STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23 CVS 9526
SEARS FARM, LLC and SEARS, HACKNEY, KEENER & WILLIAMS, INCORPORATED, Plaintiffs, v. SAMARITAN HOUSING FOUNDATION, INC. d/b/a SEARSTONE RETIREMENT COMMUNITY, Defendant.	**ORDER AND OPINION ON DEFENDANT SAMARITAN HOUSING FOUNDATION, INC.'S MOTION TO DISMISS OR, ALTERNATIVELY, STRIKE**

THIS MATTER is before the Court on Defendant Samaritan Housing Foundation, Inc.'s Motion to Dismiss or, Alternatively, Strike ("Motion," ECF No. 10).

THE COURT, having considered the Motion, the briefs of the parties, the arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion to Dismiss should be **DENIED**, and the Motion to Strike should be **GRANTED**, in part, and **DENIED**, in part, for the reasons set forth below.

Milberg Coleman Bryson Phillips Grossman, PLLC, by Mark R. Sigmon, Matthew Lee, and Katharine Batchelor, for Plaintiffs.

K&L Gates LLP, by A. Lee Hogewood III and Robert B. Womble, and Williams Mullen, by Zachary S. Buckheit, for Defendant.

Davis, Judge.

INTRODUCTION

1. This case concerns a complicated series of transactions between the parties relating to the financing and construction of a retirement community. The defendant seeks dismissal of the plaintiffs' claims for breach of contract and breach

of the implied covenant of good faith and fair dealing on the ground that these claims are premature. Because the Court concludes that a more fully developed factual record is necessary in order to rule on the legal issues presented in this action, the motion to dismiss must be denied.

FACTUAL AND PROCEDURAL BACKGROUND

2. The Court does not make findings of fact in connection with a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and instead recites those facts contained in the complaint (and in documents attached to, referred to, or incorporated by reference in the complaint) that are relevant to the Court's determination of the motion. *See, e.g.*, *Window World of Baton Rouge, LLC v. Window World, Inc.*, 2017 NCBC LEXIS 60, at *11 (N.C. Super. Ct. July 12, 2017). "When reviewing a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), a trial court may consider and weigh matters outside the pleadings." *DOT v. Blue*, 147 N.C. App. 596, 603 (2001) (citing *Smith v. Privette*, 128 N.C. App. 490, 493 (1998)).

3. Neither the complaint nor the parties' briefs are models of clarity regarding the numerous transactions at issue in this case and their effect upon one another. What follows is the Court's attempt to summarize the key events—as the Court currently understands them—forming the basis for the issues raised by the present Motion.

4. In or around 1998, William "Bill" Sears ("Bill") sought to build a retirement community in Wake County, North Carolina. Acting through Sears Farm,

LLC ("Sears Farm") and Sears, Hackney, Keener & Williams, Incorporated ("SHKW") (collectively, "Plaintiffs"), over the next several years, Bill spearheaded the financing and development of a new luxury retirement community called the SearStone Continuing Care Retirement Community ("SearStone"). (Compl. ¶¶ 1, 11, ECF No. 3; Pls.' Op. Def.'s Mot. Dismiss Strike, at 2, ECF No. 22.)

5. In 2002, the Cary Town Council unanimously approved Bill's plans for the SearStone project, which was referred to as the SearStone Planned Development District (the "SearStone Project Site"). (Compl. ¶¶ 12, 14.)

6. In 2003, Bill formed Sears Farm, the entity through which he would ultimately purchase the land for the SearStone Project Site from his family. (Compl. ¶¶ 13, 15.) Sears Farm is a limited liability company that is organized under the laws of North Carolina with its principal place of business in Wake County. (Compl. ¶ 5.)

7. In 2004, Sears Farm purchased the SearStone Project Site from Bill's family for $14 million. (Compl. ¶ 16.) The purchase was partially funded by the proceeds of a mortgage from SunTrust Bank (the "First SunTrust Loan"). (Compl. ¶ 16.)

8. Between 2002 and 2004, Bill searched for a developer who could help him bring the SearStone project to fruition. (Compl. ¶ 17.) In 2004, Bill met Stanley G. Brading, an attorney who had experience with bond financing for similar projects. (Compl. ¶ 17.) Brading ultimately joined the SearStone project as both an advisor and as Sears Farm's attorney. (Compl. ¶ 18.)

9. Based on Brading's advice, Sears Farm decided to involve Defendant Samaritan Housing Foundation, Inc. ("Samaritan") in the project.[1] (Compl. ¶ 19.) Samaritan is a non-profit corporation that is organized under the laws of the state of Georgia and has a principal place of business in Georgia. (Compl. ¶ 7.)

10. Brading suggested that Sears Farm sell the SearStone Project Site to Samaritan, who would work to secure financing for SearStone's construction and, ultimately, own and operate the community. (Compl. ¶¶ 19–20.) Meanwhile, Sears Farm would be responsible for providing certain services to Samaritan. (Compl. ¶ 20.)

11. At some point, Sears Farm signed a "Site Transfer Agreement" under which it agreed to sell the SearStone Project Site to Samaritan at such time as Samaritan managed to secure the financing necessary to construct Phase I of SearStone.[2] (*See* ECF No. 3.1, at 2.)

12. Before financing for SearStone's construction could be secured, the project required extensive "pre-construction" funding for regulatory and marketing work. (*See* Compl. ¶¶ 25–28.)

13. To that end, on 29 April 2005, Sears Farm, Samaritan, and certain other entities signed a Pre-Construction Funding and Development Agreement.

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[1] Brading ultimately became Samaritan's president on 1 July 2011 and continues to serve in that capacity. (Compl. ¶¶ 10, 103.)

[2] The SearStone project was to be financed and constructed in two phases: Phase I and Phase II. (Compl. ¶ 2.)

("PCFDA,"[3] ECF No. 3.1). The PCFDA memorialized the signatories' pre-construction capital investments in the SearStone project and included details about how each of the signatories would be repaid for their respective investments. (Compl. ¶ 28.)[4]

14. Over the next several years, the SearStone project suffered significant delays due to "regulatory hurdles" and the 2008 financial crisis. (Compl. ¶ 29.)

15. In February of 2008, Sears Farm refinanced the First SunTrust Loan via a new SunTrust loan (the "Second SunTrust Loan"). (Compl. ¶ 30.)

16. By 2010, construction financing for SearStone had yet to be secured, but the Second SunTrust Loan was nearing maturity. (Compl. ¶ 31.) Meanwhile, Samaritan realized that it would need to defer its repayment of certain pre-construction debts in order to finalize its purchase of the SearStone Project Site from Sears Farm and construct Phase I of SearStone. (*See* Restated Pre-Construction Funding and Development Agreement ("R-PCFDA"), at 3, ECF No. 3.2.)

17. In light of these circumstances, on 26 May 2010, Sears Farm, Samaritan, and several other entities signed a Restated Pre-Construction Funding and Development Agreement ("R-PCFDA," ECF No. 3.2). (Compl. ¶¶ 32–33.) Pursuant to the R-PCFDA, SunTrust agreed to extend the Second SunTrust Loan's

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[3] In the Complaint and in their respective briefs, the parties add confusion to what is already a complicated set of facts by using different acronyms for the various written agreements that were executed. For purposes of clarity, the parties are directed in all future filings to use the acronyms contained in this Opinion.

[4] As set out below, the PCFDA was amended several times by the parties. At times in this Opinion, the Court refers to all of these documents collectively as the "PCFDA Agreements."

maturity date. (Compl. ¶ 32.) The signatories also agreed to (1) subordinate and defer the payments of fees and debts owed to each other regarding the construction financing that Samaritan anticipated receiving for Phase I of SearStone; and (2) advance additional capital for the project. (Compl. ¶ 32.)

18. By 31 October 2011, Samaritan had made progress in its efforts to secure financing to construct Phase I of SearStone. (Compl. ¶¶ 36–37.) This progress led Samaritan, Sears Farm, and others to sign an Amendment to Restated Pre-Construction Funding and Development Agreement. ("A-R-PCFDA," ECF No. 3.3.) The A-R-PCFDA "reflected additional agreements regarding the repayment of pre-finance capital and deferred fees." (Compl. ¶ 37.)

19. Subsequently, Samaritan finalized the financing necessary to complete its purchase of the SearStone Project Site from Sears Farm and construct Phase I. (Compl. ¶ 38.) This financing consisted of $117,450,000 worth of proceeds from the sale of a series of revenue bonds issued by the Public Finance Authority ("PFA") (individually, the 2012A, 2012B, and 2012C bonds; collectively, the "2012 Bonds"). (Compl. ¶¶ 38–40.)

20. On 1 June 2012, several important events transpired. First, Samaritan and Sears Farm (along with other parties) signed a Second Amendment to Restated Pre-Construction Funding and Development Agreement. ("2A-R-PCFDA," ECF No. 3.4.) Under the 2A-R-PCFDA, the parties agreed to defer Samaritan's reimbursement of Sears Farm for $2,390,000 worth of payments that Sears Farm had made on the principal of the Second SunTrust Loan. (Compl. ¶ 43; 2A-R-PCFDA, at

1, 4–5.) The 2A-R-PCFDA appears to refer to this $2,390,000 deferred reimbursement as the "Sears Farm Obligation." (Compl. ¶ 44; 2A-R-PCFDA, at 5.) Additionally, under the 2A-R-PCFDA, Sears Farm deferred Samaritan's reimbursement of $993,000 worth of "services in connection with rezoning the SearStone Project Site and owner supplied construction." (2A-R-PCFDA, at 7.) Exhibit 3 to the 2A-R-PCFDA also memorialized an "SHKW Deferred Fee" worth $711,000 for "architectural, development consulting and construction period services." (2A-R-PCFDA, at 7.)

21. The 2A-R-PCFDA amended the terms of the prior PCFDA documents in three noteworthy ways. First, Exhibit 2 to the 2A-R-PCFDA states, in relevant part, as follows:

> [Samaritan] will be obligated to accrue interest at 6% per annum [on the principal amount of contributed pre-construction capital] (which will not exceed the . . . original principal amounts of the . . . Sears Farm Obligation); however, interest on the . . . Sears Farm Obligation will not be paid until the Series 2012 Bonds are paid in full.

22. Second, the 2A-R-PCFDA added a so-called "Efforts Clause," which states:

> In the event of a refinancing and payoff of all of the obligations of [Samaritan] related to the Bond Financing (a "Bond Refinancing"), [Samaritan] shall use commercially reasonable efforts to negotiate terms with respect to such Bond Refinancing to reimburse, to the extent supported by a feasibility study prepared in connection with such Bond Refinancing, the amount of the pre-financing capital provided by Sears Farm . . . as feasible, on terms, which are commercially favorable to Sears Farm[.]

(2A-R-PCFDA, at 2.)

23. Third, Exhibit 4 to the 2A-R-PCFDA added, in pertinent part: "[The Sears Farm Obligation is] subject to payment annually based on meeting the conditions precedent to payment as further set forth in . . . Section 9.01 [of] Supplemental Indenture Number 1 dated as of June 1, 2012 between [Samaritan] and the Master Trustee."[5]

24. Also on 1 June 2012, Samaritan signed a separate document called a Master Trust Indenture[6] with Wells Fargo Bank, National Association (the "Master Trustee")[7] in connection with Samaritan's receipt of the proceeds from the 2012 Bonds. ("2012 MTI," ECF No. 11.4.) The 2012 MTI purported to memorialize Samaritan's "obligations"[8] to repay various parties, including Sears Farm.

25. Notably, Sears Farm did not sign the 2012 MTI—a fact that serves as a fundamental basis for the parties' dispute in this case.

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[5] Supplemental Indenture Number 1 ("Supplement 1") is a separate document that is discussed below. (ECF No. 3.5)

[6] In bond financing parlance, a "trust indenture" is a "contract between a [Bond] Issuer and a Trustee (normally a commercial bank with trust powers) under which the Issuer issues Bonds and specifies their Maturities, Interest Rates, Redemption provisions, form, exchange provisions, security and other terms. The Indenture pledges certain revenues as security for repayment of the Bonds. The Trustee agrees to act on behalf of the holders of the Bonds and to represent their interests." *Indenture or Trust Indenture/Agreement*, NAT'L ASS'N BOND LAW., https://www.nabl.org/bond-basics/indenture/ (last visited March 18, 2024).

[7] Wells Fargo Bank, National Association, was later succeeded by UMB Bank, National Association, as the Master Trustee in February of 2016. (Pls.' Op. Def.'s Mot. Dismiss Strike, at 5 n.3, ECF No. 22.)

[8] The 2012 MTI defines an "Obligation" as "any promissory note, guaranty, lease, contractual agreement to pay money or other obligation of any Obligated Group Member which is authenticated and delivered pursuant to [the 2012 MTI] and which is entitled to the benefits of [the 2012 MTI]." (2012 MTI, at 14.)

26. The 2012 MTI required that any "obligations" issued thereunder be memorialized in the form of supplements[9] to the 2012 MTI. (2012 MTI § 2.01(a).)

27. Supplement 1 was the initial supplement to the 2012 MTI. ("Supplement 1," ECF No. 3.5.) Supplement 1 provided that the satisfaction of a simultaneously created promissory note—which was called the "Sears Farm, LLC Subordinated Obligation," ("Promissory Note," ECF No. 3.6)—would be a new "obligation" of Samaritan under the 2012 MTI. (Suppl. 1, at 37.) The Promissory Note memorialized Samaritan's promise to repay Sears Farm $3,383,000 plus six percent annual interest on any unpaid principal balance thereof. (Promissory Note, at 1.) The $3,383,000 amount was calculated by adding Sears Farm's deferred fee for services ($993,000) to the amount that Samaritan owed Sears Farm in exchange for Sears Farm's partial repayment of the Second SunTrust Loan principal ($2,390,000) amount.[10] (Compl. ¶ 56.)

28. Notably, § 9.01 of Supplement 1 states, in relevant part, that "[n]o payment of principal of the Series 2012 Subordinated Obligations shall be made unless" a series of conditions precedent listed therein have been met. (Suppl. 1

[9] A "supplemental indenture" is "[a] supplement to an outstanding Indenture, entered into pursuant to the terms of an outstanding Indenture and delivered in connection with the issuance of Additional Bonds, to cure an inconsistency or formal defect in the Indenture or to amend the Indenture in some manner. A Supplemental Indenture becomes part of the contract with the bondholders." *Supplemental Indenture*, NAT'L ASS'N BOND LAW., https://www.nabl.org/bond-basics/supplemental-indenture/ (last visited March 18, 2024).

[10] This $2,390,000 figure appears to correspond to the identical amount that is presumably the "Sears Farm Obligation" under the 2A-R-PCFDA. Oddly, § 8.01 of Supplement 1 also refers to the Promissory Note as the "Sears Farm Obligation," even though the Promissory Note is worth $3,383,000 (plus interest). (Suppl. 1 § 8.01.)

§ 9.01.) These conditions precedent make their first appearance in Supplement 1 and are not mentioned in any of the other documents between Samaritan and Sears Farm described herein up to this point. Section 9.01 also states in pertinent part as follows: "No payment of interest on the Series 2012 Subordinated Obligations shall be made until the Series 2012 Obligations[11] have been paid in full." (Suppl. 1 § 9.01.) Supplement 1 defines the "Series 2012 Subordinated Obligations" as including the Promissory Note along with several other amounts owed to other parties. (Suppl. 1, at 4.)

29. In addition, § 9.02 of Supplement 1 sets forth an order of priority for the repayment of the Series 2012 Subordinated Obligations (which—again—includes the Promissory Note among a number of other obligations owed to other parties). (Suppl. 1 § 9.02.) Pursuant to the order of priority, the repayment of numerous other obligations was given priority over repayment of the Promissory Note to Sears Farm. (Suppl. 1 § 9.02.)

30. Neither Supplement 1 nor the Promissory Note contain Sears Farms' signature.

31. Construction on Phase I of SearStone was completed in January of 2014. (Compl. ¶ 79.)

32. Following the completion of Phase I of SearStone, Samaritan began working on the financing for Phase II. (Compl. ¶ 80.)

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[11] Supplement 1 defines the "Series 2012 Obligations" as, "collectively, the Series 2012A Obligation, the Series 2012B Obligation, and the Series 2012C Obligation." (Suppl. 1, at 4.)

33. In order to obtain the financing for Phase II, Samaritan first needed to refinance the Series 2012A Bonds. (Compl. ¶ 81.) On 1 December 2017, Samaritan did so through a process called an "advance refunding." (Compl. ¶ 81; Samaritan's Br. Supp. Mot. Dismiss Alt. Strike, at 5, ECF No. 12.) As part of the advance refunding process, the PFA issued a second series of bonds worth $77,745,000 (the "2017 Bonds") and loaned Samaritan the proceeds from those bonds. (Compl. ¶ 82.) Samaritan then used the proceeds of the 2017 Bonds to "defease" and refinance the then-outstanding 2012 Bonds.[12] (Compl. ¶ 82; Samaritan's Br. Supp. Mot. Dismiss Alt. Strike, at 5.)

34. Contemporaneously with Samaritan's receipt of the proceeds from the 2017 Bonds, Samaritan and UMB Bank, National Association ("UMB Bank") signed an Amended and Restated Master Trust Indenture, within which Samaritan's "Obligations" to repay the 2017 Bonds were memorialized. ("2017 MTI," ECF No. 11.3.) Once again, this document was not signed by Sears Farm.

35. On 1 March 2018, Sears Farm initiated a bankruptcy proceeding under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of North Carolina. *See In re Sears Farm, LLC*, No. 18-00986-5-SWH (Bankr. E.D.N.C.). (Samaritan's Br. Supp. Mot. Dismiss Alt. Strike, at 6.)

[12] Between November 2021 and March 2023, the PFA also issued an additional $264,605,000 in proceeds from bonds. (Compl. ¶ 83.) Those bonds, however, do not appear to be relevant to this case.

36. On 30 July 2018, Sears Farm filed a reorganization plan, (ECF No. 11.09), and Disclosure Statement, (ECF No. 11.10), in connection with the bankruptcy proceeding. The Disclosure Statement listed Sears Farm's anticipated claims (or rights to payment) against Samaritan for "payment of Pre-Finance Subordinated Obligations and interest due to Sears Farm, LLC from the Liquidity Support Fund established under the Series 2012 Bonds and terminated as part of the refinancing of the Series 2012 Bonds," and for "pre-finance capital [equaling] $2,390,000." (Disclosure Statement, at 15.)

37. On 11 February 2019, the Bankruptcy Court ordered mediation after Samaritan and UMB Bank—creditors entitled to vote on Sears Farm's reorganization plan—objected to that plan. (ECF Nos. 11.11–11.13.)

38. Sears Farm, Samaritan, and UMB Bank reached a settlement in the bankruptcy case on 4 March 2019. (ECF No. 11.13, Ex. A.)

39. On 26 April 2019, Sears Farm, Samaritan, and UMB were all signatories to a Settlement Agreement reflecting the terms of the agreed-upon settlement. ("Settlement Agreement," ECF No. 11.15.) Notably, in the Settlement Agreement, Sears Farm agreed to release various claims against Samaritan. (Settlement Agrmt., App. C, at 17.) However, Sears Farm excluded from this release its claim regarding "the Samaritan-Sears Farm Subordinated Obligation[.]" (Settlement Agrmt., App. C, at 16–17.)

40. On 21 April 2023, Plaintiffs initiated the present lawsuit by filing a Complaint against Samaritan and Brading in Wake County Superior Court asserting

the following eight claims: (1) breach of contract against Samaritan; (2) breach of the implied covenant of good faith and fair dealing against Samaritan; (3) fraudulent misrepresentation against Samaritan and Brading; (4) an alternative claim for negligent misrepresentation against Samaritan and Brading; (5) a claim for unfair and deceptive trade practices against Samaritan and Brading; (6) breach of fiduciary duty against Samaritan and Brading; (7) constructive fraud against Samaritan and Brading; and (8) civil conspiracy against Samaritan and Brading. (Compl. ¶¶ 120–163.)

41. On 14 June 2023, Plaintiffs voluntarily dismissed six of their claims (which included all of the claims against Brading), leaving only the claims for breach of contract and breach of the implied covenant of good faith and fair dealing against Samaritan. (ECF No. 9.)[13]

42. Samaritan filed the present Motion on 10 July 2023, and the parties subsequently submitted briefs with respect to the Motion. (ECF Nos. 12, 22, 27.)

43. The Court held a hearing on Samaritan's Motion on 21 November 2023. Over the next few months, the parties submitted supplemental memoranda at the Court's direction. (ECF Nos. 29, 30, 35, 36.)

44. Samaritan's Motion is now ripe for resolution.

LEGAL STANDARD

45. In its Motion, Samaritan has moved to dismiss both of Plaintiffs' remaining claims under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure

[13] As a result, Brading is no longer a defendant in this action.

for lack of subject matter jurisdiction on the theory that Plaintiffs lack standing to bring any of the claims they have asserted in this action. Samaritan also seeks dismissal of these claims under Rule 12(b)(6) for failure to state valid claims for relief. In the alternative, Samaritan has moved to strike certain allegations in the Complaint—particularly those concerning Brading—pursuant to Rule 12(f) on the grounds that those allegations are irrelevant, immaterial, and scandalous.

46. "A plaintiff's standing to assert its claims may be challenged under either Rule 12(b)(1) or Rule 12(b)(6) of the North Carolina Rules of Civil Procedure." *Raja v. Patel*, 2017 NCBC LEXIS 25, at *11 (N.C. Super. Ct. Mar. 23, 2017). A Rule 12(b)(1) motion challenges a court's "jurisdiction over the subject matter" of the plaintiff's claims. N.C. R. Civ. P. 12(b)(1). "Subject matter jurisdiction is the indispensable foundation upon which valid judicial decisions rest," *In re T.R.P.*, 360 N.C. 588, 590 (2006), and "has been defined as 'the power to hear and to determine a legal controversy; to inquire into the facts, apply the law, and to render and enforce a judgment,' " *High v. Pearce*, 220 N.C. 266, 271 (1941). "[T]he proceedings of a court without jurisdiction of the subject matter are a nullity." *Burgess v. Gibbs*, 262 N.C. 462, 465 (1964) (citation omitted).

47. "As the party invoking jurisdiction, plaintiff[] ha[s] the burden of establishing standing." *Queen's Gap Cmty. Ass'n v. McNamee*, 2011 NCBC LEXIS 37, at **3 (N.C. Super. Ct. Sept. 23, 2011) (quoting *Marriot v. Chatham Cnty.*, 187 N.C. App. 491, 494 (2007)). In determining the existence of subject matter jurisdiction, the Court may consider matters outside the pleadings. *Emory v. Jackson*

Chapel First Missionary Baptist Church, 165 N.C. App. 489, 491 (2004). "However, if the trial court confines its evaluation [of standing] to the pleadings, the court must accept as true the [claimant]'s allegations and construe them in the light most favorable to the [claimant]." *Munger v. State*, 202 N.C. App. 404, 410 (2010) (quoting *DOT v. Blue*, 147 N.C. App. 596, 603 (2001)).

48. "It is well-established that dismissal pursuant to Rule 12(b)(6) is proper when '(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.' " *Corwin v. British Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (quoting *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)). The Court may also "reject allegations that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint." *Laster v. Francis*, 199 N.C. App. 572, 577 (2009).

49. Rule 12(f) authorizes a court to "strik[e] from any pleading . . . any redundant, irrelevant, immaterial, impertinent, or scandalous matter." N.C. R. Civ. P. 12(f). A motion to strike is addressed to the sound discretion of the trial court. *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 25 (2003).

ANALYSIS

A. Samaritan's Motion to Dismiss

50. "The elements of a claim for breach of contract are the existence of a valid contract and a breach of that contract's terms." *JT Russell & Sons, Inc. v.*

Russell, 2024 NCBC LEXIS 35, at **9 (N.C. Super. Ct. Feb. 28, 2024) (citing *Poor v. Hill*, 138 N.C. App. 19, 26 (2000)).

51. Additionally, "[u]nder North Carolina law, every enforceable contract contains an underlying implied covenant of good faith and fair dealing 'that neither party will do anything which injures the right of the other to receive the benefits of the agreement.' " *Kelly v. Nolan*, 2022 NCBC LEXIS 78, at **19 (N.C. Super. Ct. Jul. 19, 2022) (citing *Bicycle Transit Auth., Inc. v. Bell*, 314 N.C. 219, 228 (1985)).

52. Plaintiffs' claims are based upon the PCFDA Agreements. They contend that Samaritan breached its obligations to them stemming from these agreements in several respects.

53. Specifically, Plaintiffs allege that Samaritan breached its duty to pay Sears Farm interest due on the sums owed pursuant to these agreements and by "failing to use commercially reasonable efforts to negotiate terms with respect to Bond Refinancing to reimburse the amount of principal of pre-finance capital advanced by Sears Farm on terms which are commercially favorable to Sears Farm" as required under the "Efforts Clause" contained in the 2A-R-PCFDA. (Compl. ¶¶ 121–124.)

54. Plaintiffs' claim for breach of the implied covenant of good faith and fair dealing asserts that Samaritan has acted in bad faith to prevent the existence of

certain conditions that would trigger repayment of the principal of the Series 2012 Subordinated Obligations as well as SHKW's deferred fee. (Compl. ¶ 127.)[14]

55. In a nutshell, Samaritan argues that dismissal of Plaintiffs' claims is appropriate because (1) any contractual obligations arising from the PCFDA Agreements were nullified by the subsequent execution of the 2012 MTI; (2) Plaintiffs lack standing to bring claims based on the 2012 MTI because they have failed to satisfy certain existing conditions precedent to the assertion of such claims; and (3) Sears Farm released Samaritan from any remaining obligations relevant to the present lawsuit in the Settlement Agreement in the bankruptcy proceeding.[15] Samaritan asserts that Sears Farm and SHKW will, in fact, be repaid the sums they are due but that they must wait their turn based on the priority of payments schedule contained in the MTI documents.

56. Plaintiffs, conversely, contend that they never signed the 2012 MTI (or any of the ensuing MTI-related documents) and that—for this reason—those documents are not binding on them and do not supersede their rights under the PCFDA Agreements. Plaintiffs further argue that for several reasons (which, in the interest of brevity, the Court will not undertake to summarize) the release of claims

[14] Although the Complaint is not entirely clear on this point, it appears that the breach of contract claim is being asserted only on behalf of Sears Farm while the claim for breach of the implied covenant of good faith and fair dealing has been pled on behalf of both Sears Farm and SHKW.

[15] Samaritan appears to be making this latter argument solely as to *Sears Farm's* claims given that SHKW was not a party to the bankruptcy proceeding.

in the Settlement Agreement by Sears Farm does not affect its right to bring the claims it has asserted in this action.

57. The Court has conducted an exhaustive and painstaking review of the Complaint, the parties' briefs, and the wealth of documents attached to the pleadings.

58. The Court concludes that there are simply too many moving parts in this case for Samaritan to be entitled to the relief it seeks in its Motion to Dismiss at this early stage of the litigation. Although Samaritan contends that the documents attached to the pleadings fill in any gaps left by the allegations in the Complaint, the Court disagrees. Gaps do, in fact, remain, and the Court lacks the authority to fill in those gaps under the guise of ruling on the present Motion. Discovery will enable the parties to flesh out the facts regarding the events summarized above, and the Court's task in deciding the legal issues raised by the parties will be made considerably easier at the summary judgment stage at which time the Court will have the benefit of a more fully developed factual record.

59. For these reasons, the Court **DENIES** Samaritan's Motion to Dismiss.

B. Motion to Strike

60. Finally, Samaritan moves to strike certain portions of Plaintiffs' Complaint pursuant to Rule 12(f). Specifically, Samaritan requests that the Court strike paragraphs 3, 90–119, and 129–167 of the Complaint based upon its contention that those paragraphs—many of which concern the relationship between Bill Sears and Brading—are likely "to cause continuing professional and personal reputational harm without any legitimate purpose" and lack relevance given Plaintiffs' voluntary

dismissal of their claims against Brading. (Samaritan's Br. Supp. Mot. Dismiss Alt. Strike, at 27.)

61. The Court, in the exercise of its discretion, **CONCLUDES** that paragraphs 129–167 of Plaintiffs' Complaint should be stricken given that those paragraphs are relevant only to the claims that have been dismissed by Plaintiffs. In all other respects, the Motion to Strike is **DENIED** as the remaining paragraphs are part of the factual narrative of the events giving rise to Plaintiffs' remaining claims.

CONCLUSION

THEREFORE, it is hereby **ORDERED** that Samaritan's Motion to Dismiss is **DENIED**, and its Motion to Strike is **GRANTED**, in part, and **DENIED**, in part. Paragraphs 129–167 of Plaintiffs' Complaint are hereby **STRICKEN**.[16]

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

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases

[16] Because of the complexity of the transactions and written agreements at issue in this case, the Court directs the parties to strive for a greater degree of clarity in articulating their arguments in future briefs than that existing with regard to the briefs attendant to the present Motion.