In re Se. Eye Ctr. (Pending Matters); In re Se. Eye Ctr. (Judgments), 2024 NCBC 85.

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE 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 RIGHT TO A JURY TRIAL
(OLD BATTLEGROUND v. CCSEA)
(NIVISON v. HARRIS)

1. **THIS MATTER** is before the Court on the issue presented in the Court's 1 August 2024 Scheduling Order[1] concerning whether Defendant Douglas S. Harris ("Harris") is entitled to a jury trial for contested issues identified in the parties' 29 July 2024 Joint Status Report (the "Joint Status Report") in the above-captioned actions.[2]

[1] (Sched. Order & Not. Hr'g ¶ 10(d) [hereinafter, "Sched. Order"], ECF No. 1607.) For ease of reference, all ECF citations in this Order are to the Business Court's electronic docket in Wake County 15 CVS 1648 unless otherwise specified.

[2] (Joint Status Rep., ECF No. 1604.)

2. Harris broadly seeks the right to a jury trial "on all factual issues and all factual disputes" remaining in these actions.[3] Gerald A. Jeutter, Jr. (the "Receiver") argues in opposition, however, that there are no factual issues or disputes remaining for jury determination, and, in particular, that Harris does not have the right to a jury trial on any issues to be determined in the accounting proceeding the Court initiated at the Receiver's request based on the Court's conclusion that Harris breached his fiduciary duty as the trustee of JDPW Trust ("JDPW").[4]

3. Having considered the parties' briefs concerning the alleged jury trial issues identified in the Joint Status Report, the relevant pleadings, and the arguments of counsel at the hearing on these issues, the Court, in the exercise of its discretion, hereby **DENIES** Harris's request for a jury trial on any remaining issues in these actions for the reasons set forth below.

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.

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[3] (Def. Harris's Br. Resp. Ct.'s Order of 1 Aug. 2024 re Harris's Position on Right to Jury Trial 10 [hereinafter, "Harris Br. Supp."], ECF No. 1626.)

[4] (Mot. for Order for Doug Harris to Acct. (*Old Battleground v. CCSEA*) [hereinafter, "Mot. to Acct."], ECF No. 1465; Order on Receiver's Mot. for Douglas S. Harris to Acct. (*Old Battleground v. CCSEA*) [hereinafter, the "Mot. Acct. Order"], ECF No. 1503; Sched. Order & Am. Not. Hr'g, ECF No. 1640.)

I.

FACTUAL AND PROCEDURAL BACKGROUND

4. The parties' dispute over Harris's purported jury trial rights arises within a large group of cases before this Court that the Court has 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).[5]

5. As relevant here, on 21 March 2022, the Receiver filed a Motion for Doug Harris to Account, asking the Court to exercise its equitable jurisdiction and authority under N.C.G.S. §§ 36C-10-1001(b)(4) and (b)(10) for an order requiring Harris to account for all assets, income, and expenses of JDPW during his service as trustee, including as to four NewBridge Bank (the "Bank") notes JDPW acquired in September 2012.[6]

6. N.C.G.S. § 36C-10-1001 establishes the available remedies for a trustee's breach of trust and specifies at subsection (b)(4) that the Court may "[o]rder the

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[5] The extensive background of these cases is set forth in previous orders and opinions of this Court. *See In re Se. Eye Ctr.—Pending Matters*, 2019 NCBC LEXIS 29, at *3–23 (N.C. Super. Ct. May 7, 2019) [hereinafter, the "May 2019 Order"]; *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"]); 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).

[6] (Mot. to Acct. 1. The four Bank notes included three notes owed by Central Carolina Surgical Eye Associates, P.A. ("CCSEA") and one note owed by Historic Castle McCulloch, LLC (the "CM Note"). *See* Order on Acct'g (*Old Battleground v. CCSEA)* at ¶¶ 9, 14–24, ECF No. 1687.)

Trustee to account." As this Court has previously noted,[7] our Court of Appeals has explained that an accounting is:

> "[a] rendition of an account, either voluntarily or by court order. The term frequently refers to the report of all items of property, income, and expenses prepared by a personal representative, trustee, or guardian and given to heirs, beneficiaries or the probate court." Black's Law Dictionary 22 (9th ed. 2009). An accounting is an equitable remedy sometimes pled in claims of breach of fiduciary duty. *See, e.g.*, *Toomer v. Branch Banking & Tr. Co.*, 171 N.C. App. 58, 70 (2005) ("Plaintiffs sought an accounting as an equitable remedy for the alleged breaches of fiduciary duty and constructive fraud.").

Burgess v. Burgess, 205 N.C. App. 325, 333 (2010). Additionally, our courts have held that "[t]he appropriate method for determining the exact amount which may be due the plaintiff, if anything, is to require the defendant, who is in possession of the essential information, to render an accounting." *Watson v. Fulk*, 19 N.C. App. 377, 380 (1973).

7. On 10 August 2022, and relying on the Court's earlier conclusion on summary judgment that "Doug Harris received property while acting as trustee for JDPW and that Doug Harris breached his fiduciary duty as trustee of JDPW," the Court granted the Receiver's Motion and ordered Doug Harris to render an accounting (the "Order to Account").[8] The Order to Account specifically identified the information Harris was required to produce in the accounting.[9]

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[7] (*See* Mot. Acct. Order ¶ 15.)

[8] (Mot. Acct. Order ¶ 17; *see also* May 2019 Order ¶¶ 18–19; Jan. 2022 Am. Order ¶¶ 21, 81–95.)

[9] (Mot. Acct. Order ¶ 18 (citing *Pluciennik v. TCB Univ. Park Cold Storage, LLC*, 2013 Ill. App. 3d 120026, ¶ 15 (Ill. App. Ct. 2013) (citations omitted) (holding that an accounting should include: a statement of all receipts and disbursements, provision of original source

8. On 10 October 2022, Harris filed his Accounting Report Regarding JDPW Trust (the "Accounting").[10] The Nivison Parties[11] filed their objections to the Accounting on 8 November 2022,[12] and the Receiver did likewise the following day (together, the "Objections").[13]

9. On 15 July 2024, the Receiver submitted an Updated Status Report in anticipation of a jury trial in these matters then scheduled to commence on 5 August 2024.[14] The Court convened a conference later that same day at which the Receiver, the Nivison Parties, and the Castle McCulloch Defendants were represented by counsel, and Harris and Mark McDaniel appeared *pro se*.[15] As agreed at the conference, the Court cancelled the jury trial previously scheduled for 5 August 2024 and ordered the Receiver to file a joint status report describing all remaining issues requiring judicial resolution and the process, timing, and proposed deadlines for resolving those issues. The Court also noticed an evidentiary hearing in which the

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documents, and that a party failing to produce those documents may have doubts resolved against them) and *Watson v. Watson*, 144 Idaho 214, 219 (2007) ("The party called upon to render an accounting bears the burdens of production and persuasion.")).)

[10] (Tr. Douglas S. Harris's Acct'g Rep. re JDPW Tr. [hereinafter, the "D. Harris Acct'g"], ECF No. 1511.)

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

[12] (Resp. Nivison Parties to Tr. Douglas S. Harris's Acct'g Rep. re JDPW Tr., ECF No. 1517.)

[13] (JDPW Obj. Harris Acct'g (*Old Battleground v. CCSEA*), ECF No. 1520.)

[14] (Receiver's Updated Status Rep. (*Old Battleground v. CCSEA/Nivison v. Harris*), ECF No. 1593.)

[15] (Sched. Order ¶ 4.)

Court would sit as a master in equity to consider the Accounting and the Objections (the "Accounting Proceeding").[16]

10. The Receiver filed the requested Joint Status Report on 29 July 2024.[17] The Receiver and Harris reflected in the Joint Status Report a disagreement concerning Harris's right to a jury trial on various issues.[18] The Court then ordered the Receiver and Harris to file opening and response briefs concerning whether a jury trial was necessary to resolve any of the remaining issues the parties identified in the Joint Status Report.[19]

11. The Court also advised the parties that the Court "expressly reserved its right to receive evidence at the Foreclosure[20] and Accounting Proceedings subject to the Court's later determination as to whether any of the issues raised in those proceedings should be heard by a jury and thus whether any evidence received at those proceedings should be excluded from the Court's consideration of the Receiver's appeal in the Foreclosure Proceeding or from its consideration of the Accounting and

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[16] (Sched. Order ¶ 10.)

[17] (Joint Status Rep.)

[18] (Joint Status Rep., 19–20.)

[19] (Sched. Order ¶ 10(d)(i).)

[20] On 23 July 2024, the Court noticed a *de novo* hearing for 22 August 2024 on the Receiver's Appeal from a 2 April 2024 Order of the Clerk of Superior Court of Guilford County denying JDPW Trust's request to allow a foreclosure sale under the power of sale in the Historic Castle McCulloch, LLC Deed of Trust in *In Re: The Foreclosure of Deed of Trust of Historic Castle McCulloch, LLC Dated September 30, 2004* (Guilford County 23 SP 1872) (the "Foreclosure Proceeding"). (ECF No. 42 (23 SP 1872).)

the Objections as a master of equity in the Accounting Proceeding in favor of a jury trial as to those issues."[21]

12. After full briefing,[22] the Court convened a hearing on 11 September 2024 (the "Hearing") to consider, among other matters, Harris's purported right to a jury trial on the issues identified in the Joint Status Report. The Receiver was represented by counsel and Harris appeared *pro se* at the Hearing in connection with Harris's jury trial demand.

13. On 13 September 2024, the Court entered a scheduling order concerning the Accounting Proceeding.[23] On 23 September 2024, Harris filed a Notice of Appeal of the 13 September 2024 scheduling order, contending that his right to a jury trial on the issues to be determined in the Accounting Proceeding had been denied.[24] The Court entered an Order on Notice of Appeal later that same day noting that "[s]ince the Court has not determined that Harris is not entitled to a jury trial on any matters at issue in the Foreclosure Proceeding or the Accounting Proceeding, his Appeal is premature and does not affect a substantial right."[25] As a result, the Court

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[21] (Order Not. Appeal ¶ 4 (reciting the Court's earlier statements), ECF No. 1644.)

[22] (*See* Harris Br. Supp.; Receiver's Opening Br. re Jury Trial for Equitable Acct'g (*Old Battleground v. CCSEA/Nivison v. Harris*) [hereinafter "Receiver Br."], ECF No. 1628; Def. Douglas S. Harris's Reply Br. in Further Supp. re Contested Joint Status Rep. Issues [hereinafter "Harris Reply"], ECF No. 1635; Receiver's Reply Br. re Jury Trial for Equitable Acct'g (*Old Battleground v. CCSEA/Nivison v. Harris*) [hereinafter "Receiver Reply"], ECF No. 1636.)

[23] (Sched. Order & Am. Not. Hr'g.)

[24] (Def. Douglas Harris's Not. Appeal, ECF No. 1643.)

[25] (Order Not. Appeal ¶ 4.)

"conclude[d] that it [was] proper and appropriate in the current circumstances to disregard the interlocutory Appeal and proceed with the Accounting Proceeding as currently scheduled."[26] After full briefing, the Court thereafter proceeded with the Accounting Proceeding on 26 September 2024 and, after a delay occasioned by Hurricane Helene, on 7 November 2024.

14. The issues regarding Harris's claimed entitlement to a jury trial are now ripe for resolution.

II.

ANALYSIS

15. Harris claims he is entitled to a jury trial on all issues to be determined in the Accounting Proceeding.[27] He also contends he is entitled to a jury trial on the following factual determinations:

a. "[W]hether or not the 21 September 2012 contract signed by Harris and Nivison is the binding contract in this case"[28];

b. "[W]hether the Castle McCulloch Note ["CM Note"] was paid in full or not"[29]; and

c. "[W]hy [the Receiver's] mathematical calculations are all over the place."[30]

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[26] (Order Not. Appeal ¶ 5.)

[27] (Harris Br. Supp. 1–3.)

[28] (Harris Br. Supp. 4–5.)

[29] (Harris Br. Supp. 6.)

[30] (Harris Br. Supp. 10.)

The Court shall address each in turn.

A. The Accounting Proceeding

16. Harris contends that he has a right to a jury trial on the issues to be resolved in the Accounting Proceeding under the North Carolina Constitution and the law governing receiverships.

17. Harris first argues that the Accounting Proceeding issues must be resolved by a jury under Art. I § 25 and Art. IV § 13(1) of the 1971 North Carolina Constitution. Art. I § 25 reads: "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." Art. IV § 13(1) states: "There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury."

18. Harris ignores, however, a long line of decisions from the Supreme Court of North Carolina narrowly interpreting these provisions in light of the availability of the jury trial right when the North Carolina Constitution of 1868 was adopted:

> The right to a trial by jury under article I has long been interpreted by this Court to be found only where the prerogative existed by statute or at common law at the time the Constitution of 1868 was adopted (citations omitted). Conversely, where the prerogative did not exist by statute or at common law upon the adoption of the Constitution of 1868, the right to trial by jury is not constitutionally protected today.

Kiser v. Kiser, 325 N.C. 502 (1989).[31] *See, e.g.*, *N.C. State Bar v. DuMont*, 304 N.C. 627, 641 (1982) ("Article I, § 25 of the North Carolina Constitution preserves intact the right to trial by jury in all cases where the prerogative existed at common law or by statute at the time the 1868 Constitution was adopted.").

19. Turning then to whether the jury trial right Harris seeks was available upon the adoption of the North Carolina Constitution in 1868, the Court notes that the Supreme Court of North Carolina held in 1871 that there was no right to a jury trial in an accounting proceeding whether due to a complicated account or in equity. *See Klutts v. McKenzie*, 65 N.C. 102, 103 (1871) (finding that a "Court of Equity of matters of account" should "give[ ] judgment on both facts and law" "in regard to matters of complicated accounts").[32]

20. Harris ignores *DuMont*, *Kiser*, and *Klutts* and offers no evidence or case law suggesting that there was a jury trial right in an accounting proceeding in 1868.

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[31] *See, e.g., Huyck Corp. v. Mangum, Inc.*, 309 N.C. 788 (1983) (no jury trial right where sovereign immunity would have prevented the suit at common law); *In re Clark*, 303 N.C. 592 (1981) (no jury trial right in case involving parental rights); *In re Annexation Ordinances*, 253 N.C. 637, 649 (1961) ("The right to a trial by jury is not guaranteed in those cases where the right and the remedy have been created by statute since the adoption of the Constitution [of 1868]"); *Utils. Comm's v. Trucking Co.*, 223 N.C. 687 (1943) (no jury trial right in petition for trucking franchise certificate); *Belk's Dep't Store, Inc. v. Guilford Cnty.*, 222 N.C. 441 (1943) (no jury trial right for controversy over tax valuation); *Unemployment Comp'n Comm. v. Willis*, 219 N.C. 709 (1941) (no jury trial right in cases involving administration of the tax laws); *Hagler v. Highway Comm'n*, 200 N.C. 733 (1931) (no jury trial right under the Workmen's Compensation Act); *McInnish v. Bd. of Educ.*, 187 N.C. 494 (1924) (no jury trial right for discretionary administrative decision regarding site for school building); *Groves v. Ware*, 182 N.C. 553 (1921) (jury of six constitutionally acceptable in insanity hearing); *Phillips v. Phillips*, 73 N.C. App. 68 (1985) (no jury trial right for equitable distribution action).

[32] Harris argues that the accounting here is not "complicated," but the Court disagrees. Certainly compared to the accounting performed in *Klutts*, the Accounting Proceeding here is "complicated."

Moreover, the constitutional argument he makes was expressly rejected by the Supreme Court of North Carolina in *Kiser*. In *Faircloth v. Baird*, 320 N.C. 505 (1987), the case on which Harris principally relies, the Supreme Court held that shareholders in a derivative action were entitled to a jury determination on questions of fact. The Supreme Court stated two years later in *Kiser*, however, that "Defendant urges this Court to construe *Faircloth* broadly as holding that article IV, section 13 creates a constitutional right to trial by jury in all civil cases arising from controversies affecting private rights and redressing private wrongs. This we decline to do." *Kiser*, 325 N.C. at 509. *See also, e.g.*, *In re Foreclosure of Real Prop. Under Deed of Tr. From Elkins*, 193 N.C. App. 226, 228 (2008) (rejecting plaintiff's arguments for a jury trial under Art. I § 25 and Art. IV § 13(1) because "the [Supreme] Court's holding in *Kiser* rejected the analysis set forth in *Faircloth*."). Since the defendant's unsuccessful argument in *Kiser*, like the plaintiff's unsuccessful argument in *Elkins*, is the same argument Harris makes here, the Court finds that argument without merit under North Carolina law.

21. Moreover, the equitable accounting remedy, here ordered under the Court's equitable jurisdiction and pursuant to N.C.G.S. § 36C-10-1001 and by which the Court shall "sit as a master in equity . . . in accordance with the law and the evidence,"[33] is essentially the same procedure the North Carolina courts employed at the time the 1868 North Carolina Constitution was adopted. Indeed, in *Martin v. Wilbourne*, 66 N.C. 321 (1872), our Supreme Court held that:

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[33] (*See* Mot. Acct. Order ¶¶ 15, 19.)

> When the facts connected with the management of the trust are in dispute, the rights of the parties cannot be readily ascertained and determined without an account. This is the usual course adopted by Courts of Equity and if any of the parties are dissatisfied with the report of the Master, the cause of objection can be presented by proper exception and *thus the Court can decide all matters of controversy*.

Id. at 322 (emphasis added). *See also McPherson v. McPherson*, 33 N.C. 391 (1850) (recognizing that a jury trial right did not exist for an accounting to determine the balance due for rents and profits between co-tenants); *Williamson v. Williams*, 59 N.C. 62 (1860) (confirming master in equity's accounting).

22. Accordingly, for the reasons set forth above, the Court concludes that, because the North Carolina Constitution did not provide a jury trial right in an accounting proceeding when it was adopted in 1868, Harris does not have a right under the 1971 North Carolina Constitution for the issues in the Accounting Proceeding to be decided by a jury.

23. Harris's argument for a jury trial under the North Carolina's receivership statutes[34] is equally unavailing. As argued in his Motion to Dismiss Pursuant to Rules 12(b)(1) and 12(h)(3) of the North Carolina Rules of Civil Procedure (the "Rule(s)") (the "12(b)(1) Motion"),[35] Harris contends that "the Nivison Entities have never yet actually made a claim against JDPW" and thus that "the Receiver has never yet had an opportunity 'to pass upon and allow or disallow the claims or any part

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[34] (Harris Br. Supp. 4; Harris Reply 11; *see also* Douglas S. Harris's Mot. Dismiss Pursuant to N.C. R. Civ. P. Rules 12(b)(1) & 12(h)(3) [hereinafter, "12(b)(1) Mot."], ECF No. 1575.)

[35] (*See* 12(b)(1) Mot.)

thereof and notify the claimants of his determination.' "[36] From this contention, Harris argues that he has not had the right to make an exception to the Receiver's determination and demand a jury trial.[37] The Court rejected this same argument, however, in its Order on Harris's 12(b)(1) Motion (the "12(b)(1) Order"), and the Court incorporates by reference its analysis in the 12(b)(1) Order here.[38]

B. <u>Remaining Factual Determinations</u>

24. Harris's contentions that he is entitled to have a jury determine "whether or not the 21 September 2012 contract signed by Harris and Nivison is the binding contract in this case,"[39] "whether the Castle McCulloch Note was paid in full or not,"[40] and any calculation of damages are likewise without merit. Contrary to Harris's contention that he "is entitled to a trial by jury of all factual disputes before his property can be taken,"[41] our appellate courts have made clear that "the

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[36] (Harris Br. Supp. 4 (quoting N.C.G.S. § 1-507.7).)

[37] (Harris Br. Supp. 4.)

[38] (*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 (noting that "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" and that "the Court's Case Management Order [ECF No. 82] . . . plainly stated that '[p]arties to lawsuits currently pending,' which included NFI and Harris in the *Old Battleground* action . . . do 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.").)

[39] (Harris Br. Supp. 4–5.)

[40] (Harris Br. Supp. 6.)

[41] (Harris Br. Supp. 6.)

constitutional right to trial by jury, N.C. Const. Art. I, § 25, is not absolute." *Sullivan v. Pugh,* 258 N.C. App. 691, 693 (2018). "As both the United States Supreme Court stated in *Ex parte Wall* and [the Court of Appeals] adopted in *In re Bonding Co.*, 'it is a mistaken idea that due process of law requires a plenary suit and a trial by jury in all cases where property or personal rights are involved.' " *Id.* (quoting *Ex parte Wall*, 107 U.S. 265, 289 (1883) and *In re Bonding Co.*, 16 N.C. App. 272, 277 (1972)). To the contrary, the right to a trial by jury "is premised upon a preliminary determination by the trial judge that there indeed exist genuine issues of fact and credibility which require submission to the jury." *Bank v. Burnette*, 297 N.C. 524, 537 (1979).

25. Here, the Court has already rejected Harris's argument that the dispute about the terms of the 21 September 2012 contract between JDPW and Nivison provides a defense to the Receiver's claim against him for breach of trust as JDPW's trustee.[42] As the Court held in concluding under Rule 56 that Harris committed a breach of trust, even "assuming the limitation of liability applies [i.e., even if the Court agrees to apply the version of the September 2012 agreement Harris prefers,] . . . [t]he conflict of interest that permeated the Nivison Loan renders it a breach of trust without any need to assess the limitation of liability."[43] The same is true with Harris's contention that the CM Note was paid in full in the September 2012 transaction with the Bank. Even if Harris were correct that the CM Note was

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[42] (Jan. 2022 Am. Order ¶¶ 93–98.)

[43] (Jan. 2022 Am. Order ¶ 97.)

paid in full, satisfaction of the CM Note in no way affects the Court's conclusion that Harris committed a breach of his fiduciary duty as JDPW's trustee by "transferring away the CM Note and Release Deed and failing to enforce JDPW's rights to the CM Loan."[44]

26. As for Harris's argument that the Receiver's damages calculation must be tested by a jury,[45] this claim, too, is without merit. The Court has ruled that Harris committed a breach of fiduciary duty as JDPW's trustee and that JPDW is therefore entitled to "(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."[46] These amounts may be derived from mathematical calculations based on the terms of the notes themselves and by accounting for the time that has passed without payments being made. No jury issues are presented in making these calculations. *See Marcoin, Inc. v. McDaniel*, 70 N.C. App. 498, 506 (1984) ("As the computation of the amount of fees due was merely a mathematical determination, there was no need to submit this question to the jury."); *see also Chisolm v. TranSouth Fin. Corp.*, 194 F.R.D. 538, 563 (E.D. Va. 2000) (recognizing that "[w]here 'reasonable factfinders applying the correct legal standard could come to but one determination as to the amount of damages to be awarded

[44] (Jan. 2022 Am. Order ¶ 143.)

[45] (Harris Br. Supp. 10.)

[46] (Jan. 2022 Am. Order ¶ 140; *see also* Findings Fact, Conclusions L. & Final J. on Foreclosure Appeal (23 SP 1872), filed contemporaneously herewith, ECF No. 1686.)

under the jury's findings on liability,' no jury rights attach at that stage") (quoting *Aetna Cas. Sur. Co. v. P&B Autobody,* 43 F.3d 1546, 1567 (1st Cir. 1994)).

27. The Court further concludes that the remaining issues raised by Harris are either irrelevant, immaterial, or have already been decided by settlement or on summary judgment.[47]

III.

CONCLUSION

28. **WHEREFORE**, for the reasons set forth above, the Court hereby **ORDERS** as follows:

a. Harris's demand for a jury trial on any issues to be determined in the Accounting Proceeding is hereby **DENIED**;

b. Harris's demand for a jury trial on "whether or not the 21 September 2012 contract signed by Harris and Nivison is the binding contract in this case" is hereby **DENIED**;

c. Harris's demand for a jury trial on "whether the Castle McCulloch Note was paid in full or not" is hereby **DENIED**;

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[47] (*See* ECF Nos. 471, 472, 1443 & 1444.) Harris raises two other issues that bear mention. First, he argues that Rule 53(b)(2), which provides that "a compulsory reference does not deprive any party of his right to a trial by jury" supports his right to a jury trial. The Court finds Harris's Rule 53 argument unpersuasive, however, since the Court has not appointed a referee under Rule 53 in this action. Next, Harris argues in his reply brief for the first time that the claims against him are barred by collateral estoppel. Not only is this argument not properly raised under the Business Court Rules, *see* BCR 7.7, but the Court finds no basis to conclude that Harris's jury trial rights are impacted by the application of collateral estoppel in the manner he contends.

d. Harris's demand for a jury trial on "why [the Receiver's] mathematical calculations are all over the place" is hereby **DENIED**; and

e. Harris's demand for a jury trial on any other issues raised in this action is hereby **DENIED**.

29. 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 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