

STATE OF NORTH CAROLINA
HENDERSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1820

DANIEL YODER, M.D.,
Plaintiff,

v.

ALAN VERM, M.D.; LOOKING
GLASS EYE CENTER, P.A.;
LOOKING GLASS
ENTERPRISES, LLC; and
HEALTHCARE LLC, VII.,
Defendants.

**ORDER AND OPINION ON
DEFENDANT HEALTHCARE LLC,
VII'S MOTION TO DISMISS**

1. **THIS MATTER** is before the Court upon Defendant Healthcare LLC, VII's ("Healthcare VII") Motion to Dismiss (the "Motion") pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure (the "Rule(s)"), filed 16 February 2024 in the above-captioned case.¹

2. Having considered the Motion, the parties' briefs in support of and in opposition to the Motion, the Verified Complaint, the arguments of counsel at the hearing on the Motion, and other appropriate matters of record, the Court hereby **GRANTS** the Motion as set forth below.

Prince, Massagee, & Alexander, PLLC, by Sharon B. Alexander and Lucy K. Massagee, for Plaintiff Daniel Yoder.

James, McElroy & Diehl, P.A., by Adam L. Ross, Jennifer M. Houti, and Haley Lohr, for Defendants Alan Verm, Looking Glass Eye Center, P.A., and Looking Glass Enterprises, LLC.

Bradley Arant Boult Cummings, LLP, by Dana C. Lumsden and Hanna E. Eickmeier, for Defendant Healthcare LLC, VII.

¹ (Mot. Dismiss, ECF No. 7.)

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

3. The Court does not make findings of fact when ruling on a motion to dismiss under Rule 12(b)(6). Rather, the Court recites the allegations asserted in the Verified Complaint (the “Complaint”) that are relevant to the Court’s determination of the Motion.

4. This case has its origins in the settlement of three cases previously before this Court: *Looking Glass Eye Center, P.A. v. Yoder* (Henderson County 22-CVS-1141), *Yoder v. Looking Glass Enterprises, LLC* (Henderson County 22-CVS-1384), and *Yoder v. Looking Glass Eye Center, P.A.* (Transylvania County 22-CVS-332; collectively, the “Original Litigation”). The Original Litigation involved the same parties now before the Court, with the exception of Defendant Healthcare VII.

5. After litigating for a number of months, the parties reached a settlement of the Original Litigation, which was memorialized in a written settlement agreement (the “Settlement Agreement” or “Agreement”)² the Court approved on 15 December

² (Consent Mot. Approve Settlement and Allow Discontinuance Derivative Proceedings Ex. B [hereinafter “Settlement Agreement”], 22-CVS-332 ECF No. 34.2 (redacted).) The parties filed the unredacted version of the Settlement Agreement under seal in 22-CVS-332 as ECF No. 34.1. Since the Settlement Agreement has not yet been filed on the Court’s electronic docket in this action, the Court’s citations to this document will be to ECF No. 34.2 in 22-CVS-332. Pinpoint citations will be to the page numbers automatically assigned to the electronic PDF of the filing as the document itself is not paginated.

2022.³ The parties to this action, with the exception of Healthcare VII, were all signatories to the Settlement Agreement.⁴

6. Almost a year later, however, Plaintiff Daniel Yoder (“Plaintiff” or “Yoder”) filed the Verified Complaint in this action on 28 November 2023, alleging that Defendants Alan Verm (“Verm”), Looking Glass Eye Center, P.A. (“LGEC”), and Looking Glass Enterprises, LLC (“LGE”) have “failed and refused to comply with all of the obligations imposed . . . by the terms of the Settlement Agreement.”⁵ As a result, Plaintiff now seeks a declaratory judgment as to the rights and obligations of the parties under the Settlement Agreement⁶ and asserts four causes of action for breach of that Agreement—three against Verm and LGEC⁷ and one against Verm and LGE.⁸ Plaintiff does not assert any claims for relief against Defendant Healthcare VII and instead avers that “Healthcare VII is joined as a party to this

³ (Verified Compl. ¶¶ 8–9, ECF No. 2; Order Approving Proposed Settlement Agreement, 22-CVS-332 ECF No. 38.)

⁴ (Settlement Agreement 12.)

⁵ (Verified Compl. ¶ 16.)

⁶ (Verified Compl. ¶¶ 84–85.)

⁷ (Verified Compl. ¶¶ 18–63.) These causes of action seek (i) accounting and payment from Verm and LGEC of certain “Additional Funds” as contemplated by the Settlement Agreement, (Verified Compl. ¶¶ 20–27); (ii) payment of interest by Verm and LGEC on a promissory note pursuant to the terms of the Settlement Agreement, (Verified Compl. ¶¶ 2944); and (iii) alleged damages from Verm and LGE related to a buyout of Yoder’s interest in LGE as prescribed by the Settlement Agreement, (*see* Verified Compl. ¶¶ 61–63.)

⁸ (Verified Compl. ¶¶ 64–83.) This cause of action seeks alleged damages related to Verm and LGE’s buyout of Yoder’s interest in Healthcare VII as contemplated by the Settlement Agreement.⁸

action to ensure a complete resolution of the issues in controversy complained of herein that pertain to Healthcare VII.”⁹

7. Healthcare VII filed the Motion with supporting brief on 16 February 2024.¹⁰ Yoder filed his response on 5 March 2024,¹¹ and Healthcare VII filed its reply on 15 March 2024.¹² After full briefing, the Court held a hearing on the Motion on 10 April 2024, at which all parties were represented by counsel. The Motion is now ripe for resolution.

II.

ANALYSIS

8. “A justiciable controversy is a prerequisite to a court’s obtaining [subject matter] jurisdiction.” *Town of Ayden v. Town of Winterville*, 143 N.C. App. 136, 140 (2001); *see, e.g., Creek Pointe Homeowners Ass’n v. Happ*, 146 N.C. App. 159, 164 (2001) (“Jurisdiction in North Carolina depends on the existence of a justiciable case or controversy.”). “A justiciable controversy entails ‘an actual controversy between parties having adverse interests in the matter in dispute.’” *Time Warner Ent. Advance-Newhouse P’ship v. Town of Landis*, 228 N.C. App. 510, 516 (2013) (quoting *Gaston Bd. of Realtors, Inc. v. Harrison*, 311 N.C. 230, 234 (1984)).

⁹ (Verified Compl. ¶ 15.)

¹⁰ (Mot. Dismiss; Def.’s Mem. Law Supp. Def. Healthcare LLC, VII’s Mot. Dismiss Pl.’s Compl., ECF No. 8.)

¹¹ (Pl.’s Mem. Law Opp’n Healthcare LLC, VII’s Mot. Dismiss, ECF No. 10.)

¹² (Def.’s Mem. Law Further Supp. Def. Healthcare LLC, VII’s Mot. Dismiss Pl.’s Compl., ECF No. 14.)

9. To plead a justiciable controversy:

[T]he plaintiff shall allege in his complaint and show at the trial that a real controversy, arising out of their opposing contentions as to their respective legal rights and liabilities . . . exists between or among the parties, and that the relief prayed for will make certain that which is uncertain and secure that which is insecure.

Time Warner Ent. Advance-Newhouse P'Ship, 228 N.C. App. at 516 (alterations in original) (quoting *Carolina Power & Light Co. v. Iseley*, 203 N.C. 811, 820 (1933)).

10. If a plaintiff fails to allege a justiciable controversy, the trial court must dismiss the plaintiff's action for lack of subject matter jurisdiction. *See, e.g., Yeager v. Yeager*, 228 N.C. App. 562, 565 (2013) (“[A] trial court does not have subject matter jurisdiction over a non-justiciable claim[.]”); *Raja v. Patel*, 2017 NCBC LEXIS 25, at *18–19 (N.C. Super. Ct. Mar. 23, 2017) (holding that a complaint that “does not allege a real, existing, and justiciable controversy between the parties [] must be dismissed, without prejudice”).

11. Healthcare VII contends that it should be dismissed from this action under Rule 12(b)(6) because “there are no facts sufficient to make a good claim” against it.¹³ The Court agrees that dismissal is appropriate—but under Rule 12(b)(1) rather than Rule 12(b)(6)—because a review of Plaintiff's Complaint makes plain that Plaintiff does not allege an actual or justiciable controversy with Healthcare VII. Indeed, Plaintiff does not assert any claims against Healthcare VII, allege any wrongdoing by Healthcare VII, or seek any relief from Healthcare VII. The only allegations

¹³ (Def.'s Mem. Law Supp. Def. Healthcare LLC, VII's Mot. Dismiss Pl.'s Compl. 8 (quoting *Oates v. JAG, Inc.* 314 N.C. 276, 278 (1985)).)

involving Healthcare VII are those identifying the entity,¹⁴ asserting that Healthcare VII is joined “to ensure a complete resolution of the issues in controversy,”¹⁵ alleging the ownership interests in Healthcare VII,¹⁶ referencing the “cash held by Healthcare VII,”¹⁷ and asserting that “Verm and/or Healthcare VII may need to enter into a loan transaction to effectuate the purchase of Yoder’s membership interest in Healthcare VII.”¹⁸

12. The last three of these allegations are included in Plaintiff’s fourth claim for relief alleging that Verm and LGE breached the Settlement Agreement and are the ones on which Plaintiff principally relies in opposing Healthcare VII’s Motion. Plaintiff argues that because the Settlement Agreement forecasts that Healthcare VII “may need to obtain a loan” to facilitate the purchase of Yoder’s interest,¹⁹ Healthcare VII is a necessary party to this action.

13. But as noted above, Healthcare VII is not a party to the Settlement Agreement and thus is not bound by the Agreement’s provisions. *See, e.g., Howe v. Links Club Condo. Ass’n*, 263 N.C. App. 130, 139 (2018) (“[A]s a matter of law, a non-party to a contract cannot be held liable for any breach that may have occurred.”)

¹⁴ (Verified Compl. ¶ 5.)

¹⁵ (Verified Compl. ¶ 15.)

¹⁶ (Verified Compl. ¶¶ 65–66, 68.)

¹⁷ (Verified Compl. ¶¶ 78–81.)

¹⁸ (Verified Compl. ¶ 72.)

¹⁹ (Pl.’s Mem. Law Opp’n Healthcare LLC, VII’s Mot. Dismiss 4.)

(cleaned up)). Moreover, as pleaded, the Settlement Agreement does not obligate Healthcare VII to obtain a loan; indeed, the Settlement Agreement itself reflects only the parties' *acknowledgement* that "Healthcare VII may need to enter into a loan transaction," not Healthcare VII's agreement to obtain a loan.

14. Based on the above, the Court concludes that Plaintiff has failed to plead facts showing the existence of an actual or justiciable controversy with Healthcare VII. As a result, the Court does not have subject matter jurisdiction over Healthcare VII in connection with this matter. The Court will therefore dismiss Healthcare VII as a party to this litigation under Rule 12(b)(1) without prejudice.²⁰ *See, e.g., State ex rel. Utils. Comm'n v. Cube Yadkin Generation, LLC*, 279 N.C. App. 217, 221 (2021) ("The existence of an actual controversy is a jurisdictional prerequisite to any judicial action based thereon."); *Holton v. Holton*, 258 N.C. App. 408, 415 (2018) (holding that a dismissal for lack of subject matter jurisdiction "must be made without prejudice, since a trial court without jurisdiction would lack authority to adjudicate the matter.").

²⁰ Healthcare VII's decision to move under Rule 12(b)(6) rather than under Rule 12(b)(1) is of no consequence to the Court's resolution of the Motion since "it is well-established that an issue of subject matter jurisdiction may be raised at any stage of a case and may be raised by a court on its own motion." *Sanford v. Williams*, 221 N.C. App. 107, 116 (2012) (quoting *Laurel Valley Watch, Inc. v. Mountain Enters. of Wolf Ridge, LLC*, 192 N.C. App. 391, 404 (2008)); *see, e.g., Lemmerman v. A.T. Williams Oil Co.*, 318 N.C. 577, 580 (1986) ("Every court necessarily has the inherent judicial power to inquire into, hear and determine questions of its own jurisdiction, whether of law or fact, the decision of which is necessary to determine the questions of its jurisdiction."). The Court, therefore, is fully within its authority to determine its subject matter jurisdiction over this matter on the current Motion. *See, e.g., State v. Whittle Commc'ns*, 328 N.C. 456, 462–63 (1991) (affirming trial court's dismissal of action on its own motion under Rule 12(b)(1)).

III.

CONCLUSION

15. **WHEREFORE**, the Court hereby **GRANTS** the Motion. Healthcare VII is hereby **DISMISSED** from this action **without prejudice**.

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

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