

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF CLEVELAND 2025 JUL -9 P 12: 25 24-CVS-1660

KINGS MOUNTAIN LAND DEVELOPMENT PARTNERS, LLC, CLEVELAND CO., C.S.C.

BY )  
Plaintiff/Counterclaim-Defendant, )

v. )

CATAWBA INDIAN NATION, )

Defendant/Counterclaim-Plaintiff. )

**ORDER ON  
DEFENDANT/COUNTERCLAIM-  
PLAINTIFF'S PARTIAL MOTION  
TO DISMISS AND FOR JUDGMENT  
ON THE PLEADINGS**

THIS MATTER came before the Court on Defendant/Counterclaim-Plaintiff Catawba Indian Nation's (the "Tribe") Partial Motion to Dismiss and for Judgment on the Pleadings under N.C. Gen. Stat. §1A-1, Rules 12(b)(2) and 12(c), filed on March 28, 2025 (the "Motions") and argued on June 11, 2025.

Having considered the Motions, the pleadings and exhibits attached thereto, the parties' respective memoranda and exhibits attached thereto, the arguments of counsel, and other matters of record as appropriate to each respective motion, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The only allegation Kings Mountain Land Development Partners, LLC ("KMLD") made in its Complaint about the Tribe's waiver of sovereign immunity is found in Paragraph 13 of the Complaint:

This dispute arises, in part, from the Tribe's violations of easements more particularly described below and incorporated herein by reference (defined as the Stormwater Easement and Temporary Construction

Easement), in which the Tribe waived its sovereign immunity (including for all claims asserted herein) and irrevocably and unconditionally consented to the jurisdiction of this Court.

2. Three agreements are attached as exhibits to KMLD's Complaint that contain a limited waiver of the Tribe's sovereign immunity: (a) a Temporary Construction Easement Agreement, attached as Exhibit B to the Complaint (which the Complaint refers to as the "Temporary Construction Easement"), (b) an Easement Agreement, attached as Exhibit C to the Complaint (which the Complaint refers to as the "Stormwater Easement," and collectively with the Temporary Construction Easement referred to herein as the "Easements")), and (c) an Agreement of Restrictive Covenants, attached as Exhibit D to the Complaint (which the Complaint refers to as the "Covenant") (the Easements and Covenant are referred to herein collectively as "Agreements" and individually as an "Agreement").

3. Each Agreement contains a limited waiver ("Waiver") of the Tribe's sovereign immunity that states, in pertinent part:

[The Tribe] hereby expressly and irrevocably grants to each KMLD Party a limited waiver of its sovereign immunity from suit or other legal process with regard to any claim or action that is directly or indirectly related to this Agreement or any transactions contemplated hereunder, whether any such claim or action arises under law or in equity, whether arising as a matter of contract or a tort, whether seeking monetary damages, injunctive or declaratory relief or other remedies, and whether arising during or after the expiration or termination of this Agreement (each, a "Claim") and waives all defenses based thereon with respect thereto; ... (emphasis in original)

4. KMLD's Complaint does not include any allegation about the Waiver in the Covenant.

## CONCLUSIONS OF LAW

5. N.C. Gen. Stat. §1A-1, Rules 12(b)(2) and 12(c), are proper means to challenge claims on the grounds that they are barred by sovereign immunity. *Meherrin Indian Tribe v. Lewis*, 197 N.C. App. 380, 384, 677 S.E.2d 203, 207 (2009) (Rule 12(b)(2)); *The News & Observer Publishing Co. v. McCrory*, 251 N.C. App. 211, 218-19, 795 S.E.2d 243, 248 (2016) (Rule 12(c)).

6. A Waiver does not waive the Tribe's sovereign immunity unless, and only insofar as, it is clear and unequivocally expressed. *Oklahoma Tax Com'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 508 (1991); *State ex rel. Cooper v. Seneca-Cayuga Tobacco Co.*, 197 N.C. App. 176, 181-82, 676 S.E.2d 579, 584 (2009); *Welch Contracting v. N.C. Dep't of Transp.*, 175 N.C. App. 45, 55, 622 S.E.2d 691, 697 (2005).

7. The Waiver in an Agreement applies to claims that are "directly or indirectly related to" that Agreement or to "transactions contemplated [t]hereunder." The plain and ordinary meaning of the term "relate" is "to show or establish logical or causal connection between." Merriam-Webster Online Dictionary, available at <https://www.merriam-webster.com/dictionary/relate> (last visited June 2, 2025).

8. A claim does not have a logical or causal connection to an Agreement or the transactions contemplated thereunder unless it is based on the express rights or restrictions in the Agreement.

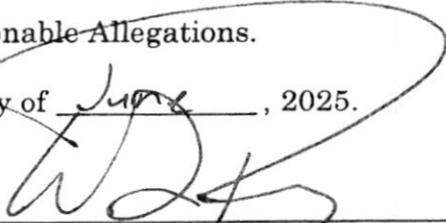
9. The allegations in Paragraphs 7, 9, 22(b), 22(c), 24, 27, 29(d), 29(f), 31-35, 38, 39, 40(e), 40(f), and 42(d) of the Complaint, insofar as they are based on the

express rights or restrictions in the Easements, are the only allegations that could provide a basis for a claim for which the Tribe has clearly and unequivocally waived its sovereign immunity under the Waiver (hereinafter, collectively, the "Actionable Allegations").

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Tribe's Motions are GRANTED and the following claims of the Complaint are hereby DISMISSED WITH PREJUDICE, in whole or in part, as specified below:

- (i) Count One for Continuing Trespass Claim Against the Tribe (Compl. ¶¶ 43-47), except to the extent this claim relies on the Actionable Allegations.
- (ii) Count Two for Recurring Trespass Claim Against the Tribe (Compl. ¶¶ 48-52), except to the extent this claim relies on the Actionable Allegations.
- (iii) Count Three for Conversion Claim Against the Tribe (Compl. ¶¶ 53-56).
- (iv) Count Six for Unfair and Deceptive Trade Practices Claim Against the Tribe (Compl. ¶¶ 64-66), except to the extent this claim relies on the Actionable Allegations.
- (v) Count Seven for Claim for Injunctive Relief (Compl. ¶¶ 67-68), except to the extent this claim relies on the Actionable Allegations.

SO ORDERED, this the 27 day of June, 2025.

  
The Honorable W. Todd Pomeroy  
Senior Resident Superior Court Judge

BY  
Cleveland County, Ohio

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FILED

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