No. COA25-1163 THIRTY-NINTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

KINGS MOUNTAIN LAND DEVELOPMENT PARTNERS, LLC, Plaintiff-Appellant, v. CATAWBA INDIAN NATION, Defendant-Appellee.	)	From Cleveland County

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DEFENDANT-APPELLEE'S RESPONSE BRIEF

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DEFENDANT-APPELLEE'S RESPONSE BRIEF

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ISSUE PRESENTED

Congress has formally recognized Catawba Indian Nation ("Catawba Nation" or "Tribe") as a sovereign nation. In 2024, the Tribe signed two easement agreements with Kings Mountain Land Development Partners, LLC ("KMLD"), both of which included limited waivers of the Tribe's sovereign immunity. Did the trial court properly reject specific allegations and claims in KMLD's complaint where the plain language of the waiver provisions did not clearly, expressly, and unequivocally waive immunity for those allegations and claims?

INTRODUCTION

This lawsuit implicates a foundational right—as a federally recognized Indian Tribe, Catawba Nation enjoys sovereign immunity from lawsuits unless that immunity is abrogated by Congress or waived by a clear and unequivocally expressed waiver by the Tribe itself. (*Accord* R pp 6, 111, 114). Catawba Nation partially waived its immunity in two easement agreements with KMLD. (R pp 30-31, 47-48). But those waivers are limited and specific. They apply only to claims related to the easements or "transactions contemplated [t]hereunder." (R pp 30, 47).[1]

KMLD ignored the terms of those limited waivers and sued the Tribe for matters plainly outside their scope. For example, KMLD claims it has the exclusive and lucrative right to build and operate a parking deck for the Tribe's new casino in Cleveland County. (*See* R pp 8-9). But nothing in the easements mentions or contemplates a parking deck, much less grants an exclusive right for KMLD to build and operate one for the Tribe's casino.

Dissatisfied now with the scope of the waivers it negotiated in the easements, KMLD seeks to rewrite and expand them through litigation to reach all of its claims and allegations in this lawsuit. (*See* R pp 134-35; Doc. Ex. 33-41, 46-54, 270). In doing so, KMLD misinterprets the language of the waivers, tramples bedrock legal principles governing the interpretation of sovereign-immunity waivers, and ultimately asks this Court to undermine the Tribe's sovereignty. The trial court

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[1] Congress has not abrogated Catawba Nation's sovereign immunity in North Carolina, and KMLD does not assert otherwise. (*See* Opening Br. p 21; R p 6).

properly rejected KMLD's effort to get more than the law allows and more than it bargained for from the Tribe, and this Court should affirm. (R p 135).

Affirming the trial court would not leave KMLD without relief. The Tribe has waived sovereign immunity for certain disputed claims in KMLD's complaint, and did not challenge those particular claims in its motions. But the remainder of KMLD's complaint is a bridge too far.

FACTS AND PROCEDURAL HISTORY

I. Factual Background.

A. KMLD attempts to take advantage of the Tribe's casino project.

Catawba Nation is a federally recognized Indian tribe that has long suffered in poverty. (R pp 6-7); *accord* 89 Fed. Reg. 99899, 99899 (Dec. 11, 2024); 89 Fed. Reg. 944-02, 945 (Jan. 8, 2024). In 2020, the Tribe received federal approval to build a permanent casino in Cleveland County on land held by the United States in trust for the Tribe ("Trust Land"). (R pp 4, 7). The temporary casino that the Tribe currently operates on that Trust Land "has been a tremendously successful economic engine that is lifting the Tribe out of poverty." (R p 7). The permanent casino likewise promises to drive the Tribe's "economic independence." (R p 4).

"For over a decade," KMLD and its affiliates have tried to take financial advantage of the Tribe's "unparalleled gaming opportunity." (R p 4). KMLD sold the land now held in trust for the Tribe's new casino, and KMLD continues to own surrounding parcels. (R pp 7-9). KMLD's parent company held "extensive discussions" with the Tribe and "made plans concerning the construction" of the

Tribe's casino until federal regulators prohibited any involvement by KMLD's parent company. (*See* R p 4).

B. KMLD and the Tribe negotiate a limited agreement for a temporary surface parking lot on one of KMLD's parcels.

After federal regulators rejected plans involving KMLD's parent, KMLD conveyed Parcel C to the Tribe for use as a surface parking lot for the temporary casino. (R pp 4-5, 7-8). The Tribe signed an Agreement of Restrictive Covenants ("Restrictive Covenant") "forbidding the construction of a multi-level parking facility ***on Parcel C***" for 25 years. (R p 5 (emphasis added); *see* R pp 8-9, 62-63). It is undisputed that this Restrictive Covenant does not prevent the Tribe from constructing a parking deck on the Trust Land. The Tribe now owns Parcel C, while KMLD owns the surrounding Parcels A, B, D, and E, and the unmarked parcel immediately west of Parcel A, as depicted below:

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(R pp 9, 25).

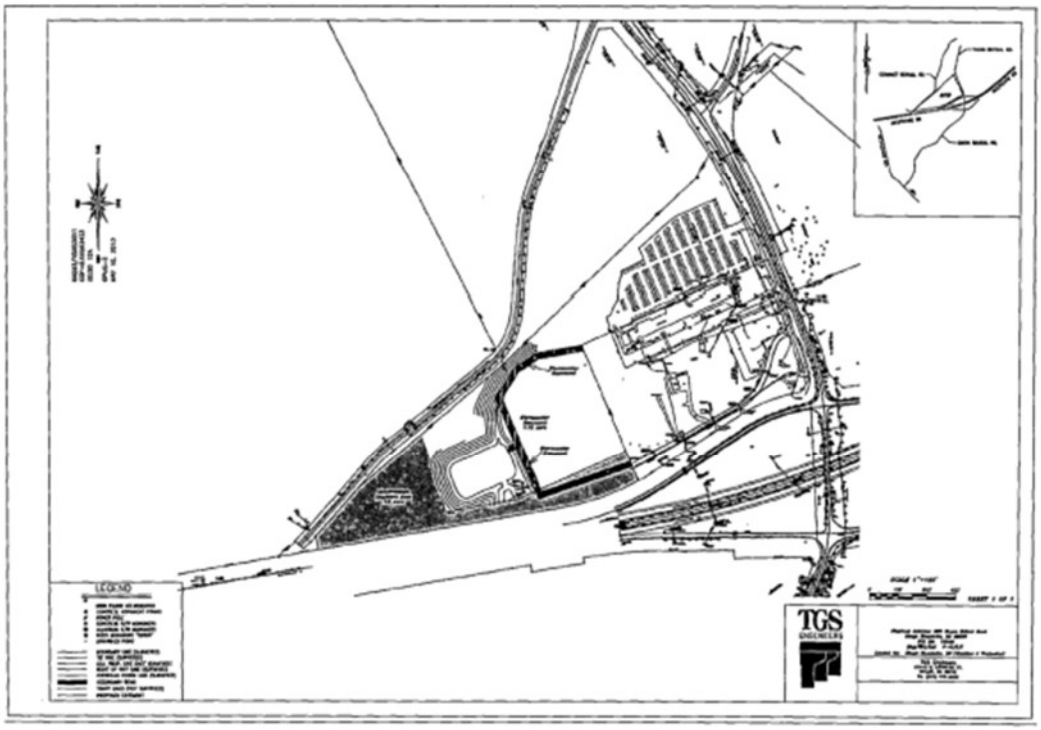
KMLD's complaint alleges that, in connection with the transfer of Parcel C, the Tribe orally stated it would "cooperate and coordinate with KMLD to permit KMLD to construct and operate a multi-level parking garage adjacent to and with access to the new casino." (R p 8). Despite multiple complex written agreements between them, KMLD further alleges that an unwritten understanding gives KMLD the ***exclusive*** right to build a parking deck for the casino "on [KMLD's] land adjacent to Parcel C." (R p 5). KMLD's parking-deck claim therefore argues that such an agreement verbally encumbered not just Parcel C owned by the Tribe, but also land held in trust for the Tribe by the United States.

C. KMLD negotiates two easement agreements that contain limited waivers of the Tribe's sovereign immunity.

On 6 February 2024, KMLD granted the Tribe a "Temporary Construction Easement" and a "Stormwater Easement"[2] (collectively, "Easements"). (R pp 8, 27-40, 42-60). The Temporary Construction Easement allows "use of a portion of the KMLD[] Parcel for construction staging and laydown areas" for the Tribe's benefit. (R pp 27-28). The following map shows the Temporary Construction Easement—the darkly shaded portion in the far corner west of Parcel A (the Construction Laydown Area), extending along the southern boundaries of Parcels A and B.

LEGAL DESCRIPTION AND DEPICTION OF EASEMENT AREA

Site Plan Depicting Easement Area



(R p 39).

[2] The parties refer to the "Stormwater Easement," which is contained in a document entitled "Easement Agreement."

KMLD separately granted the Tribe the Stormwater Easement to construct, use, and maintain stormwater facilities (*i.e.*, drainage systems) on Parcel B. (R p 44). The map above shows the Stormwater Easement as the darkly shaded C-shaped portion running approximately along the northern, western, and southern borders of Parcel B. (*Accord* R p 59). Thus, the Easements discreetly encumber only certain portions of Parcels A and B and the area west of Parcel A.

Both Easements contain, in relevant part, the same waiver of sovereign immunity:

> [The Tribe] hereby expressly and irrevocably grants to [KMLD] 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 … and waives all defenses based thereon with respect thereto.

(R pp 30, 47) (emphasis added). The parties expressly agreed that the waivers were "limited" in scope, and neither Easement mentions a parking deck.[3]

D. KMLD sues the Tribe after it announced the construction of a parking deck on the Trust Land.

In May 2024, the Tribe announced that the casino would include a parking deck on the Trust Land. (R p 9). KMLD sued the Tribe on 3 October 2024. (R pp 3-21). KMLD's complaint, as discussed below, includes allegations and claims about the

[3] The Restrictive Covenant also contains a sovereign-immunity waiver, (R pp 66-67), but KMLD cannot rely on that waiver to expand the universe of actionable claims. *See infra* Subsection II.E.

Tribe's planned parking deck, as well as other assorted activities by the Tribe's contractors—some of which are related to the Easements but many of which are not.

II. Procedural History.

The allegations and claims admittedly related to the Easements are the following: (1) building a temporary concrete plant in the Construction Laydown Area in violation of the Temporary Construction Easement, (2) failing to provide proof of insurance as required by the Temporary Construction Easement, (3) building drainage systems on Parcel B without KMLD's prior approval, (4) building part of the drainage systems outside the Stormwater Easement area on Parcel B, and (5) failing to provide proof of insurance as required by the Stormwater Easement. (*See* R pp 5, 11-18, 20; Doc. Ex. 30-32, 43-45, 59-63). Because those allegations and claims fall squarely within the Easements' limited sovereign-immunity waivers, the Tribe did not seek to dismiss them and they remain in the case for the time being. (*See* R pp 134-35; Doc. Ex. 8).

KMLD's complaint, however, went much further and made allegations unrelated to the Easements, including the following:

- That KMLD is unable to build a parking deck for the Tribe's casino (R pp 5, 8-9, 12);
- Asserting rights under an "unrelated and revocable easement" that KMLD granted in 2021, approximately three years ***before*** the Tribe's limited waivers of sovereign immunity at issue here (R p 10);
- Re-grading unencumbered Parcel D to avoid building a retaining wall on Parcel C (R p 10);

- "Grading and movement of earth throughout Parcels B, D and E"—"none of which are in the easement" (R p 14);
- Locating and operating construction equipment and dumping trash at unspecified locations "throughout KMLD property that is not subject to any easement" (R p 11, 14-15);
- Removing rocks and soil from other parts of KMLD's land and using those natural materials to generally improve Tribal land (R pp 10-14);
- Creating roads "throughout KMLD property" and using them "at will to access the Trust land and facilitate casino construction" (R p 14); and
- Generally altering KMLD's 40-acre parcel—at unspecified locations and in unspecified ways—such that KMLD lost unspecified developable land (R p 11).

(*See* Doc. Ex. 33-41, 46-54; *see also* Doc. Ex. 59-60, 246-50 (making similar assertions in discovery responses)).

KMLD's purported damages also focus on losses unrelated to the Easements, including the loss of "a viable site for a parking garage"; lost value due to "wrongful" and "extensive grading and reworking" of Parcel D and other portions of KMLD's land; "[t]he value of the soil and rocks removed" throughout KMLD's property; rental value for the Tribe's generally "wrongful use of the KMLD Tract"; and the cost of remediating allegedly unauthorized grading, drainage, and removal and relocation of soil and rocks. (R pp 16-17).

KMLD's complaint included causes of action for continuing trespass, recurring trespass, conversion "of the boulders, rocks, soil, and personal property located on the KMLD Tract," breaches of the Easements, unfair and deceptive trade practices, and injunctive relief. (R pp 18-21).

On 31 December 2024, the Tribe answered the complaint and asserted its sovereign-immunity defense. (R pp 111, 114, 121). It also asserted a counterclaim, alleging in relevant part that "KMLD agreed to certain grading/sloping on the easement abutting the … construction project that is expected to be landscaped and would be substantially more aesthetically pleasing than construction of a retaining wall." (R p 124). The Tribe further alleged that "[o]ther activities related to the use of easements and/or the lands of KMLD have benefited KMLD," including that "rock has been crushed, stored and/or removed with KMLD's consent and to their benefit." (R p 124).

On 28 March 2025, the Tribe filed a partial motion to dismiss and for judgment on the pleadings, arguing that allegations and claims not related directly or indirectly to the Easements fell outside the scope of the limited sovereign-immunity waivers. (R pp 128-31). The trial court agreed. Recognizing that "[a] Waiver does not waive the Tribe's sovereign immunity unless, and only insofar as, it is clear and unequivocally expressed," the court looked first to the plain language of the waivers. (R p 134). Those waivers were limited to claims "directly or indirectly related to [the Easements] or any transactions contemplated [t]hereunder." (R pp 133-34 (quotation omitted)). The court determined that the plain meaning of "relate" requires a "logical or causal

connection" between the alleged conduct and the Easements or their contemplated transactions, and that such connection was lacking "unless [the alleged conduct] is based on the express rights or restrictions in the [Easements]." (R p 134 (quotation omitted)).

Applying that interpretation, the court concluded that some of KMLD's allegations were unrelated to the Easements and that the Tribe had not "clearly and unequivocally waived its sovereign immunity" for them. (R pp 134-35). Accordingly, the court dismissed KMLD's conversion claim with prejudice and partially dismissed KMLD's claims for trespass, unfair and deceptive trade practices, and injunctive relief "except to the extent th[ose] claim[s] rel[y] on the Actionable Allegations." (R p 135). The court's order identified the following as Actionable Allegations: "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." (R pp 134-35).

The court did not dismiss KMLD's claims for breach of the Easements, which the Tribe did not challenge. (*See* R pp 134-35).

STANDARD OF REVIEW

When, as here, the parties submit evidence on a motion to dismiss for lack of personal jurisdiction, this Court reviews factual findings to determine whether they are supported by competent evidence in the record. *Cohen v. Cont'l Motors, Inc.*, 279 N.C. App. 123, 133-34, 864 S.E.2d 816, 823 (2021). If the evidence contradicts the allegations, the evidence controls; contrary allegations "can no longer be taken as true." *Id.* (quotation omitted); (*contra* Opening Br. p 20). Documents attached to a

complaint likewise control over contrary allegations. *See* N.C. R. Civ. P. 10(c); *Wilson v. Crab Orchard Dev. Co.*, 276 N.C. 198, 206, 171 S.E.2d 873, 878-79 (1970).

The Court reviews *de novo* a trial court's legal conclusions related to personal jurisdiction, including its decision to dismiss based on sovereign immunity, and its decision to grant a motion for judgment on the pleadings. *State ex rel. Stein v. Kinston Charter Acad.*, 379 N.C. 560, 571, 866 S.E.2d 647, 655-56 (2021); *Hughes v. Bd. of Trs. Teachers' & State Emps.' Ret. Sys.*, 296 N.C. App. 478, 486, 909 S.E.2d 697, 703 (2024); *Cohen*, 279 N.C. App. at 134, 864 S.E.2d at 823.

ARGUMENT

I. The trial court properly construed the Tribe's sovereign-immunity waivers.

The Court should affirm the trial court's order ("Order") dismissing KMLD's claims that are unrelated to the Easements. KMLD bore the burden of showing that the Tribe unequivocally waived sovereign immunity as to each claim. *See Can Am S., LLC v. State*, 234 N.C. App. 119, 125, 759 S.E.2d 304, 309 (2014); *Corbin Russwin, Inc. v. Alexander's Hardware, Inc.*, 147 N.C. App. 722, 723, 556 S.E.2d 592, 594 (2001); *Data Gen. Corp. v. Cty. of Durham*, 143 N.C. App. 97, 103-05, 545 S.E.2d 243, 247-49 (2001). It failed to carry that burden.

The Tribe waived its sovereign immunity only for claims "directly or indirectly related to" the Easements and the "transactions contemplated [t]hereunder." (R pp 30, 47). Consistent with the ordinary meaning of "relate," the trial court correctly interpreted that language to require at least some "logical or causal connection" to the Easements. (R p 134 (quotation omitted)). Applying that ordinary meaning to

KMLD's complaint, the court properly determined that KMLD fell short of its burden to show that the Tribe had expressly and unequivocally waived sovereign immunity as to each claim. (R pp 134-35).

Notably, the court did not dismiss any claim to the extent it is logically related to the Easements or the transactions they contemplate. (R p 134).[4] That decision is consistent with the plain language of the Easements, accepted canons of contract interpretation, and federal law requiring sovereign-immunity waivers to be strictly construed in favor of Indian tribes. KMLD's arguments, by contrast, are not consistent with those fundamental precepts of sovereign-immunity law. The Court should affirm.

A. An Indian tribe enjoys immunity absent a clear and unequivocally expressed waiver, strictly construed in favor of the tribe.

Federally recognized Indian tribes like Catawba Nation enjoy sovereign immunity from suit, including those arising from commercial activity. *E.g.*, *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 756-60 (1998); *State ex rel. Cooper v. Seneca-Cayuga Tobacco Co.*, 197 N.C. App. 176, 181, 676 S.E.2d 579, 584 (2009). Indeed, "[a]mong the core aspects of sovereignty that tribes possess ... is the common-law immunity from suit traditionally enjoyed by sovereign powers." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quotation omitted).

Tribal sovereign immunity is a matter of federal law and cannot be limited by the states. *Kiowa Tribe*, 523 U.S. at 756. Immunity can be limited only by an act of

[4] The court dismissed the entirety of the conversion claim because it is wholly unrelated to either Easement.

Congress or a clear waiver from the tribe. *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991); *Seneca-Cayuga Tobacco*, 197 N.C. App. at 181, 676 S.E.2d at 583.

A waiver of tribal sovereign immunity cannot be implied, such as from entering a contract. *Welch Contracting, Inc. v. N.C. Dep't of Transp.*, 175 N.C. App. 45, 55, 622 S.E.2d 691, 697 (2005). Instead, it must be "unequivocally expressed." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978); *accord Seneca-Cayuga Tobacco*, 197 N.C. App. at 181-82, 676 S.E.2d at 583-84.

Any erosion of immunity, moreover, is strictly interpreted in favor of the tribe. *Seneca-Cayuga Tribe of Okla. v. Okla. ex rel. Thompson*, 874 F.2d 709, 715 (10th Cir. 1989) ("It has long been settled law that retained tribal sovereign immunity is co-extensive with that of the United States … [and that] waivers of sovereign immunity are strictly construed."); *see Welch Contracting*, 175 N.C. App. at 54-55, 622 S.E.2d at 696-97; *accord Lane v. Pena*, 518 U.S. 187, 192 (1996) ("[A] waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign."). Indeed, "if [the relevant provision] can reasonably be construed as the Tribe would have it construed, it *must* be construed that way." *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1445 (D.C. Cir. 1988) (emphasis in original).

B. The trial court correctly construed the Tribe's "limited" waivers in favor of the Tribe and dismissed any claim that fell outside that reasonable construction.

The waivers that KMLD negotiated with the Tribe were not unlimited. (R pp 30-31, 47-48). Those waivers apply only to a "claim or action that is directly or

indirectly related to [the Easements] or any transactions contemplated [t]hereunder." (R pp 30, 47).

Unlike traditional contract construction, when interpreting the plain meaning of a tribal waiver, the trial court is not required to reconcile the parties' competing interpretations or determine what the parties originally intended. Federal law requires a court to strictly construe the waiver in favor of the tribe. *See, e.g.*, *Muscogee (Creek) Nation*, 851 F.2d at 1445. The operative question here is whether ***the Tribe's*** interpretation is reasonable. So long as it is, the Court's inquiry is complete. *Id.*

The Tribe argued that "related to" required a logical or causal connection to the Easements or the transactions contemplated thereunder. (Doc. Ex. 17-18, 270; T p 17). The trial court agreed. (R p 134). That interpretation was correct as a matter of law. At minimum, it was reasonable. Either way, the trial court did not err.

1. The trial court correctly interpreted "related to" according to its ordinary meaning.

The trial court's construction of the waivers is entirely supported by applicable dictionary definitions. The phrase "related to" establishes a bounded scope. It includes only things "connected by reason of an established or discoverable relation." "Related," *Merriam-Webster Online Dictionary*, *available at* https://www.merriam-webster.com/dictionary/related (last visited 24 Feb. 2026); *accord Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001); *see N.C. Farm Bureau Mut. Ins. Co., Inc. v. Martin ex rel. Martin*, 376 N.C. 280, 287-88, 851 S.E.2d 891, 896 (2020) (relying on the *Merriam-Webster Collegiate Dictionary* to define a contractual term).

The North Carolina Supreme Court itself has construed that phrase to include a "logical connection." *In re N.C. Pesticide Board File Nos. IR94-128, IR94-151, IR94-155*, 349 N.C. 656, 671-72, 509 S.E.2d 165, 175-76 (1998). The United States Supreme Court has likewise concluded that two things are "related to" each other when they are "logically connected." *Turner v. Safley*, 482 U.S. 78, 89, 91-92, 97-98 (1987). Other courts have reasonably relied on the same definition. *E.g.*, *In re Remicade (Direct Purchaser) Antitrust Litig.*, 938 F.3d 515, 524 (3d Cir. 2019) (interpreting "'relating to' … to mean … hav[ing] 'some logical or causal connection'" (quotation omitted)); *John Wyeth & Bro. Ltd. v. CIGNA Int'l Corp.*, 119 F.3d 1070, 1074 (3d Cir. 1997) (Alito, J.) (interpreting "in relation to" as the equivalent of "related to," which means having "some 'logical or causal connection'" (quoting *Webster's Third New International Dictionary*, 1916 (1971)). The trial court here did not err in reaching the same reasonable conclusion.[5]

Opposing that conclusion, KMLD insists that the trial court's construction of the waiver language "conflicts with appellate precedent" that "*does not* require a causal connection." (Opening Br. pp 25-29 (emphasis in original)). This argument misconstrues the Order, which concluded that "related to" requires "a logical ***or*** causal connection." (R p 134 (emphasis added)). As explained, the trial court's

[5] Any complaint by KMLD about minor grammatical differences between "relate" as a transitive verb instead of "related" as an adjective is a trivial point. (Opening Br. p 24). *See Combs v. Paul*, 200 N.C. 382, 157 S.E. 12, 12-13 (1931) (per curiam) (explaining that orders "will not be set aside for harmless error, or for mere error and no more").

determination that "related to" includes either a "logical or causal connection" is consistent with the plain meaning of the phrase and is a reasonable construction.

KMLD cannot manufacture error through its own narrow focus on ***only half*** of the trial court's actual definition. KMLD's reliance on cases rejecting a causal connection is therefore misplaced. (Opening Br. pp 25-29). Ultimately, KMLD's misplaced focus on a definition that includes a causal connection is academic because the relevant question is whether a "logical connection" is a reasonable definition of "related to." It is. *See Turner*, 482 U.S. at 91-92, 97-98; *In re N.C. Pesticide Board*, 349 N.C. at 671-72, 509 S.E.2d at 175-76. The trial court therefore correctly concluded that "related to" requires a "logical ***or*** causal connection," and this Court should affirm.[6]

KMLD's reliance on *AQuate II LLC v. Myers*, 100 F.4th 1316 (11th Cir. 2024), is equally misplaced. (Opening Br. pp 27-28, 37-38). The waiver in *AQuate* expressly applied to all claims related to an ***entire*** government program, and the plaintiff's claims arose from the tribe's participation in that very program. *AQuate*, 100 F.4th at 1320. The tribe therefore waived immunity for those claims. KMLD asks for a comparable result here, but it does not have a comparably broad waiver. It seeks a waiver that applies to the ***entire*** casino construction project (Opening Br. pp 34, 40)—

[6] Even though the trial court did not impose a causal-connection requirement for the definition of "related to" here, it is worth noting that KMLD's trial court brief argued that the waiver language did require a causal connection. (Doc. Ex. 180 (arguing that "directly or indirectly" covers "all causes that *contributed* to an injury") (emphasis in original)). KMLD has now argued both sides of this point.

which is far broader than the actual "limited" waiver language that KMLD bargained for here.

2. The trial court correctly applied canons of construction for tribal waivers of immunity.

The trial court did not err when clarifying that a claim must be "based on the express rights or restrictions in the [Easements]" to have "a logical or causal connection" to them. (R p 134; *contra* Opening Br. pp 29-32). However "broad" the ordinary meaning of "related to" may be, (*see* Opening Br. pp 27-28), its reach is not infinite. "[T]he existence of a tangential or incidental connection" does not suffice. *City of Asheville v. State*, 369 N.C. 80, 102, 794 S.E.2d 759, 775-76 (2016). "At some point, … a logical connection may be too tenuous reasonably to be called a relationship, and the rule of restrictive reading of broad language would come into play." *Gregory v. Home Ins. Co.*, 876 F.2d 602, 606 (7th Cir. 1989); *accord Happel v. Guilford Cty. Bd. of Educ.*, 387 N.C. 186, 205, 913 S.E.2d 174, 191 (2025) ("The literalist interpretation defendants urge us to adopt today defies even the broad scope of the statutory text."); *see also Highwoods Props., Inc. v. Exec. Risk Indem., Inc.*, 407 F.3d 917, 924 (8th Cir. 2005) ("[A] term … may be ambiguous if the facts fall on the margins of a broad reading.").

In *In re Northwest Child Development Centers, Inc.*, for example, a use restriction in a deed required the defendant to use the property for a day care and "'related purposes.'" 633 B.R. 145, 156 (Bankr. M.D.N.C. 2021). The defendant argued that it complied with that restriction because it used the property to store equipment and technology for a childcare facility in a neighboring county. *Id.* at 159. The court

rejected that argument. *Id.* Although "the ordinary meaning of 'related' can be extensive, courts have held that definition does not extend ad infinitum." *Id.* at 158. "[S]toring equipment, for use at a separate child day care facility *in a different county*," was "*at best*, a 'tangential or incidental connection.'" *Id.* at 159 (quoting *City of Asheville*, 369 N.C. at 102, 794 S.E.2d at 775-76) (emphases in original). Construing the use restriction to include such an attenuated connection "would stretch the meaning of 'related purposes' beyond reason and lead to unusual and unjust results." *Id.* (quotation omitted).

Those same limiting principles apply here. Indeed, they are particularly applicable in the context of a waiver of tribal immunity, which ***must*** be clear, unequivocally expressed, and strictly construed in favor of the Tribe.

Interpreting "related to" to require only a "logical or causal" connection was not enough to delineate the boundaries of the waivers. "[I]f the standard can be satisfied by nothing more than a '*logical* connection' … , it is virtually meaningless." *Turner*, 482 U.S. at 100 (Stevens, J., concurring in part and dissenting in part) (emphasis in original); *see Egelhoff*, 532 U.S. at 147 ("Acknowledging that 'connection with' is scarcely more restrictive than 'relate to,' we have cautioned against an uncritical literalism that would make [the object of those phrases] turn on infinite connections." (quotations omitted)). Accordingly, in order to determine the proper boundaries of the waivers, the court needed to determine what the claims should logically be related or connected "to." The court reasonably decided the connection needed to be the "express rights and restrictions" in the Easements, *i.e.*, the terms of

the Easements themselves. Otherwise, the claims and allegations would be too "tangential or incidental." *City of Asheville*, 369 N.C. at 102, 794 S.E.2d at 775-76.

Tethering the connection to the "express rights or restrictions" in the very Easements in which the parties chose to place the waivers prevents them from becoming "virtually meaningless," *Turner*, 482 U.S. at 100—and this construction certainly comports with the legal requirement that a waiver of tribal immunity must be clear, unequivocally expressed, and strictly construed in favor of the tribe. The trial court's construction therefore correctly separates those claims that are related to the Easements from those that are related only to something else, such as the parking deck or the general casino construction project. *See also infra* Subsection II.B (discussing the distinction between Easement claims and casino-construction claims).

KMLD complains that the "express rights or restrictions" language "nullifies the waiver provisions' express statement that they cover tort claims." (Opening Br. p 31). That argument is meritless. The Order expressly ***preserves*** KMLD's tort claims—including its claim for unfair and deceptive trade practices—to the extent they fall within the reasonable scope of the waivers. (R pp 134-35). But as the law requires, the Order strictly construed the waivers in favor of the Tribe and dismissed KMLD's tort claims to the extent they were unrelated to the rights and restrictions in the Easements, and thus too tangential or incidental.

Equally meritless is KMLD's argument that the "express rights or restrictions" language in the Order nullifies the "any transactions contemplated hereunder" language in the waivers. (*See* Opening Br. p 31). Once more, the Order expressly

recognized such claims, but they too must be tethered to the express rights or restrictions in the Easements themselves: "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." (R p 134 (emphasis added)). The Tribe did not waive its sovereign immunity for claims that are wholly disconnected from the express rights and restrictions in the Easements, because such claims cannot fairly be said to be "related to" the Easements in which the parties placed the waivers or to transactions contemplated thereunder.

The trial court's construction of "related to" also did not, as KMLD argues, obviate the waivers' "directly or indirectly" language or impermissibly insert words into the parties' agreements. (Opening Br. pp 30-31). For example, a claim that the Tribe built part of the stormwater system outside the easement area is directly related to the rights and restrictions of the Stormwater Easement, which specifies where the system may be built. A claim that the Tribe damaged KMLD's non-easement property while conducting permitted activities on Easement property is indirectly related to the rights and restrictions of the Easements. The Order preserves both. The court merely interpreted the plain language of the waivers and applied the appropriate limiting principles that the law requires for tribal waivers of immunity. Such a reasonable approach was not error.

In a final effort to preserve its overbroad construction of the waiver language, KMLD suggests that the language is ambiguous, and that "all ambiguities must be resolved in the plaintiff's favor." (Opening Br. p 22). That argument ignores the

unique nature of sovereign immunity. *See Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) ("[T]he standard principles of statutory construction do not have their usual force in cases involving Indian law."). Again, waiver of tribal immunity must be clear, and unequivocally expressed. *E.g.*, *Okla. Tax Comm'n*, 498 U.S. at 509; *Santa Clara Pueblo*, 436 U.S. at 59. Moreover, such waivers are strictly construed ***in favor of the sovereign.*** *See, e.g.*, *Lane*, 518 U.S. at 192. A material ambiguity in the waivers "must be resolved in favor of [tribal] immunity," and is therefore fatal to KMLD's case. *Meyers v. Oneida Tribe of Indians of Wisc.*, 836 F.3d 818, 827 (7th Cir. 2016); *accord Blackfeet Tribe*, 471 U.S. at 766; *Bank of Okla. v. Muscogee (Creek) Nation*, 972 F.2d 1166, 1171 (10th Cir. 1992). By even making this argument, KMLD implicitly concedes that it cannot win on appeal if the Court applies the correct canon of construction for tribal waivers of immunity.

In short, the trial court's construction of the Tribe's limited waivers—excluding certain specific allegations and claims in KMLD's complaint—is a reasonable one. And since the relevant provision here "can reasonably be construed as the Tribe would have it construed, it *must* be construed that way." *Muscogee (Creek) Nation*, 851 F.2d at 1445 (emphasis in original). The Court should affirm.

II. The trial court properly identified the claims to be dismissed.

Applying its reasonable construction of the Tribe's waivers, the trial court properly dismissed some of KMLD's claims as barred by sovereign immunity.

A. KMLD's complaint is overbroad.

The Tribe acknowledges that it has waived sovereign immunity as to those specific allegations and claims identified by the Order that relate to the Easements

and to the narrow range of activities they contemplate. (*Accord* R p 134; Doc. Ex. 30-32, 43-45). But the remainder of KMLD's complaint asserts claims for "numerous other wrongful actions" that fall outside the Tribe's limited waivers and therefore are barred. (R p 13).

The most prominent example of KMLD's attempt to reach beyond the clear and unequivocally expressed waivers is its unfair and deceptive trade practice claim arising out of the Tribe's decision to build a parking deck on the Trust Land. KMLD broadly complains that because the Tribe is building a parking deck for the casino on the unencumbered Trust Land, KMLD is unable to build a financially viable parking deck on its land. (*See* R pp 5, 8-9, 12; Opening Br. pp 11, 14, 39-40). But those complaints are unrelated to the Easements or the transactions contemplated thereunder. Nowhere do the Easements even discuss a parking deck. (*See* R pp 27-40, 42-60). Their silence on that point speaks volumes. KMLD says it wanted to build a parking deck on Parcel B, where the Stormwater Easement is located. (Doc. Ex. 247-48). It could have referenced any agreement about the deck in that Easement. But it did not. Instead, KMLD's parking-deck complaints are based on a vague and unwritten "mutual understanding" between the parties. (R p 5).

In addition to having a statute of frauds problem,[7] there is no allegation that such "mutual understanding" included a waiver of the Tribe's sovereign immunity. This is fatal to KMLD's claim. Perhaps recognizing that fatal deficiency, KMLD asks

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[7] *See Moore v. Shore*, 206 N.C. 699, 175 S.E. 117, 118 (1934) (explaining that restrictive covenants, easements, or other "interest[s] in land" are subject to the statute of frauds).

the courts to solve it by expanding sovereign-immunity waivers that do not mention a parking deck. The Court should decline KMLD's invitation to relieve it of the bargain it struck in the Easements.

KMLD nevertheless asserts that the parking deck is related to the Easements because the Tribe's alleged "oral misrepresentations" about the parking deck "induced KMLD to execute the easements and convey Parcel C to the Tribe." (Opening Br. p 39). Once again, KMLD is wrong for several reasons.

First, its argument contradicts the plain language of the Easements. Nothing in those documents states that a right to build a parking deck was a condition that ***KMLD*** placed on the Easements or the transfer of Parcel C. Rather, ***the Tribe*** required ***the Easements*** as a condition of its purchase of Parcel C. (R p 27 ("[A]s a condition to [the Tribe's] acquisition of Parcel C from KMLD[], [the Tribe] required that the Parties sign this Agreement."); R p 42 (similar)). The Easements expressly show that the reason for them had nothing to do with a parking deck, much less a parking deck on the Trust Land.

Second, KMLD's argument that the Tribe's alleged misrepresentations induced the Easements and the transfer of Parcel C also is undermined by the plain language of the Restrictive Covenant. That document explains that the "covenants, restrictions and conditions" set forth therein were "a material condition" of the transfer of Parcel C. (R p 62). The Restrictive Covenant even says that KMLD "would not convey [Parcel C] to the Tribe but for the restrictions now being placed against [Parcel C]." (R p 62). Critically, however, the Covenant goes no further. It says

nothing about KMLD's conveyance of Parcel C being conditioned on any mutual understanding that KMLD has the exclusive right to build a parking deck for the casino. Nor does it prohibit the Tribe from building a parking deck on the Trust Land or any other parcel besides Parcel C. (*See* R pp 62-70).

Third, even assuming the Tribe made the oral representation alleged in the complaint, that still would not give rise to an actionable claim because the parking deck does not relate to the Easements. Nothing in the Easements references building a parking deck for the casino. Nor do the Easements contemplate it. And they certainly do not address the gravamen of KMLD's claim—that a parking deck on its property is not financially viable if the Tribe builds one on the Trust Land. KMLD cannot expand the Tribe's limited waivers in the Easements to reach an oral representation and a speculative financial loss wholly unrelated to the rights and restrictions in the Easements or the transactions they contemplate.

Beyond the parking deck, the complaint contains other allegations and claims unrelated to the Easements. (*See* R pp 134-35; Doc. Ex. 33-41, 46-54). In fact, the complaint concedes that KMLD's claims "arise[], ***in part***, from the Tribe's violations of [the] easements." (R p 6 (emphasis added); *accord* R pp 5-6, 13, 19, 21). KMLD's conversion claim, for example, is expressly directed to the Tribe's alleged interference with KMLD's ability to "exercis[e] its ownership rights over KMLD's boulders, rocks, and soil, which the Tribe has converted for the Tribe's use"—conduct plainly outside of the Easements. (R p 19; *accord* Doc. Ex. 60). Such overbreadth exceeds the scope of the Tribe's limited waivers, and the trial court properly rejected it.

B. The Tribe did not waive sovereign immunity as to all claims related to construction of the casino.

KMLD next insists that its dismissed claims fall within the Tribe's waivers because the claims relate to "the construction of the casino." (Opening Br. pp 34-36, 38, 40). To be sure, KMLD could have negotiated precisely that language. The waivers could have expressly and unequivocally extended to "construction of the casino." To be enforceable, federal law demands such an unequivocal expression of a waiver. *E.g.*, *Santa Clara Pueblo*, 436 U.S. at 58-59 ("It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed." (quotation omitted)). But the waivers here do not contain that language.

The self-described "limited" waivers in the Easements instead expressly and unequivocally waived the Tribe's sovereign immunity only for claims "directly or indirectly related to [the Easements] or any transactions contemplated [t]hereunder." (R pp 30, 47). KMLD did not bargain for a waiver provision that more broadly waived any claims related to "construction of the casino." It cannot now obtain by litigation what it chose not to bargain for in the plain language of the Easements.

Undeterred, KMLD asserts that "[f]acilitating the Tribe's construction of the casino," and ensuring that its property rights were protected during construction, "was the reason why KMLD granted the easements" in the first place. (Opening Br. pp 34, 36). So, the "logic" continues, construction of the casino must be a "transaction contemplated by" the Easements and for which the Tribe waived its immunity. (Opening Br. pp 4-5, 34, 36, 38, 40).

Whatever transactions ***KMLD*** contemplated, however, are irrelevant. Under the plain language of the waivers, the operative question is what transactions ***the Easements*** contemplate. On that, the answer is clear. At its most fundamental level, a "transaction" is "something transacted, *especially*: a business deal." *See* "Transaction," *Merriam-Webster Online Dictionary*, *available at* https://www.merriam-webster.com/dictionary/transaction (last visited 24 Feb. 2026) (providing the "Kids Definition") (emphasis in original). It is "an exchange or transfer of goods, services, or funds" or "a communicative action or activity involving two parties or things that reciprocally affect or influence each other." *Id.* (providing the more complex definitions). "Hereunder," moreover, means "under or in accordance with this writing or document." *See* "Hereunder," *Merriam-Webster Online Dictionary*, *available at* https://www.merriam-webster.com/dictionary/hereunder (last visited 24 Feb. 2026).

No reasonable interpretation of the waiver language would lead to a conclusion that casino construction is somehow "under or in accordance with" the Easements. The Easements pertain to specific, ancillary activities that are incidental to the overall casino construction project. That project is not part of the Easements. KMLD's argument that "transactions contemplated hereunder" means "casino construction" is therefore absurdly incongruous. To conclude otherwise would be to construe the waiver provision ***against*** the Tribe, which is contrary to the law. *E.g.*, *Muscogee (Creek) Nation*, 851 F.2d at 1445.[8]

[8] Well-settled law relieves the Court of any need to reconcile the parties' competing interpretations of "transactions." The Tribe offers at least one reasonable

That "the very name of one of the easements is a Temporary *Construction* Easement Agreement" also does not save KMLD's claims. (Opening Br. p 34 (emphasis in original)). The construction activities contemplated under that Easement are limited, as specified therein. The heading logically refers to those limited construction activities, not to construction of the entire casino. In any event, debate over the header's implicit meaning is an immaterial distraction. First, "Courts are not … bound by the description that the parties have given a relationship," and a party "cannot, by giving a name to [a contract], change its legal effect." *Atl. Contracting & Material Co., Inc. v. Adcock*, 161 N.C. App. 273, 276-77, 588 S.E.2d 36, 39 (2003). And second, nowhere is that more true than in the context of a tribal-immunity waiver, where it must be clear and unequivocally expressed, rather than implied by the mere title of the document. *See, e.g., Santa Clara Pueblo*, 436 U.S. at 58-59 (waivers of tribal immunity may not be implied).

Equally unavailing is KMLD's argument that the Tribe's alleged misconduct is "sequentially and temporally connected with the easement agreements," and therefore related to them. (Opening Br. p 35). Not every connection creates a relation. *See City of Asheville*, 369 N.C. at 102, 794 S.E.2d at 775-76. "[T]angential or incidental" ones do not suffice. *Id.* But interpreting "related to" to require nothing more than a temporal or sequential nexus would encompass claims that the Tribe has not clearly, expressly, and unequivocally waived, *i.e.*, any claim that merely post-

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construction. To the extent KMLD offers a different one, (Opening Br. pp 4-5, 34, 36, 38, 40), the law requires the application of the Tribe's construction. *See Muscogee (Creek) Nation*, 851 F.2d at 1445.

dates the commencement of the casino construction. The Court should reject that overbroad construction.

C. KMLD cannot expand the waivers by negative implication.

KMLD also tries to expand the waiver provisions by negative implication. KMLD argues that every activity on its land that is not authorized by the Easements is a violation of the Easements and therefore falls within the waivers. (Opening Br. pp 33-34). KMLD's overbreadth again renders its arguments illogical.

The Easements address only a narrow range of activities. The Temporary Construction Easement permits a Construction Laydown Area to the west of Parcel A for "construction staging, including operations trailer, storage, and laydown areas." (R p 28).[9] The Stormwater Easement permits the Tribe to construct, use, and maintain drainage systems on Parcel B. (R pp 44-45).[10] The Tribe expressly waived immunity for claims related to the narrow activities identified in those Easements, on specific portions of KMLD's land. (R pp 30, 47). But the Easements do not, as KMLD's negative-implication argument suggests, somehow operate as governing documents for the casino project itself or for KMLD's land as a whole. Accordingly,

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[9] KMLD appears to assert that, because the Temporary Construction Easement authorized a laydown yard west of Parcel A, any construction equipment parked anywhere else on KMLD's land, no matter how far removed from the laydown yard, must be a violation related to the Easement. (*See, e.g.*, R pp 11-14; Opening Br. pp 33-34, 41-42).

[10] KMLD appears to assert that, because the Stormwater Easement authorizes construction of drainage systems in a specific area of Parcel B, the Tribe's alleged regrading of other parts of Parcel B, as well as Parcel D, Parcel E, and other unspecified and unencumbered portions of KMLD's property, must be a violation related to the Easement. (*See, e.g.*, R pp 10-11, 14; Opening Br. pp 33-34).

the Tribe did not by negative implication waive immunity for all claims related to casino construction or KMLD's land.

KMLD's negative-implication argument fails for another, fundamental reason: a waiver of tribal sovereign immunity cannot be implied—it must be unequivocally expressed. And even then, the waiver must be construed in favor of the sovereign. *See supra* Subsection I.A. Interpreting the waivers to permit claims for every conceivable activity the Easements implicitly do not authorize, rather than for the limited range of activities they expressly do authorize, violates those bedrock principles.

D. Catawba Nation did not admit that every construction activity falls within the Easement waivers.

Contrary to KMLD's argument, nowhere has the Tribe "implicitly admitted" that every construction activity falls within the waiver provisions of the Easements. (Opening Br. pp 35-36). In its counterclaim, the Tribe purportedly alleged that "grading/sloping on the easement abutting the construction project" is "related to the use of [the] easements." (Opening Br. p 35 (quotations and alteration omitted)). That allegation, says KMLD, demonstrates that grading and sloping broadly fall within the Tribe's waivers. That argument is curious. The counterclaim addresses "certain grading/sloping ***on the easement***." (R p 124 (emphasis added)). Clearly, that is related to an Easement. Acknowledging that obvious point does not somehow concede that all other grading and sloping, no matter its location, is also related to the Easements.

Nor has the Tribe conceded that "the removal of rocks" is "related to the use of [the] easements." (Opening Br. pp 35-36 (quotation omitted)). In an effort to show

otherwise, KMLD misquotes the counterclaim. What the Tribe actually alleged is the following: "Other activities related to the use of [the] easements ***and/or the lands of KMLD*** have benefitted KMLD. For example … rock has been crushed, stored and/or removed." (R p 124 (emphasis added)). Removal of rocks is related to KMLD's land, but the Tribe has not conceded that it is related to the use of the Easements. Like its effort to rewrite the waiver language to create waivers where none exist, KMLD cannot rewrite the Tribe's counterclaim to manufacture an "admission" where none exists. (Opening Br. p 36).

E. KMLD cannot expand the universe of actionable claims based on a waiver in the Restrictive Covenant.

KMLD argues that its unfair trade practices claim, based on an oral representation that burdens the Trust Land, falls within the waiver of the Restrictive Covenant. (Opening Br. pp 38-40). The Restrictive Covenant, by its terms, only prohibits the Tribe from building a parking deck on Parcel C. (Opening Br. pp 2-3, 13-14). The Restrictive Covenant contains the same waiver language as the Easements. (R pp 66-67). But "KMLD's complaint does not include ***any*** allegation about the Waiver in the [Restrictive] Covenant." (R p 133 (emphasis added)). The only waivers KMLD alleges are those in the Easements. (*See* R p 6). That failure matters. As this Court has explained, if a complaint does not "specifically allege[] a waiver of governmental immunity," it fails to state a cause of action. *See Can Am*, 234 N.C. App. at 125, 759 S.E.2d at 309. Consequently, KMLD cannot rely on the waiver in the Restrictive Covenant to expand the universe of claims at issue. And in any event, a claim purportedly based on an oral representation burdening the Trust Land is no

more related to the written Restrictive Covenant burdening only Parcel C than it is to the Easements.

F. KMLD's unfounded fear that the waivers are too narrow does not justify expanding them through litigation.

In an effort to manufacture a basis for reversal, KMLD also exaggerates that affirmance "would … leave KMLD with no meaningful" remedies against the Tribe for its tort claims. (Opening Br. pp 19-20, 37). That is untrue. The Tribe moved only for a partial dismissal, recognizing that some claims were not barred, and the trial court expressly ***preserved*** portions of KMLD's claims for trespass, unfair and deceptive trade practices, and injunctive relief. (R pp 134-35). In fact, in its overreaching effort to assign error—akin to its overbroad effort to assert claims against the Tribe—KMLD complains that the trial court dismissed claims that the Order expressly did not. (*See* Opening Br. pp 38-42).

To be sure, claims are not actionable merely because they relate to KMLD's land or construction of the casino. Many aspects of KMLD's tort claims are barred under a proper reading of the waivers. (*See* R pp 134-35; Opening Br. pp 37-38). But that is neither the Tribe's fault nor a basis for expanding the waivers. Courts do not have a "roving license, in even ordinary cases of [contract] interpretation, to disregard clear language simply on the view that … [the parties] must have intended something broader." *Bay Mills*, 572 U.S. at 794 (quotation omitted). That is particularly true "when the consequence would be to expand an abrogation of immunity," which can only be clearly, expressly, and unequivocally waived. *Id.* In the end, KMLD and the Tribe "wrote the [agreement they] wrote—meaning, a [waiver] going so far and no

further." *Id.* (quotation omitted). KMLD cannot expand it through litigation by complaining that, in retrospect, the waiver does not go as far as KMLD would like.

That conclusion, KMLD asserts, "would defy common sense" because "it is not obvious what other language could have been employed to cover [its claims] if 'related to' were not enough." (Opening Br. pp 37-38 (quotations omitted)). Not so. KMLD could have negotiated a waiver that clearly, expressly, and unequivocally applied to any claim related to the Tribe, or the casino, or construction of the casino, or KMLD's parcels, or a parking deck, or improvements to the Trust Land. (*See, e.g.*, Doc. Ex. 270). But it did not. KMLD negotiated a "limited" waiver that applies only to claims related to the Easements and the transactions they contemplate. That is the language the Court must apply. *See Bay Mills*, 572 U.S. at 793-94.

"And the resulting world, when considered functionally, is not nearly so enigmatic as [KMLD] suggests." *Id.* at 795 (quotation and alteration omitted); (*see* Opening Br. p 38). KMLD can still pursue the contract, tort, and injunctive claims that fall within the waivers. But at the same time, it is restricted to the limited waivers it obtained. Those waivers do not extend to a parking deck, general casino construction, or anything other than the Easements and the "transactions contemplated [t]hereunder." The trial court therefore properly dismissed such claims.

CONCLUSION

As the plaintiff, KMLD bore the burden of alleging and proving that the Tribe clearly, expressly, and unequivocally waived sovereign immunity and that personal jurisdiction existed with respect to each claim. The trial court correctly determined that KMLD had failed to do so. In reaching that conclusion, the trial court properly

interpreted the Tribe's "limited" waivers according to their ordinary meaning, canons of contract interpretation, and long-established federal precedent that requires strict construction in favor of Indian tribes. Because many of KMLD's allegations and claims are unrelated to the Easements and the transactions they contemplate, and thus fall outside the scope of the Tribe's limited waivers, the trial court properly dismissed them.

The trial court's decision does not foreclose all relief. Portions of KMLD's tort (except conversion), contract, and injunctive claims remain live. Affirming the trial court's decision therefore achieves a just and legally correct outcome. KMLD still may pursue relief for alleged misconduct that falls within the waivers it negotiated, while simultaneously honoring the immunity that the Tribe—as a federally recognized sovereign—enjoys for the remainder. For these reasons, the Court should affirm the Order granting the Tribe's partial motion to dismiss and for judgment on the pleadings.

POSITION REGARDING ORAL ARGUMENT

Given the paramount importance of tribal sovereign immunity, the Tribe respectfully requests oral argument if the Court believes it would be helpful.

Respectfully submitted, this 24th day of February, 2026.

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N.C. R. App. P. 33(b) Certification:
I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Defendant-Appellee certifies that the foregoing Response Brief contains less than 8,750 words (excluding the cover, caption, index, table of authorities, signature block, certificate of service, and this certificate of compliance) as reported by the word-processing software.

This the 24th day of February, 2026.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, L.L.P.

By: Electronically Submitted
Michael W. Mitchell

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served by email on the following counsel of record:

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CONTENTS OF APPENDIX

Excerpts from June 11, 2025 Motion to Dismiss Hearing…….App. 1

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NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

****

KINGS MOUNTAIN LAND DEVELOPMENT PARTNERS, LLC,	)	CLEVELAND COUNTY
	)	24-CVS-1660
Plaintiff,	)	
v.	)	
	)	
CATAWBA INDIAN NATION,	)	
	)	
Defendant.	)	

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TRANSCRIPT, Volume 1 of 1

Pages 1 - 55

Wednesday, June 11, 2025

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June 9, 2025, Civil Session

Honorable W. Todd Pomeroy, Presiding Judge

Motion to Dismiss

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re-briefs that have been submitted by the parties. So I am familiar factually with what the case involves and I'm also familiar with the arguments.

That being said, I want you to introduce your case to me like I haven't read those things. So you can highlight what you believe is important from a factual standpoint as we go through these motions and you make your legal arguments.

So I believe probably the best place to start would be on the motion to dismiss by the defendant.

Mr. Mitchell --

MR. MITCHELL: Yes, Your Honor.

THE COURT: -- you're presenting that argument?

MR. MITCHELL: Yes, Your Honor.

Your Honor, if I could, I would like to hand up a notebook that has got some materials in it.

THE COURT: Yes, sir.

MR. MITCHELL: And it's got some exhibits in it that I would like to discuss with the Court.

May I approach, Your Honor?

THE COURT: Yes, sir.

MR. MITCHELL: I think everything that I would want to discuss with the Court is in that notebook. So I don't think I will need the blowups. So if you all wouldn't mind taking those down while I do my argument, I would

By its plain language this waiver applies to claims related to this agreement, an easement for a construction laydown area next to parcel A. It is not a general waiver for claims relating to any of KMLD's property or to anything involving the construction of the casino, but that is how they would have you interpret it.

The language "directly or indirectly related," we have both briefed what that means, Your Honor. We have provided you with a Webster's Dictionary definition of that that has been used by other courts that says that there must be some sort of causal connection between the temporary construction easement or the use of an easement area and the claims that are being asserted. At a minimum the violation or harm must be connected to the easement itself. A claim cannot be independent of this easement and yet rely on the waiver provision in the easement to save the claim.

"Relate," Your Honor, using Webster's Dictionary, is to show or establish logical or causal connection between or to have relationship or connection. KMLD in their briefing on page 11 of their opening brief seems to agree with this causal interpretation because they define "directly or indirectly" to mean that use of the easement covers all causes that contributed to an injury.

We agree that some allegations and claims in the complaint fall within that waiver: The building of an

THE COURT: I will pull them up, too. I will pull them up online. I'm a -- I like paper, but on my case law I like them online. Then I can -- I can go through and save them myself. So no worries on that. All right.

MR. FULLER: Thank you.

MR. MITCHELL: Thank you.

(This matter was recessed at 3:37 p.m.)

END OF VOLUME 1.

CERTIFICATE

I, Donna T. Chandler, RMR, CRR, the officer before whom the foregoing proceeding was taken, do hereby certify that said proceedings of June 11, 2025, consisting of pages 1 through 54 inclusive, is a true, correct, and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action, this the 15th day of October, 2025.



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