approving Pl's. Mot. Apptmt. Receiver for JDPW Tr. 3–5 [hereinafter, "Harris Mem. L. Supp. Mot. Reconsider"], ECF No. 1609.)

[29] (Def. Douglas S. Harris's Br. Supp. of Def.'s Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3) 12–16, ECF No. 1576.)

[30] (*See* Order & Op. Def. Douglas S. Harris's Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3) ¶¶ 23, 25, ECF No. 1683 (noting that "With Count Four still pending against JDPW, and after a full hearing on both motions, including 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.").)

[31] (Jury Trial Order ¶ 5.)

This, he contends, is inconsistent with footnote 1 in the Court's Order Amending Summary Judgment Order (*Old Battleground v. CCSEA*), which, as noted above, reads, "[t]he Court notes that both the Receiver, (*see* ECF No. 1386 at 1–2), and the Court assumed for purposes of the Receiver's motion for partial summary judgment that the Assignment Agreement document favored by Doug Harris was the operative Assignment Agreement."[32] Because Harris's preferred version of the Assignment Agreement contains a clause limiting JDPW's liability to the Nivison Parties,[33] Harris argues that the Court's finding that JDPW owes the Nivison Parties $2.1 million is clearly erroneous.[34]

20. Harris ignores, however, that: (i) the Court conditioned its April 2016 approval of JDPW's Settlement Agreement with the Nivison Parties on the Receiver's appointment as the trustee of JDPW Trust; (ii) that the settlement involved an assessment of the strengths and weaknesses of the Receiver's and the Nivison Parties' competing positions and ultimately resulted in a substantial reduction from

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[32] (Order Am. Summ. J. Order (*Old Battleground v. CCSEA*) ¶ 7 n.1.)

[33] This provision states:

> 5. It is understood by the Parties that James Mark McDaniel, Jr. and Dr. C. Richard Epes are pledging additional security together with personal guarantees in separate documents, but in the event of default, JDPW Trust's liability is limited to the forfeiture of the aforementioned equipment and all of its future right title, and interest in said equipment.

(Index Exs. Mot. Summ. J., Ex. 1382.2, Sept. 21, 2012 Agreement between Arthur Nivison & JDPW ¶ 5, ECF No. 1382.2.)

[34] (Harris Mem. L. Supp. Mot. Reconsider 6–9.)

the Nivison Parties' viable damages claim; and (iii) that assessing uncertain outcomes, and compromising claims and defenses, in litigation is inherent in evaluating and reaching any settlement.[35] Harris provides no new evidence or law to suggest that the Court's approval of the $2.1 million settlement in April 2016 should be reconsidered, and the Court finds no clear error or manifest injustice to justify the reconsideration of its ruling in Paragraph 5 of the Jury Trial Order.[36]

C. The Court's conclusion that $1.3 million was due and owing on the CM Note—Paragraphs 140 and 142 of the January 2022 Amended Order.

21. Harris next argues that paragraphs 140 and 142 of the January 2022 Amended Order granting "JDPW's request to enter a money judgment in JDPW's favor against Doug Harris for . . . (ii) the $1.3 million due and payable on the CM Note over and above the $2.1 million JDPW borrowed under the Nivison Loan" should be revised and rescinded for clear error. In support of his argument, Harris claims that when NewBridge Bank received the payment of $2.1 million in exchange for the Notes, it allocated a portion of that payment to pay off the remaining balance on the CM Note.[37] Harris thus contends that because there was no money owed on the CM Note, he cannot face liability for failing to collect on that Note. Harris's argument is again without merit.

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[35] (Settlement Approval Order ¶ 41.)

[36] In light of the Court's conclusion, it need not consider the Receiver's argument that Harris's preferred Assignment Agreement did not constitute a valid and binding contract. (*See* Receiver's Resp. Br. Opp'n Doug Harris Mot. Pursuant Rule 54 (*Old Battleground v. CCSEA/Nivison v. Harris*) 11–14.)

[37] (Harris Mem. L. Supp. Mot. Reconsider 11.)

22. As noted above, the Court concluded in paragraph 142 of the January 2022 Amended Order as follows:

> Had Doug Harris not committed a breach by transferring away the CM Note and Release Deed and failing to enforce JDPW's rights to the CM Loan, JDPW would not only have been able to repay the Nivison Loan, but it would have also profited from the CM Loan by receiving the difference ($1.3 million) between what JDPW could have collected on the CM Loan and what it owed on the Nivison Loan. But instead, Doug Harris arranged to receive that amount for himself personally through other channels, pursuant to the Epes and McDaniel Agreements. Thus, even absent a breach of trust, Doug Harris may be held personally liable for that amount. (citations omitted).[38]

23. Harris does not argue anywhere in his briefing that the breach of fiduciary duty found by the Court in its January 2022 Amended Order was erroneous. Moreover, even if JDPW satisfied, rather than purchased, the CM Note, as Harris contends, the undisputed fact remains that he failed to use JDPW's ownership of the Notes to its benefit. To the contrary, as he described in the claim he submitted to the Receiver, he sought to obtain the benefit of the $1.3 million reduction in the CM Note for himself—not, as his duty as JDPW's trustee required, for the benefit of JDPW. The Court therefore finds no clear error or manifest injustice in its conclusions in paragraphs 140 and 142 of its January 2022 Amended Order.

D. <u>The Court's approval of the Settlement Agreement was not a conflict-of-interest transaction—Paragraph 12 of the JDPW Receivership Order.</u>

24. The Court stated in paragraph 12 of the JDPW Receivership Order that it "perceive[d] no conflict of interest in the Receiver of the CCSEA Entities serving as receiver for JDPW Trust, provided that NFI is allowed a $2.1 million claim, plus

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[38] (Jan. 2022 Am. Order ¶ 142.)

interest and attorney's fees, against the receivership estate of JDPW Trust." Harris argues that the Court's conclusion is clear error because JDPW did not benefit from the settlement and that the settlement was made solely for the gain of the Nivison Parties.[39]

25. Harris raised this same argument in his objection to the appointment of the Receiver in his 2016 Objection to the Settlement and again in his objections to the approval of the Joint Prosecution Agreement that same month.[40] Having previously considered the Receiver's potential conflict of interest, the Court squarely addressed this issue after full briefing by the parties in the Settlement Approval Order:

> Doug Harris objects that the joint prosecution aspects of this Settlement result in a conflict of interest for the Receiver, if the Receiver is appointed as the Receiver of the JDPW Trust, and that the claims may be circular due to indemnity claims by those from whom relief is sought in the joint prosecution. In the event of such an appointment, the Settlement provides for allowance of a claim against the JDPW Trust in the amount of $2.1 million, plus accrued interest and attorney's fees. This amount is a substantial reduction in the amount sought from the JDPW Trust by the Nivison Parties. The Settlement further provides that the allowed claim will be assigned to KEPES. As a result, upon entry of this Order approving the Settlement, the Receiver will not be in a position to assert claims against the JDPW Trust while acting as Receiver for the JDPW Trust. To the extent that Doug Harris or the Castle McCulloch Parties assert claims against Receivership Entities based upon claims asserted by the JDPW Trust, any issues presented by those claims can be addressed at that time in the context of actual,

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[39] (Harris Mem. L. Supp. Mot. Reconsider 14.)

[40] (Obj. Douglas S. Harris, Individually & as Tr. of JDPW Tr., to Receiver's Mot. Confirm Partial Settlement of Debt & Claims & all Related Transactions Including Request Release CCSEA Sale Proceeds 3–5, ECF No. 333 (citing to the same case Harris uses to make his argument in the instant case, *Lowder v. Allstar Mills, Inc.*, 309 N.C. 695 (1983)); Obj. Douglas S. Harris Individually & as Tr. of JDPW Tr. Resp. Nivison Entities' Mot. Place JDPW Tr. Into Receivership 15, ECF No. 345.)

instead of hypothetical, disputes. These objections are OVERRULED in the exercise of the Court's discretion.[41]

26. The Court finds no clear error or manifest injustice in its prior ruling at paragraph 12 of the JDPW Receivership Order and that Harris's recycled arguments to the contrary continue to be without merit.

IV.

CONCLUSION

27. **WHEREFORE**, based on the above, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

a. Harris's Motion to Reconsider paragraphs 27, 140, and 142 of the January 2022 Amended Order is hereby **DENIED**;

b. Harris's Motion to Reconsider paragraph 12 of the JDPW Receivership Order is hereby **DENIED**;

c. Harris's Motion to Reconsider paragraph 19 of the Settlement Approval Order is hereby **DENIED**;

d. Harris's Motion to Reconsider paragraph 5 of the Jury Trial Order is hereby **DENIED**; and

e. Harris's Motion to Reconsider is otherwise **DENIED**.

28. 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

[41] (Settlement Approval Order ¶ 38.)

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