

In re Se. Eye Ctr. (Pending Matters); In re Se. Eye Ctr. (Judgments); In re The Foreclosure of Deed of Tr. Executed by Historic Castle McCulloch, LLC Dated September 30, 2004, 2024 NCBC 86.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

15CVS001648-910

IN RE SOUTHEASTERN EYE
CENTER-PENDING MATTERS

GUILFORD COUNTY

12CVS011322-400

IN RE SOUTHEASTERN EYE
CENTER-JUDGMENTS

GUILFORD COUNTY

23SP001872-400

IN RE: THE FORECLOSURE OF
DEED OF TRUST EXECUTED BY
HISTORIC CASTLE MCCULLOCH,
LLC DATED SEPTEMBER 30, 2004
AND RECORDED IN BOOK 6182,
PAGE 2233 IN THE GUILFORD
COUNTY PUBLIC REGISTRY,
NORTH CAROLINA

SUBSTITUTE TRUSTEE: Jonathan W.
Anderson

RECORD OWNER(S): HISTORIC
CASTLE MCCULLOCH LLC

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL JUDGMENT ON FORECLOSURE APPEAL**

1. **THIS MATTER** is before the Court upon the appeal of JDPW Trust, by and through its Receiver Gerald A. Jeutter, Jr. (the "Receiver"), from the Order of the Guilford County Clerk of Superior Court (the "Clerk of Court") dated 2 April 2024 denying JDPW Trust's request to allow a foreclosure sale under the power of sale in

that certain Deed of Trust recorded at Book 6182, Page 2233 with the Guilford County Register of Deeds (the “Foreclosure Appeal” or the “Appeal”).¹

2. Having reviewed and considered the Foreclosure Appeal, the parties’ briefs in support of and in opposition to the Appeal, the evidence presented at the evidentiary hearing on the Appeal, the arguments of counsel, and all other appropriate matters of record, the Court makes the following findings of fact and conclusions of law and enters final judgment sustaining the Foreclosure Appeal, reversing the Clerk of Court’s Order, and authorizing the Substitute Trustee to proceed with a foreclosure sale under the power of sale as 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.

City of Oaks Law, by Michael J. Geiseman, for Jonathan W. Anderson, as Substitute Trustee on a Deed of Trust Executed by Historic Castle McCulloch, LLC Dated September 30, 2004 and Recorded in Book 6182, Page 2233 in the Guilford County Public Registry, North Carolina.

Pinto Coates Kyre & Bowers, PLLC, by Richard L. Pinto and Kenneth Kyre, Jr., for Defendants Richard Harris, Historic Castle McCulloch, LLC, and Castle McCulloch, Inc.

¹ (Not. Appeal Order Den. Foreclosure [hereinafter, the “Foreclosure Appeal”], ECF No. 25; see Clerk’s Order Den. Foreclosure [hereinafter, the “Guilford Clerk’s Order”], ECF No. 24.) For ease of reference, all ECF citations in this Order are to the Business Court’s electronic docket in *In Re: The Foreclosure of Deed of Trust Executed by Historic Castle McCulloch, LLC Dated September 30, 2004*, Guilford County 23 SP 1872, unless otherwise specified. Unless otherwise defined, the capitalized terms in this Order and Opinion refer to those terms as used in the Purchase Agreement, which is more specifically defined below.

*Douglas S. Harris, Pro Se.*²

Bledsoe, Chief Judge.

FINDINGS OF FACT³

3. On 10 August 2022,⁴ and by amended Order on 6 September 2022,⁵ the Court granted the Receiver’s motion for an order authorizing the Receiver to initiate a non-judicial foreclosure proceeding to exercise the power of sale in the Castle McCulloch Deed of Trust (the “Foreclosure Order” or the “Order”). In the Order, the Court concluded that North Carolina General Statutes (“N.C.G.S.”) §§ 1-507.1 through 1-507.11 apply to the JDPW Trust receivership and that “the Receiver is entitled to seek relief under those provisions.”⁶ Accordingly, the Court, pursuant to section 1-507.4, granted the Receiver’s motion and ordered that:

The Receiver may initiate a proceeding seeking to authorize the exercise of the power of sale contained in the [Castle McCulloch] Deed of Trust . . . such proceeding to be conducted consistent with the procedures set forth in Chapter 45, Article 2A of the North Carolina

² Mark McDaniel, who has participated as a party-intervenor in various proceedings in these cases, stated at the hearing on the Foreclosure Appeal that he was “appearing as a witness.” (Aug. 22, 2024 Hr’g Tr. 5:17–18 [hereinafter, “Foreclosure Hr’g Tr.”], ECF 56.)

³ Any Findings of Fact that are more appropriately deemed Conclusions of Law are incorporated by reference into the Court’s Conclusions of Law.

⁴ (Order on Receiver’s Mot. Order Authorizing Exercise of Power of Sale (*Old Battleground v. CCSEA*), ECF No. 1504 (Wake County 15 CVS 1648).)

⁵ (Am. Order on Receiver’s Mot. Order Authorizing Exercise of Power of Sale (*Old Battleground v. CCSEA*) [hereinafter, the “Foreclosure Order”], ECF No. 1506 (15 CVS 1648).) The Court issued this amended order to reflect that any proceeding seeking to authorize the exercise of the power of sale should be conducted consistent with the procedures set forth in Chapter 45, Article 2A of the North Carolina General Statutes, rather than Chapter 45, Article 2 as had been stated in the Court’s initial order entered on 10 August 2022.

⁶ (Foreclosure Order ¶ 10.)

General Statutes; . . . All interested parties, including the Receiver, the Nivison Parties,⁷ [Douglas S.] Harris, [Mark] McDaniel, and the Castle McCulloch Defendants may raise all available claims and defenses in any proceeding initiated by the Receiver to seek authority to exercise the power of sale[.] Any appeal from any proceeding before the Guilford County Clerk of Superior Court initiated by the Receiver pursuant to this Order shall be made to this Court.⁸

4. The Receiver initiated a non-judicial foreclosure proceeding by power of sale as permitted by the Order and, on 2 April 2024, the Clerk of Court denied JDPW Trust’s request to allow a foreclosure sale under the power of sale (the “Guilford Clerk’s Order”).⁹ The Receiver thereafter timely filed a Notice of Appeal from the Guilford Clerk’s Order, requesting *de novo* review of the Guilford Clerk’s Order and an evidentiary hearing before this Court.¹⁰ The Court conducted that evidentiary hearing on 22 August 2024, at which it received testimony and documents, and heard argument in support of and in opposition to the Appeal (the “Foreclosure Proceeding”). The Court subsequently received post-hearing briefs and submissions, and the matter is now ripe for determination.

5. The subject of the Foreclosure Proceeding is a property known as Castle McCulloch, which is located at 3923-3925 Kivett Drive, Jamestown, North Carolina

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

⁸ (Foreclosure Order ¶ 15.)

⁹ (See Guilford Clerk’s Order.)

¹⁰ (See Foreclosure Appeal.)

(the “Castle McCulloch Property” or the “Property”).¹¹ Richard Harris is the owner of Historic Castle McCulloch, LLC (“HCM”) and Castle McCulloch, Inc. (together with HCM, the “Castle McCulloch Entities” or the “CM Entities”).¹² HCM owns the Property,¹³ and Castle McCulloch, Inc. conducts an event business on the Property.¹⁴ The Property is listed on the National Register of Historic Places under the name “McCulloch’s Gold Mill.”¹⁵

6. In the 1980s, the Castle McCulloch Property was purchased by Richard Harris (with the Castle McCulloch Entities, the “Castle McCulloch Defendants” or the “CM Defendants”).¹⁶ He converted the Property into an event space around 1984, and as of 2019, Castle McCulloch hosted, on average, approximately 200 events per year; 80% of those events were weddings.¹⁷

¹¹ (Aff. Richard Harris, dated 6 Mar. 2024, ¶ 1 [hereinafter, “R. Harris Aff.”], ECF No. 21.)

¹² (R. Harris Aff. ¶ 1.)

¹³ (R. Harris Aff. ¶ 1.)

¹⁴ (Articles of Incorporation of Castle McCulloch, Inc. (filed with the North Carolina Secretary of State on Feb. 16, 1988).)

¹⁵ (HCM’s Br. Opp’n Foreclosure 2–3, ECF No. 34.)

¹⁶ (See CM Defs.’ Filing of Tr. Dep. Richard Harris, Ex. 67.1, Dep. Richard Harris, dated Oct. 28, 2024, 8:23–9:3 [hereinafter, “R. Harris Dep.”], ECF No. 67.1.)

¹⁷ (HCM’s Br. Opp’n Foreclosure 2–3; see also Brian Anthony, *Vendor Spotlight: Castle McCulloch; A Fairytale Setting In The Heart Of North Carolina* (May 04, 2019) (<https://www.briananthonyphotography.com/blog-post/vendor-spotlight-castle-mcculloch>).)

7. Between 2004 and 2015, Mark McDaniel (“McDaniel”) negotiated a number of loans, payment arrangements, and other financial matters on behalf of Dr. C. Richard Epes (“Dr. Epes”) and his corporations and businesses.¹⁸

8. Sometime in 2004, McDaniel approached Richard Harris, per the suggestion of Richard Harris’s brother, Douglas (“Doug”) Harris,¹⁹ looking for security for a loan from FNB Southeast (the predecessor to NewBridge Bank, the “Bank”) involving Dr. Epes and his companies. The Bank wanted unimpaired real estate as security for the loan in addition to medical equipment and personal guaranties from McDaniel and Dr. Epes. However, Dr. Epes and his companies had no unencumbered real estate.²⁰

9. Richard Harris, McDaniel, and Dr. Epes agreed that Richard Harris would transfer his ownership in the Castle McCulloch Property to a new company he would form (i.e., HCM) and that HCM would allow its real property (i.e., the Castle McCulloch Property) to be used as security on a deed of trust for the loan Dr. Epes and his companies needed, in exchange for an investment in HCM by Dr. Epes.²¹

¹⁸ (Foreclosure Hr’g Tr. 100:19–101:1.)

¹⁹ (Not. Filing Dep. Doug Harris & Exs., Ex. 69.1, Dep. Doug Harris, Vols. 1–4, Pages 1–1085, dated Mar. 19, 2015, 30:10–31:19 [hereinafter, “D. Harris Dep.”], ECF No. 69.1.) The deposition of Doug Harris was taken over four non-consecutive days: Volume 1 dated 19 March 2015, pages 1–254; Volume 2 dated 1 April 2015, pages 255–574; Volume 3 dated 26 May 2016, pages 575–896; and Volume 4 dated 17 June 2016, pages 987–1085.

²⁰ (Aff. Mark McDaniel, dated Mar. 6, 2024, ¶¶ 3–4 [hereinafter, “McDaniel Aff.”], ECF No. 27.)

²¹ (HCM’s Filing of Add’l Docs. Used at Appeal Hr’g, Ex. 55.2, Facts to Establish at Hr’g ¶ 6, ECF No. 55.2.) At the Foreclosure Proceeding, counsel for the CM Defendants presented a factual history from a prepared document to which Mark McDaniel and Doug Harris later attested, and subsequently filed that document on the Court’s electronic docket. Each paragraph has brackets indicating who attested to each specific fact, and hereinafter they will

10. After a deal was struck between McDaniel and Dr. Epes on the one hand, and Richard Harris on the other, a loan was obtained with HCM as one of the obligors to the Bank. Dr. Epes and McDaniel guaranteed the loan as well as entered into a separate contract with Richard Harris to make all payments on the loan.²²

11. A promissory note dated 30 September 2004²³ was signed by HCM, Castle McCulloch, Inc., and NSITE Management LLC (“NSITE”) in the amount of \$2,145,000.00 (the “Castle McCulloch Note” or the “CM Note”) to evidence the loan. The CM Note originally matured on 2 October 2009 but was extended four times with the last extension setting a maturity date of 5 July 2012.²⁴ The CM Note bore number 5305802, and the Bank’s number for the loan reflected by the CM Note was 04753419001.²⁵

12. The CM Note was secured by a deed of trust also dated 30 September 2004 (the “Castle McCulloch Deed of Trust” or the “CM Deed of Trust”). HCM was the grantor of the CM Deed of Trust (i.e., the mortgagor), which contained a power of sale provision that allowed the lender (or holder of the CM Note) (i.e., the mortgagee) to

be referenced as “McDaniel Facts,” “D. Harris Facts,” or “D. Harris & McDaniel Facts,” as appropriate. (*See* Foreclosure Hr’g Tr. 38:3–39:17.)

²² (D. Harris Dep. 31:6–19.)

²³ The Court notes that, although the Receiver has identified the date of the promissory note as 24 September 2024, (JDPW Tr.’s Proposed Findings Fact & Conclusions of L. ¶ 6, ECF No. 70), the note itself states that its date is 30 September 2024, (*see* Aff. Gerald A. Jeutter Jr., dated Mar. 3, 2024 [hereinafter, “Receiver Aff.”], Ex. 13.1, HCM Promissory Notes, ECF No. 13.1.)

²⁴ (Receiver Aff., Ex. 13.1, HCM Promissory Notes.)

²⁵ (McDaniel Facts ¶ 7; Receiver Aff., Ex. 13.1, HCM Promissory Notes.)

foreclose on the Castle McCulloch Property in the event of a default on the CM Note.²⁶ The Bank was the payee on the CM Note and the grantee on the CM Deed of Trust.²⁷

13. A separate written agreement was made between Richard Harris, McDaniel, and Dr. Epes on 20 September 2004 (the “2004 Separate Agreement”). The Bank was not a party to this agreement. The 2004 Separate Agreement provided that all payments, interest, and principal owed on the CM Note would be paid by Dr. Epes and McDaniel, that Dr. Epes and McDaniel would guarantee the CM Note, and that their obligations to pay the CM Note and hold Richard Harris and his companies harmless were not transferable without the written consent of Richard Harris. The parties to this 2004 Separate Agreement agreed that the proceeds of the loan from the Bank reflected by the CM Note would be used to pay off an existing line of credit mortgage owed by Richard Harris on the Castle McCulloch Property, to buyout the interests of Richard Harris’s ex-wife in the Property and in Castle McCulloch, Inc., to pay Doug Harris a broker fee, and to allow Dr. Epes and McDaniel to retire certain short-term debt.²⁸

14. McDaniel and Doug Harris testified that the 2004 Separate Agreement also provided that the Castle McCulloch Property would be removed as security for any

²⁶ The power of sale provision appears at paragraph 16 of the CM Deed of Trust.

²⁷ (Receiver Aff., Ex. 13.4, HCM Deed of Trust, ECF No. 13.4.)

²⁸ (HCM Not. Filing Ev. App. Hr’g, Ex. 29.1, Aff. April Cassidy, dated July 19, 2016 (+2 CDs), YB 00306–07, 00309, 00314 [hereinafter, “Cassidy Aff.”], ECF No. 29.1.)

ongoing loan,²⁹ but no party has offered any written evidence of that term in the Agreement.

15. The loan reflected by the CM Note was closed, funded, and the proceeds of the loan were used as agreed in the 2004 Separate Agreement. Doug Harris received a payment of \$55,800 for his role in the transaction.³⁰

16. There is no evidence that any payments on the CM Note were made by the obligors listed on the CM Note (i.e., HCM, Castle McCulloch, Inc., and NSITE). Richard Harris similarly made no payments on the CM Note.³¹ There is no evidence that Dr. Epes or McDaniel personally made any payment on the CM Note. Bank records reflect that various checks from Central Carolina Surgical Eye Associates, P.A. (“CCSEA”), an entity owned by Dr. Epes and Dr. John D. Matthews (“Dr. Matthews”), were credited by the Bank as payments on the CM Note.³² There is no record of any corporate resolution or approval signed by Dr. Matthews authorizing CCSEA to pay the CM Note on behalf of Dr. Epes, McDaniel, Richard Harris, or any of the obligors on the CM Note.

17. After the execution of the CM Note and CM Deed of Trust, in 2007 and 2008, the Bank made three loans to CCSEA in the amounts of \$100,000 (Loan Number 6846670101 on 29 October 2007), \$2,450,000 (Loan Number 6846679001 on 29

²⁹ (McDaniel Facts ¶ 10; McDaniel Aff. ¶ 4; Foreclosure Hr’g Tr. 48:9–22.)

³⁰ (Cassidy Aff. YB 00544, Loan Closing Statement.)

³¹ (R. Harris Dep. 33:3–35:22.)

³² (See Cassidy Aff.)

October 2007), and \$117,850 (Loan Number 06846679002 on 6 March 2008) (the “CCSEA Notes”; together with the CM Note, the “Notes”). The three loans were evidenced by promissory notes and secured by equipment and vehicles.³³

18. In 2012, Doug Harris saw JDPW as a potential vehicle to aid in a plan to refinance the CM Note and the CCSEA Notes, specifically to help his brother reorganize his businesses and minimize tax consequences.³⁴ During this time, Richard Harris had retained Doug Harris, a licensed attorney, to represent him in negotiating the refinancing deal.³⁵ Doug Harris’s plan entailed JDPW purchasing the CM Note and CCSEA Notes from the Bank, with that purchase to be funded by a loan from one or more of the Nivison Parties.³⁶

19. For reasons satisfactory to the contracting parties, effective 3 July 2012, the Bank, the Castle McCulloch Entities, Dr. Epes, and McDaniel entered into an agreement (the “Settlement Agreement”) providing for the sale of the CM Note and CCSEA Notes with a then total outstanding balance of \$3,350,139.42 (the “Outstanding Balance”) to a “third party purchaser” for \$2,026,834.35 (the “Original

³³ (JDPW Mem. L. & Supp. Submissions [hereinafter, “JDPW Mem.”], Ex. 17.7, Bill of Sale & Assignment of Loan Documents, Schedule A, ECF No. 17.7; Cassidy Aff. YB 00390–93.)

³⁴ (See D. Harris Dep. 229:1–25, 829:17–830:14.)

³⁵ (See D. Harris Dep. 229:7–12; Receiver’s Answer to Cross-cls. of CM Entities & Cross-cls. against Douglas Harris ¶ 434, ECF No. 716 (15 CVS 1648); Douglas S. Harris’s Answer Cross-cls. JDPW Tr., CCSEA & DRE & Douglas S. Harris’s Cross-cls. ¶ 434, ECF No. 739 (15 CVS 1648).)

³⁶ (*In re Se. Eye Ctr.—Pending Matters*, 2021 NCBC LEXIS 43, at *8 (¶ 13) (N.C. Super. Ct. Jan. 6, 2022) [hereinafter, the “Jan. 2022 Am. Order”].)

Purchase Price”). Richard Harris signed the Settlement Agreement on behalf of HCM, and Doug Harris signed the Settlement Agreement on behalf of Castle McCulloch, Inc. The Settlement Agreement provided that “time [was] of the essence” and required a closing by no later than 20 August 2012.³⁷ Neither Doug Harris, individually, nor JDPW Trust was a party to the Settlement Agreement.³⁸

20. The Settlement Agreement was negotiated with the Bank by McDaniel and Doug Harris on behalf of the obligors, as defined in the Settlement Agreement,³⁹ including the Castle McCulloch Entities.⁴⁰

21. On 26 July 2012, Doug Harris, Dr. Epes, and McDaniel entered into an agreement in which Doug Harris agreed to cause JDPW Trust, for which he was the sole trustee, to sign a contract to purchase from the Bank the CM Note and CCSEA Notes with related Loan Documents for the Original Purchase Price. In exchange for this agreement and Doug Harris’s waiver of claims against Dr. Epes and McDaniel, the parties agreed that Doug Harris would be paid “the money owed on NewBridge loan number 04753419001, \$1.3 million[.]”⁴¹

³⁷ (JDPW Mem., Ex. 17.17, Settlement Agreement with Newbridge, ECF No. 17.17.)

³⁸ (McDaniel Facts ¶ 25; McDaniel Aff. ¶ 11; Aff. Douglas Harris, dated Mar. 6, 2024, ¶ 3, ECF No. 22.)

³⁹ The 3 July 2012 agreement was between NewBridge Bank, CCSEA, HCM, NSITE, Castle McCulloch, Inc., HUTA Leasing Company, Southeastern Eye Management, Inc., McDaniel, and Dr. Epes. (D. Harris & McDaniel Facts ¶ 23; McDaniel Aff. ¶ 10; McDaniel Aff., Ex. 27.2, Agreement July 3, 2012, ECF No. 27.2.)

⁴⁰ (JDPW Mem., Ex. 17.17, Settlement Agreement with Newbridge; D. Harris Dep. 40:2–21.)

⁴¹ (JDPW Add’l Submissions, Ex. 18.8, Claim of Douglas S. Harris against the entities within the receivership, joint & severally (*Old Battleground v. CCSEA – Consol.*, Agreement at 20–23 incorporating by reference Agreement at 3–8, ECF No. 18.8.)

22. On 27 July 2012, the Bank entered into a written Note Purchase and Sale Agreement with the Bank (the “Purchase Agreement”) agreeing to transfer the CM Note, the CCSEA Notes, and all related Loan Documents, including the CM Deed of Trust, to JDPW for the Original Purchase Price with a warranted Outstanding Balance. The purchase was scheduled to close on 20 August 2012. This agreement was executed on behalf of JDPW by Doug Harris.⁴²

23. On 8 August 2012, Arthur Nivison provided a letter to McDaniel outlining potential terms of a bridge loan of slightly more than \$2 million to be used in purchasing the CM and CCSEA Notes and Loan Documents from the Bank while other financing was being arranged. The letter expressly stated that it “should be interpreted as a general outline” of what Arthur Nivison and his companies, Old Battleground Properties, Inc. and Nivison Family Investments LLC, were “prepared to negotiate” and that “a final agreement” was “a matter of future negotiation.”⁴³

24. On 20 August 2012, the Bank and JDPW agreed to a Note Purchase and Sale Modification Agreement (the “Modification Agreement”) changing the purchase price for the CM and CCSEA Notes and Loan Documents to \$2,126,834.09 (the “Purchase Price”) and postponing the closing date to 21 September 2012. The Modification Agreement was executed by Doug Harris on behalf of JDPW.⁴⁴

⁴² (JDPW Mem., Ex. 17.8, Note Purchase & Sale Agreement, ECF No. 17.8.)

⁴³ (R. Harris Aff., Ex. E, Nivison 8 Aug. 2012 Letter to McDaniel, ECF No. 21.5.)

⁴⁴ (JDPW Mem., Ex. 17.13, Modification to Note Purchase Agreement, ECF No. 17.13.)

25. On 20 August 2012, an Addendum to and Modification of Settlement Agreement (Purchase of Loans) document (the “Addendum”) was executed by the Bank and the Castle McCulloch Entities, Dr. Epes, and McDaniel, among others. The Addendum acknowledged that funding to pay the Purchase Price under the Purchase Agreement was being provided by a loan from the Nivison Parties, that the loan was dependent upon payment of a deed of trust dated 30 March 2012 owed to an entity related to the Nivison Parties, that the new closing date was 21 September 2012, and that the Purchase Price would be increased as consideration for the modification.⁴⁵

26. On 21 September 2012, in fulfillment of its obligations under the Purchase Agreement, the Bank executed in favor of JDPW a Bill of Sale and Assignment of Loan Documents (“Assignment of Notes”) that included the CM Note and the CM Deed of Trust and a separate Assignment of Security Interests (“Assignment of CM Security”) for the CM Deed of Trust and related collateral which was recorded with the Guilford County Register of Deeds. The Bill of Sale was signed by the Bank and notarized by its attorney, Donald VonCannon, on 21 September 2012.⁴⁶ The Assignment of Notes and the Assignment of CM Security were notarized on 21 September 2012 and, by their terms, were “as of” 21 September 2012 and “[e]ffective as of” 21 September 2012, respectively.⁴⁷ The Bank also executed an Allonge in favor

⁴⁵ (JDPW Mem., Ex. 17.19, Addendum to the Settlement Agreement, ECF No. 17.19.)

⁴⁶ (JDPW Mem., Ex. 17.7, Bill of Sale & Assignment of Loan Documents.)

⁴⁷ (JDPW Mem., Ex. 17.7, Bill of Sale & Assignment of Loan Documents; JDPW Mem., Ex. 17.6, Recorded Assignment of Sec. Instruments, ECF No. 17.6.)

of JDPW for the CM Note “[e]ffective as of” 21 September 2012.⁴⁸ The Allonge changed the “Pay to the Order of” directions on the CM Note from the Bank to JDPW “[e]ffective as of” 21 September 2012.

27. In addition, the Bank issued a document titled *Important Notice Regarding Your NewBridge Bank Loan* to the obligors on each of the Notes (“Notice of Transfer”).

Each Notice of Transfer stated, in relevant part, that:

Effective September 21, 2012 (the “Transfer Date”), the above-referenced loans with NewBridge Bank was [sic] sold to DOUGLAS STEVEN HARRIS, TRUSTEE OF THE JDPW TRUST (the “Purchaser”). If you request or otherwise receive from NewBridge Bank a statement regarding your loan after the Transfer Date you might have received inaccurate information. Please disregard such statement and contact the Purchaser for your balance information.

PAYMENTS:

Please do not send any future payments to NewBridge Bank after the Transfer Date. Sending payments to NewBridge Bank may delay the date such payment is credited to your loan. The Purchaser or its agent or affiliate will be contacting you shortly with specific instructions about where to send your payments[.]⁴⁹

28. JDPW borrowed the money to pay for the four Notes from one or more of the Nivison Parties.⁵⁰ Specifically, on 21 September 2012, one or more the Nivison Parties caused \$2,101,834.35 to be wired to the Bank.⁵¹ The purpose of this wire was

⁴⁸ (Receiver Aff., Ex. 13.2, Allonge, ECF No. 13.2.) An allonge is a document that changes the “Pay to the Order of” directions in a promissory note.

⁴⁹ (Cassidy Aff., YB 00892–95.)

⁵⁰ (JDPW Add'l Submissions, Ex. 18.8, Claim of Douglas S. Harris against the entities within the receivership, joint & severally (*Old Battleground v. CCSEA – Consol.*))

⁵¹ (JDPW Mem., Ex. 17.12, Closing Statement, ECF No. 17.12.) The parties’ and the Court’s convention in this case has been to reference the Nivison loan to JDPW as a \$2.1 million loan,

to fund, on behalf of JDPW, the Purchase Price under the Purchase Agreement to obtain transfer to JDPW of the CM and CCSEA Notes and Loan Documents with outstanding balances as warranted in the Purchase Agreement. Neither the Nivison Parties nor JDPW agreed or intended for this payment to be made in satisfaction of, or payment in whole or in part of, the then outstanding principal liability of the obligors under the CM Note.

29. The wire was sent after 5:00 PM on Friday, 21 September 2012 and was not received by the Bank until Monday, 24 September 2012. The Bank delivered the Assignment of Notes, Assignment of CM Security, and Allonge to Doug Harris as trustee of JDPW. While there is conflicting testimony by Doug Harris as to when he received the closing documents from the Bank,⁵² there is no dispute that he did in fact receive the documents. There is no evidence that the Bank has contested the Closing, has sought recovery of the Closing documents, or has behaved in any way inconsistent with the Purchase Agreement transaction. The Court finds that the Purchase Agreement transaction closed substantially in accordance with its terms.

30. On or about 25 September 2012, the Bank made entries in its internal accounting records applying the Purchase Price proceeds from the Purchase Agreement transaction to its accounts relating to the CM Note and the three CCSEA

rather than to identify the loan by its precise amount. The Court will use this convention from time to time in this Order and Opinion.

⁵² (Foreclosure Hr'g Tr. 151:13–153:5.) Doug Harris testified at his deposition in 2015 that he received possession of all of the original Bank Loan Documents as JDPW's trustee on 21 September 2012, (*see* D. Harris Dep. 242:1–10), but testified nine years later at the September 2024 Hearing that he did not receive those documents until several days had passed, (*see* Sept. 26, 2024 Hr'g Tr. 42:8–16, 48:7–20, 54:6–16, ECF No. 1653 (15 CVS 1648).)

Notes. Those accounting records show that the Bank allocated \$1,692,430.39 to the internal account for the CM Note and wrote off interest and late fees of \$64,839.77 and \$12,171.10 respectively.⁵³ The Castle McCulloch Defendants sought and obtained summary judgment on claims asserted by the Nivison Parties by claiming, before this Court, that the money paid by the Nivison Parties on behalf of JDPW to the Bank was not “furnish[ed] . . . to pay off the Castle McCulloch Note[.]”⁵⁴ The Court rejected the Nivison Parties’ request to be equitably subrogated to the rights of the Bank under the Loan Documents in reliance on the arguments asserted by the Castle McCulloch Defendants that the Nivison Parties’ payment on behalf of JDPW did not pay off the CM Note.⁵⁵

31. No payments on the CM Note were ever made to JDPW. The current outstanding principal balance on the CM Note is \$1,692,430.39, plus accrued interest and other charges as provided in the CM Note.⁵⁶

32. Despite receiving the CM Note, Allonge, CM Deed of Trust, Assignment of Notes, and Assignment of CM Security as trustee of JDPW, the evidence makes clear

⁵³ (JDPW Mem., Ex. 17.9, NewBridge Acct. Ledger, ECF No. 17.9.)

⁵⁴ (Br. Supp. CM Defs.’ Mot. Summ. J. III. B.)

⁵⁵ (See CM Defs.’ Br. Opp. Pls.’ Mot. Partial Summ. J. 19, ECF No. 881 (15 CVS 1648) (contending that NFI loaned funds to JDPW, who in turned purchased the CM Note and CM Deed of Trust, as constituting two separate transactions, and that permitting NFI’s claim against the CM Defendants and JDPW would permit a double recovery).) The Court permitted the CM Defendants to prevail on their motion for summary judgment against NFI on the ground that JDPW was a separate and distinct entity from the CM Defendants, *see In re Southeastern Eye Center-Pending Matters*, 2019 NCBC LEXIS 29, at ¶ 92 (N.C. Super. Ct. May 7, 2019), yet the CM Defendants seek to avoid liability now on the ground that JDPW is a “pass-through” entity whose existence should be ignored in considering foreclosure.

⁵⁶ (JDPW Mem., Ex. 17.9, NewBridge Acct. Ledger.)

that Doug Harris never intended to collect the CM Note for the benefit of JDPW and made no effort to do so. Doug Harris instead intended to use, and did use, his control as trustee of JDPW over the CM Note, the CM Deed of Trust, and the other notes and collateral solely for the benefit of his brother, Richard Harris, his brother's companies, HCM and Castle McCulloch, Inc., and himself. Richard Harris was aware of, and accepted the benefit of, this conduct by Doug Harris. Richard Harris also assisted Doug Harris's plan, on behalf of his companies and himself, by providing the bridge funding needed to pay deposits required by the Bank between 3 July 2012 and 21 September 2012 and by executing agreements required by the Bank.⁵⁷

33. The original Notes and other instruments were lost by Doug Harris. The contents of the Notes have been established by the Bank's records as well as by other evidence of record. There is no dispute as to the contents of the CM Note or the CM Deed of Trust.

34. Doug Harris was representing his brother and his brother's companies, including HCM, in arranging for the sale of the CM Note and CM Deed of Trust to JDPW, which, as discussed above, was a trust controlled by Doug Harris as its trustee.⁵⁸ As the Castle McCulloch Defendants acknowledge, in releasing the CM Deed of Trust and assigning away the CM Note, "Doug Harris was merely

⁵⁷ (D. Harris Dep. 196:17–197:5; *see also* Jan. 2022 Am. Order ¶ 124.)

⁵⁸ (D. Harris Dep. 614:2–21.)

effectuating [the] intention” of the debtors, i.e. the Castle McCulloch Entities and NSITE.⁵⁹

35. In March 2013, Doug Harris, acting as JDPW’s trustee, effectively transferred the CM Note, the related Loan Documents, and the related Collateral to his brother, Richard Harris.⁶⁰ Specifically, he signed over to HCM a deed (the “CM Release Deed”), dated 15 March 2013, that released the CM Collateral—both the real property encumbered by the CM Deed of Trust and the rights to leases and rents under the Assignment of CM Security.⁶¹ He also assigned to Richard Harris all of JDPW’s rights under the CM Note.⁶² In Doug Harris’s words, “I assigned any and all other rights under the note to him [Richard Harris], so he’d be in control of it instead of anybody else. For whatever--since 2004, for eight years, those rights had been assigned to NewBridge Bank. It was my purpose to cancel each and every one of those rights because that was the deal.”⁶³ With those transfers effected, JDPW lost all rights to the CM Note, Loan Documents, and Collateral but remained obligated on the Nivison loan.⁶⁴

⁵⁹ (Br. Supp. CM Defs.’ Mot. Summ. J. 20.)

⁶⁰ (See D. Harris Dep. 34:1–11.)

⁶¹ (See JDPW Mem. Ex. 17.14, Release Deed, ECF No. 17.14; D. Harris Dep. 866:19–868:25; see also Am. Consol. Compl., Ex. YY, ECF No. 192 (15 CVS 1648).)

⁶² (See D. Harris Dep. 628:12–635:25.)

⁶³ (D. Harris Dep. 633:1–5.)

⁶⁴ (Jan. 2022 Am. Order ¶ 21.)

36. The CM Release Deed was recorded on 14 April 2015.⁶⁵ By Order and Opinion entered 26 April 2021 and amended on 6 January 2022, this Court set aside the CM Release Deed and the assignment of the CM Note.⁶⁶

37. The record establishes Doug Harris's personal familial interest. Richard Harris was involved in the transactions described above, both personally and through his two companies, HCM and Castle McCulloch, Inc. Moreover, Doug Harris represented Richard Harris as his attorney during the CM Defendants' negotiations with McDaniel and Dr. Epes. Again, the record is replete with examples of Richard Harris's role in the transactions, Doug Harris's relationship with him (both as brother and attorney), and actions Doug Harris took for Richard Harris's benefit (including attempting to use JDPW as a pass-through vehicle to direct funds to benefit Richard Harris and his companies).⁶⁷

38. Recent testimony by Doug and Richard Harris to the contrary, provided to the Court for the first time in the second half of 2024, contradicts the record previously presented to this Court by the Harris brothers, is inconsistent with the documents (including Richard Harris's execution of the Settlement Agreement on behalf of HCM), is self-serving, and lacks credibility.

⁶⁵ (JDPW Mem. Ex. 17.14, Release Deed.)

⁶⁶ (Order & Op. Mots. Summ. J. or Partial Summ. J. (*Old Battleground v. CCSEA*) ¶ 163, ECF No. 1413 (15 CVS 1648); Jan. 2022 Am. Order ¶ 162.)

⁶⁷ (*See, e.g.*, D. Harris Dep. 38:24–39:11, 39:18–24, 40:2–11, 56:21–57:14, 229:1–25, 862:2–863:18, 864:17–865:16, 866:4–18; Jan. 2022 Am. Order ¶ 80.)

39. On 29 December 2023, after this Court set aside the CM Release Deed and the assignment of the CM Note, Jonathan Anderson, as Substitute Trustee for the JDPW Trust and at the request of the Receiver, filed a Notice of Hearing on Foreclosure of Deed of Trust in Guilford County to initiate this special proceeding (23 SP 1872) to foreclose upon and sell the Castle McCulloch Property.⁶⁸ The Clerk of Court held a hearing upon proper notice. The CM Note was not a home loan. The obligors under the CM Note and the CM Deed of Trust are not in the military, and the sale of the Castle McCulloch Property is not barred by military service.⁶⁹

40. On 2 April 2024, the Guilford Clerk's Order was entered denying foreclosure on the ground that the Receiver did not hold a valid debt.⁷⁰ As noted above, on 10 April 2024, the Receiver for JDPW timely filed the Foreclosure Appeal to this Court.⁷¹

41. By order dated 15 August 2024, the Court consolidated the Accounting Proceeding in *In re Southeastern Eye Center-Pending Matters* (Wake County 15 CVS 1648) and *In re Southeastern Eye Center-Judgments* (Guilford County 12 CVS 11322)⁷² into the Foreclosure Proceeding for the limited purpose of receiving evidence

⁶⁸ (Not. Foreclosure Hr'g, ECF No. 6.)

⁶⁹ (Not. Foreclosure Hr'g; Special Proc. Bill of Costs, ECF No. 7; Not. & Statement of Debt, ECF No. 8; Substitute Tr. Aff. Service & Sheriff Returns, ECF No. 9; Substitute Tr. Aff. Regarding Mil. Serv., ECF No. 10; Substitute Tr. Aff. Non-Home Loan, ECF No. 11; Guilford Clerk's Order.)

⁷⁰ (See Guilford Clerk's Order.)

⁷¹ (See Foreclosure Appeal.)

⁷² By order dated 10 August 2022 in both Wake County Superior Court master case number 15 CVS 1648 (*In re Southeastern Eye Center Pending Matters*) and Guilford County Superior Court master case number 12 CVS 11322 (*In re Southeastern Eye Center Judgments*), this

and argument on, and determining, whether the Castle McCulloch Note has been satisfied.⁷³ On 22 August 2024, after full briefing, the Court held the Foreclosure Proceeding, which, as noted, was a *de novo* evidentiary hearing on the Receiver's Notice of Appeal from the Guilford Clerk's Order denying JDPW Trust's request to allow a foreclosure sale under the power of sale in the Castle McCulloch Deed of Trust.

42. The Castle McCulloch Defendants, the Receiver, the Substitute Trustee for the JDPW Trust, and the Nivison Parties were represented by counsel at the Foreclosure Proceeding. Doug Harris appeared *pro se*. The Receiver, McDaniel, and Doug Harris appeared and testified at the Foreclosure Proceeding. Richard Harris was unable to attend the Foreclosure Proceeding, but his post-proceeding deposition testimony was received and admitted.⁷⁴

43. The Receiver and the Castle McCulloch Defendants timely submitted supplemental briefs concerning the matters at issue in the Foreclosure Proceeding on 18 November 2024. The Receiver's Appeal is now ripe for determination.

Court entered an Order granting the Receiver's Motion for Douglas S. Harris to Account, ordering Doug Harris to file an accounting, and providing that the Court would sit as a master in equity to resolve any objections to that accounting. Doug Harris timely filed his accounting, objections were timely filed, and the Court held an evidentiary hearing concerning the accounting and the objections on 26 September 2024 and 7 November 2024 (the "Accounting Proceeding").

⁷³ (Ltd. Consolidation Order & Am. Not. Hr'g, ECF Nos. 1623 (15 CVS 1648), 723 (12 CVS 11322), 52 (23 SP 1872).)

⁷⁴ (See R. Harris Dep.)

CONCLUSIONS OF LAW⁷⁵

44. To foreclose under a power of sale, six factors must be established as provided in N.C.G.S. § 45-21:

- (i) That proper notice of the hearing was provided to those entitled;
- (ii) That the right to foreclose was created by the power of sale in the instrument;
- (iii) There was a valid debt held by the party seeking foreclosure;
- (iv) There was a default by the debtor;
- (v) That the debtor is not in active duty military service; and
- (vi) That the underlying loan is not a home loan.

45. All Parties are properly before the Court. All required notices have been given. The Court has subject matter jurisdiction. The debtor is not in active duty military service. The CM Note is not a home loan.

46. The CM Deed of Trust contains a Power of Sale. JDPW is the holder of that deed of trust by and through its Receiver. The Substitute Trustee was properly appointed and there is a right to foreclose to remedy any default on the CM Note.

47. The CM Note is a valid debt. JDPW is the current and proper holder of that debt by and through its Receiver.

48. The CM Note is in default.

49. JDPW has established a *prima facie* right to foreclose as provided in Chapter 45, Article 2A.

⁷⁵ Any Conclusions of Law that are more appropriately deemed Findings of Fact are incorporated by reference into the Court's Findings of Fact.

50. HCM asserts two defenses to foreclosure: (a) payment, and (b) the statute of limitations found at N.C.G.S. § 45-21.12.

51. HCM has failed to establish that the CM Note was paid. The CM Defendants rely upon the Bank's application in its internal records of part of the \$2.1 million wired to the Bank by the Nivison Parties on behalf of JDPW on or about 21 September 2012 as a payment for the benefit of the obligors on the CM Note. This reliance is misplaced. That wire transfer was the payment of the Purchase Price for JDPW to buy the Notes with a warranted outstanding balance. The Bank's internal accounting does not establish otherwise. HCM did not demonstrate that the Bank's internal accounting would have been any different whether the CM Note was satisfied or purchased. Moreover, the Bank's post-receipt, internal accounting decisions have no bearing on what the parties agreed to do under the Purchase Agreement several months before. Therefore, the Court concludes that the internal accounting records are neither determinative nor instructive as to the legal effect of the Bank's application of its receipt of the \$2.1 million from the Nivison Parties on behalf of JDPW.

52. Similarly, the Court finds Doug Harris's and McDaniel's new-found contention that JDPW paid off the CM Note and thus received from the Bank a "zeroed out mortgage" lacking in credibility based on the documentary evidence of record, which does not lend any support to this contention. Indeed, other than to rely on the Bank's post-receipt, internal accounting decisions, which do not control what the parties agreed to in the Purchase Agreement, McDaniel and Harris have failed to

point to any credible documentary evidence that verifies their assertion that JDPW purchased the CM Note with a zero balance. None of the transaction documents support that testimony in any respect.

53. Moreover, once the Bank executed the Allonge and Assignment of Notes on 21 September 2012, the Bank ceased to be a holder of the CM Note. Since the Bank was no longer a holder of the CM Note as of 21 September 2012, the Bank had no authority or power to accept payments on the CM Note after that date. As a result, the receipt of \$2.1 million by the Bank on 24 September 2012 was not payment on the CM Note. To the contrary, the evidence establishes that the Nivison Parties' \$2.1 million payment on behalf of JDPW was made to effect JDPW's purchase of the Notes and related Loan Documents, including the CM Deed of Trust, under the Purchase Agreement.⁷⁶

54. Turning next to the CM Defendants' statute of limitations argument, N.C.G.S. § 45-21.12 provides that "no person shall exercise any power of sale contained in any mortgage or deed of trust, or provided by statute, when an action to foreclose the mortgage or deed of trust, is barred by the statute of limitations." N.C.G.S. §1-47 sets a ten-year statute of limitations to commence a foreclosure action by a creditor with a power of sale. The CM Defendants argue that because this foreclosure action was not filed until December 2023, which is more than ten years

⁷⁶ The Court incorporates herein by reference its findings of fact and conclusions of law set forth in the Order on Accounting concluding that the CM Note was not satisfied at the time JDPW purchased the Note from the Bank. (*See* Order on Acct'g ¶¶ 9, 14-34, 48-57, 61, 67, ECF No. 75.)

after the 21 September 2012 CM Note transactions at issue in this action, foreclosure on the Castle McCulloch Property is time-barred, and the Receiver's Appeal should be denied.⁷⁷ The evidence, however, does not establish that an action to foreclose the CM Deed of Trust is barred by the statute of limitations as the CM Defendants contend.

55. Sometime in September 2012, Doug Harris took possession of the CM Note and the CM Deed of Trust. As described above, Doug Harris undertook these actions solely for the benefit of himself and his brother and never held those instruments with the intent to exercise them for the benefit of JDPW. N.C.G.S. § 25-3-302(a)(2) requires that, for a holder to qualify as a "holder in due course" of an instrument, the holder must take the instrument "in good faith." Since the transactions involving the CM Note, the CM Deed of Trust, and the related Loan Documents were affected by Doug Harris's several substantial conflicts of interest,⁷⁸ the Court concludes that the instruments were not acquired in "good faith" under section 25-3-302(a)(2) and that therefore, while Doug Harris served as JDPW's trustee, JDPW was not a "holder" of these instruments and the related Loan Documents capable of taking action for the benefit of JDPW as contemplated under section 25-3-302(a)(2).

56. Because the CM Note and the CM Deed of Trust were not held by a trustee or other person authorized and willing to act on behalf of JDPW and for its benefit, and because JDPW was the only entity authorized to collect or otherwise exercise the

⁷⁷ (Foreclosure Hr'g Tr. 34:18–35:9.)

⁷⁸ (Jan. 2022 Am. Order ¶ 90.)

rights arising under these instruments, there was no holder of these instruments from 21 September 2012 until 26 April 2021, when this Court set aside the purported assignments, transfer, and release of these instruments.⁷⁹ See *Godley v. Taylor*, 14 N.C. 178, 181 (1831) (statute of limitations does not begin to run until there is a “person in existence, capable of suing”); *Hobco Auto Sales, Inc. v. Dew*, 241 N.C. App. 175 (2015) (to similar effect). It was not until 26 April 2021 that the Receiver became the holder of the CM Note, the CM Deed of Trust, and the related Loan Documents by this Court’s order of that date.⁸⁰ The Receiver was the first holder in due course since JDPW acquired the instruments from the Bank in September 2012.

57. For a statute of limitations to run on a foreclosure action, there must be a holder capable of bringing suit. More specifically, for foreclosure under N.C.G.S. §§ 1-47(3) and 45-21.12(a) to be barred, “two events must occur: (1) the lapse of ten years after the forfeiture or after the power of sale became absolute or after the last payment, and (2) the possession of the mortgagor during the entire ten-year period.” *In re Foreclosure of Lake Townsend Aviation, Inc.*, 87 N.C. App. 481, 484 (1987) (citing *Ownbey v. Parkway Properties, Inc.*, 222 N.C. 54, 56 (1942)). Because there was no good faith “holder” of the CM Note, the CM Deed of Trust, and the related Loan Documents from 21 September 2012 until 26 April 2021, the statute of limitations did not run during this period. As a result, the Court concludes that this foreclosure

⁷⁹ (Jan. 2022 Am. Order ¶¶ 137–39, 162.)

⁸⁰ (Jan. 2022 Am. Order ¶¶ 137–39, 162; Order & Op. Mots. Summ. J. or Partial Summ. J. (*Old Battleground v. CCSEA*) ¶¶ 137–139, 163.)

action's filing in December 2023 was within the applicable statute of limitations and that the CM Defendants' argument to the contrary is without merit.

58. Since the Court has determined that the foreclosure action was brought within the limitations period, it need not address the parties' various arguments concerning equitable estoppel and whether the Receiver may assert equitable estoppel in this Foreclosure Proceeding.⁸¹

59. HCM asserts various other arguments relating to the Nivison Parties, the 2004 Separate Agreement, and other matters to the effect that HCM was never supposed to pay the CM Note and that Dr. Epes and McDaniel were supposed to remove the Castle McCulloch Property as collateral for their debts. All such arguments ask this Court to ignore the documented transactions found in the CM Note, the CM Deed of Trust, the Purchase Agreement, the Assignment of Notes, and the Assignment of CM Security, and to treat JDPW as a "disregarded" or "pass-through" entity. Such defenses are: (i) appeals to the Court's equitable jurisdiction, which are not properly considered under Chapter 45, Article 2A; (ii) precluded by the parol evidence rule; (iii) are contrary to the transaction documents' terms; (iv) are supported by inconsistent and changed testimony from Doug Harris and McDaniel; and (v) reflect a changed position by the CM Defendants from the position they

⁸¹ Since the Court declines to consider the parties' equitable estoppel arguments, it concludes that the CM Defendants' request for a jury trial on the grounds that the Receiver seeks equitable relief is denied as moot. (See HCM's Br. Resp. Receiver's Br. re Foreclosure Proceeding 5-6, ECF No. 45.)

successfully took in obtaining summary judgment on the Nivison Parties' claims against them.⁸²

60. Much of the evidence proffered by the CM Defendants, McDaniel, and Doug Harris is appears intended to establish that (1) that the proceeds from the Nivison loan to facilitate the purchase of these Notes were to be used to pay off the CM Note and cause the release of the Castle McCulloch Property as security for all Epes-related loans,⁸³ (2) that JDPW was simply a pass-through entity Doug Harris used to facilitate the Bank's request that, to comply with banking regulations, a neutral third-party needed to receive the CM Note and CM Deed of Trust,⁸⁴ (3) McDaniel negotiated for Dr. Epes and his companies a 39.5% reduction in the approximately \$3.4 million then owed to the Bank on the Notes,⁸⁵ and (4) that the CM Note and CM Deed of Trust were to have been paid off and have no value when they were transferred to JDPW.⁸⁶

61. The CM Defendants, McDaniel, and Doug Harris ignore, however, the structure of the transaction as set forth in the transaction documents and that Doug Harris had a fiduciary duty as trustee of JDPW to act in furtherance of JDPW's interests. Rather than support the Guilford Clerk's Order, the evidence advanced

⁸² (*See supra* note 55.)

⁸³ (CM Defs.' Proposed Findings Fact & Conclusions L., Findings Fact ¶¶ 37, 40, ECF No. 71.)

⁸⁴ (CM Defs.' Proposed Findings Fact & Conclusions L., Findings Fact ¶¶ 29–33.)

⁸⁵ (CM Defs.' Proposed Findings Fact & Conclusions L., Findings Fact ¶ 20.)

⁸⁶ (CM Defs.' Proposed Findings Fact & Conclusions L., Findings Fact ¶¶ 40, 42.)

and relied upon by the parties opposing foreclosure only affirms the Court's previous conclusion in these actions that, by incurring the \$2.1 million debt to the Nivison Parties on behalf of JDPW to purchase the CM Note, CM Deed of Trust, and related Loan Documents and thereafter cancelling the CM Note and releasing the CM Deed of Trust on the Castle McCulloch Property, Doug Harris breached his fiduciary duty as JDPW's trustee.⁸⁷

62. In sum, the Court concludes, for the reasons set forth above, that the foreclosure of the Castle McCulloch Property is proper, that the Guilford Clerk's Order denying foreclosure should be reversed, and that the Substitute Trustee should be permitted to sell the Property in accordance with the provisions of Article 2A of Chapter 45.

63. **WHEREFORE**, the Court, hereby **ENTERS FINAL JUDGMENT** in accordance with the findings of fact and conclusions of law set forth above, **DETERMINES** that the foreclosure of the Castle McCulloch Property is proper, **REVERSES** the Clerk of Court's Order denying foreclosure, and hereby **AUTHORIZES** the Substitute Trustee to sell the Property in accordance with the provisions of Article 2A of Chapter 45. The Court retains jurisdiction to address any matters that may arise during or after that sale.

64. 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

⁸⁷ (Jan. 2022 Am. Order ¶ 91–99.)

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

This the 19th day of December, 2024.

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