IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1163

Filed 18 November 2026

Cleveland County, No. 24CVS001660-220

KINGS MOUNTAIN LAND DEVELOPMENT PARTNERS, LLC, Plaintiff/Counterclaim-Defendant,

v.

CATAWBA INDIAN NATION, Defendant/Counterclaim-Plaintiff.

Appeal by Plaintiff/Counterclaim-Defendant from Order entered 9 July 2025 by Judge W. Todd Pomeroy in Cleveland County Superior Court. Heard in the Court of Appeals 2 June 2026.

Robinson, Bradshaw & Hinson, P.A., by Robert W. Fuller, Erik R. Zimmerman, and Kevin R. Crandall; Teddy, Meekins & Talbert, P.L.L.C., by Will Meekins; and Wyatt & Blake, LLP by James F. Wyatt, III, and Robert A. Blake, Jr., for Plaintiff/Counterclaim-Defendant Appellant.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Michael W. Mitchell, Jang H. Jo, and C. Michael Anderson; Carroll Law Offices, P.A., by Dioné Carroll, for Defendant/Counterclaim-Plaintiff Appellee.

HAMPSON, Judge.

Factual and Procedural Background

Kings Mountain Land Development Partners, LLC (Plaintiff) appeals from an Order granting Catawba Indian Nation's (Defendant) Partial Motion to Dismiss and for Judgment on the Pleadings. The Record before us—including the factual

allegations made in Plaintiff's Complaint, which we treat as true solely for the purposes of this appeal—tends to reflect the following:

Plaintiff owned approximately 67 acres of land in Cleveland County, North Carolina. In 2018, Defendant bought a 17-acre parcel from Plaintiff (the Trust Land). The United States government took title to this parcel in trust for Defendant's benefit. The rest of the land remained in Plaintiff's possession.

In 2020, Defendant obtained federal approval to build a casino on the Trust Land. In July 2021, Defendant opened a temporary casino on the Trust Land. Plaintiff and Defendant had planned to build a new casino together, but the National Indian Gaming Commission did not approve those plans. Instead, Plaintiff and Defendant entered into a "Payment Agreement" to compensate Plaintiff for use of the surrounding land and Plaintiff's efforts to help establish Defendant's casino.

After the Payment Agreement's terms were finalized, Defendant refused to honor the agreement and pay Plaintiff unless Plaintiff agreed to sell to the Tribe a 9.4 acre tract of land immediately north of the Trust Land. Plaintiff conveyed this tract to Defendant for use as a surface parking lot for the temporary casino. The parties entered into an "Agreement of Restrictive Covenants" whereby Defendant agreed to refrain from building a "parking structure and/or parking garage[ ]" on this tract of land for twenty-five years. Plaintiff planned to construct a multi-level parking garage on a piece of adjacent property.

In connection to the sale of this additional tract of land, the parties entered into a "Temporary Construction Easement Agreement" and a separate "Easement Agreement." The Temporary Construction Easement Agreement gave Defendant limited access to parts of Plaintiff's land for certain construction activities. The Easement Agreement also granted Defendant an easement for access to Plaintiff's land for certain construction activities, including access to install utilities and a stormwater system—with prior notice and subject to Plaintiff's approval.

The Agreement of Restrictive Covenants, Temporary Construction Easement Agreement, and Easement Agreement[1] each contain a provision entitled "Limited Waiver of Sovereign Immunity" (the Waivers). This clause provides, in relevant part, Defendant will grant Plaintiff a limited waiver of its sovereign immunity from suit with regard "to any claim or action that is directly or indirectly related to [the] Agreement or any transactions contemplated hereunder":

> [Defendant], on behalf of itself, each of its affiliates, and any of their respective successors and assigns (each, a "Tribal Party"), hereby expressly and irrevocably grants to [Plaintiff] 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; provided

[1] These three Agreements are referred to collectively throughout this opinion as "the Agreements."

> that such limited waiver of sovereign immunity: (a) is limited in duration to the statute of limitations provided under the laws of the State of North Carolina . . . (b) is granted solely to [Plaintiff]; and (c) shall in no event permit recourse against [certain assets].[2]

In July 2024, after an inspection of the construction site, Plaintiff sent Defendant a cease-and-desist letter, asking Defendant to stop certain activities. Specifically, Plaintiff asserted Defendant had used Plaintiff's land without regard for property lines and easement boundaries; stored construction materials, equipment, trash, and debris on Plaintiff's land; created unauthorized roads on Plaintiff's land, parked on that land, and generally used the land at will; ran multiple dump trucks taking rock and earth from Plaintiff's land and used it for construction on Defendant's land; graded and moved earth throughout Plaintiff's land; and impermissibly built a generator station and fuel dump on Plaintiff's land. In other words, Plaintiff accused Defendant of trespassing and violating the terms of each of the three Agreements.

On 3 October 2024, Plaintiff filed a Complaint against Defendant alleging claims for Continuing Trespass, Recurring Trespass, Conversion, Breach of Stormwater Easement, Breach of Temporary Construction Easement, Unfair and Deceptive Trade Practices, and for Injunctive Relief.

[2] There are slight variations in the Waivers in each Agreement. However, none of the variations are material to the present appeal or affect our analysis—the language setting forth the scope of the Waivers is identical across the three Agreements. The portion of the Waiver reproduced here is taken from the Temporary Construction Easement Agreement.

On 31 December 2024, Defendant filed an Answer asserting, among other things, the trial court lacked jurisdiction over "one or more claims" in the Complaint because Defendant possessed sovereign immunity. Defendant also asserted a Counterclaim for Unjust Enrichment.

On 28 March 2025, Defendant filed a Partial Motion to Dismiss and for Judgment on the Pleadings. Specifically, Defendant moved to dismiss Plaintiff's Complaint for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure and moved for judgment on the pleadings pursuant to Rule 12(c) as to each of Plaintiff's claims except for the two claims pertaining to the Easements. Defendant argued these claims were barred by its sovereign immunity "except to the extent the claims relate directly or indirectly to the easements . . . and fall within [Defendant's] narrow, limited waiver of sovereign immunity contained therein."

A hearing on Defendant's Motion was held on 11 June 2025. Defendant argued Plaintiff's claims were barred by its sovereign immunity. Plaintiff argued its claims fell within the Waivers contained in each of the Agreements.

On 9 July 2025, the trial court entered an Order dismissing each of Plaintiff's claims, in whole or in part, except for its claims pertaining to the easements. In the Order, the trial court defined "relate," as used in the Waivers, as: "to show or establish logical or causal connection between." The trial court concluded a claim does not have a logical or causal connection to an Agreement or to the transactions contemplated

under that Agreement unless the claim is "based on the express rights or restrictions in the Agreement." The trial court defined any claim falling within these parameters as an "Actionable Allegation"—that is, "allegations that could provide a basis for a claim for which [Defendant] has clearly and unequivocally waived its sovereign immunity under the Waiver[s.]"

The trial court determined only eighteen allegations in Plaintiff's Complaint presented facts that could be considered Actionable Allegations. Following this reasoning, the trial court wholly dismissed Plaintiff's claim for Conversion with prejudice and each of the other claims "except to the extent [a claim] relies on the Actionable Allegations."

Plaintiff timely filed Notice of Appeal on 11 July 2025.

Appellate Jurisdiction

"An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). Generally, there is no right to appeal from an interlocutory order. *Id.* (citations omitted). However, a party may appeal an interlocutory order "where delaying the appeal will irreparably impair a substantial right of the party." *Hudson-Cole Dev. Corp. v. Beemer*, 132 N.C. App. 341, 344, 511 S.E.2d 309, 311 (1999) (citation omitted).

The Order at bar is interlocutory because it dismisses Plaintiff's Complaint only in part. *See Veazey*, 231 N.C. at 361-62, 57 S.E.2d at 381 (citations omitted). Plaintiff presents three grounds under which it argues we have jurisdiction over its appeal: because (1) it is a ruling on sovereign immunity, (2) it is an adverse ruling on personal jurisdiction, and (3) it creates a risk of inconsistent verdicts.

In *Moore v. Evans*, this Court stated, "when the moving party claims sovereign, absolute or qualified immunity, the denial of a motion for summary judgment is immediately appealable." 124 N.C. App. 35, 39, 476 S.E.2d 415, 420 (1996) (citations omitted). This Court subsequently held the same is true in appeals arising out of the grant of summary judgment. *See Greene v. Barrick*, 198 N.C. App. 647, 650, 680 S.E.2d 727, 729-30 (2009) ("Even though this case involves the grant, rather than the denial of sovereign immunity, we believe the same type of issues are called into question by the appeal, and therefore, plaintiff's appeal is properly before this Court." (citing *Moore*, 124 N.C. App. at 39, 476 S.E.2d at 420)). More recently, this Court, in an opinion authored by Judge (now Justice) Dietz, stated: "[O]ur Court has held that the *grant* of a motion to dismiss based on sovereign or governmental immunity is immediately appealable." *Ballard v. Shelley*, 257 N.C. App. 561, 564, 811 S.E.2d 603, 605 (2018) (emphasis in original) (first citing *Greene*, 198 N.C. App. at 649-50, 680 S.E.2d at 720-30, and then citing *Odom v. Lane*, 161 N.C. App. 534, 535, 588 S.E.2d 548, 549 (2003)).

The dissenting opinion is concerned it is "non-sensical" for Plaintiff to assert a claim of substantial right based upon sovereign immunity to obtain immediate appellate review when the immunity belongs to Defendant. Nevertheless, that is the right the plaintiffs asserted in *Ballard*. In that case, which involved a dispute between individual plaintiffs and Cabarrus County over an issue with a fence built on the individual plaintiffs' property, the trial court dismissed the individual plaintiffs' claims on the basis Cabarrus County possessed governmental immunity. 257 N.C. App. at 562-63, 811 S.E.2d at 604-05. This Court allowed the individual plaintiffs' appeal despite its interlocutory nature because it affected a substantial right based on the County's immunity. *Id.* at 564, 811 S.E.2d at 605-06.

Moreover, we can find no authority indicating we should treat the present appeal differently because it is concerned with tribal sovereign immunity instead of local governmental immunity. *See id.* at 564, 811 S.E.2d at 605 (stating governmental immunity is "a form of" sovereign immunity). To the contrary, the *Ballard* Court stated a grant of a motion to dismiss "based on sovereign *or* governmental immunity is immediately appealable." *Id.* at 564, 811 S.E.2d at 605 (emphasis added) (citations omitted). Thus, we are bound to hold Plaintiff's interlocutory appeal is permissible.[3] *See id.* at 564, 811 S.E.2d at 606 ("Because one panel of this Court cannot overrule another, we are bound to hold that the [plaintiffs']

[3] Because we conclude we have appellate jurisdiction on this ground, we do not address Plaintiff's other arguments regarding our jurisdiction over the appeal.

interlocutory appeal on this issue is permissible."); *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 36 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." (citations omitted)).

Issue

The dispositive issue on appeal is whether the Order is sufficient to permit appellate review of the trial court's determination Plaintiff's claims for Conversion, Trespass, Unfair and Deceptive Trade Practices, and Injunctive Relief do not fall, in whole or in part, within the Waivers.

Analysis

"This Court reviews a grant of a motion for judgment on the pleadings *de novo*." *Hughes v. Bd. of Trs. Tchrs.' and State Emps.' Ret. Sys.*, 296 N.C. App. 478, 486, 909 S.E.2d 697, 703 (2024) (citing *Carpenter v. Carpenter*, 189 N.C. App. 755, 757, 659 S.E.2d 762, 764 (2008)). " 'Judgment on the pleadings, pursuant to Rule 12(c), is appropriate when all the material allegations of fact are admitted in the pleadings and only questions of law remain.' " *Id.* at 485, 909 S.E.2d at 703 (quoting *Groves v. Cmty. Hous. Corp. of Haywood Cnty.*, 144 N.C. App. 79, 87, 548 S.E.2d 535, 540 (2001)). " 'All well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as

false.' " *Id.* (quoting *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974)).

Moreover, we review "a trial court's decision to grant or deny a motion to dismiss based upon the doctrine of sovereign immunity using a de novo standard of review." *State ex rel. Stein v. Kinston Charter Acad.*, 379 N.C. 560, 571, 866 S.E.2d 647, 655-56 (2021) (citing *White v. Trew*, 366 N.C. 360, 362-63, 736 S.E.2d 166 (2013)).

"[T]ribal immunity is a matter of federal law and is not subject to diminution by the States." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 756, 118 S. Ct. 1700, 1703, 140 L. Ed. 2d 981 (1998) (citations omitted). "As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Id.* at 754, 118 S. Ct. at 1702 (citations omitted).

"Suits against Indian tribes are . . . barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509, 111 S. Ct. 905, 909, 112 L. Ed. 2d 1112 (1991) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S. Ct. 1670, 1677, 56 L. Ed. 2d 106 (1978)); *see also Welch Contracting, Inc. v. N.C. Dep't of Transp.*, 175 N.C. App. 45, 54, 622 S.E.2d 691, 696 (2005) ("An Indian tribe . . . is subject to suit only where Congress has authorized the suit or the tribe has expressly and unequivocally waived its tribal sovereign immunity." (citations omitted)). In the present case, the Agreements contain a "limited" waiver of Defendant's sovereign immunity. The Waivers specify Defendant agrees to waive its sovereign immunity

with regard "to any claim or action that is directly or indirectly related to [the] Agreement or any transactions contemplated hereunder[.]" Neither party argues the Waivers are not enforceable. Rather, Plaintiff contends the trial court erred in interpreting the scope of the Waivers.

" 'North Carolina law requires a court to interpret a contract by examining its language for indications of the parties' intent at the moment of execution.' "[4] *Advisor Law, LLC v. Holland*, _ N.C. App. _, _, 927 S.E.2d 39, 43 (2026) (quoting *Fairview Devs., Inc. v. Miller*, 187 N.C. App. 168, 171, 652 S.E.2d 365, 367 (2007)). " 'If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract.' " *Id.* (quoting *Walton v. City of Raleigh*, 342 N.C. 879, 881, 467 S.E.2d 410, 411 (1996)). " 'This intention is to be gathered from the entire instrument,

[4] Defendant, citing *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439 (D.C. Cir. 1988), argues "[f]ederal law requires a court to strictly construe the waiver in favor of the tribe." In that case, the Court stated: " 'Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.' " 851 F.2d at 1444-45 (brackets omitted) (quoting *Montana v. Blackfeet Tr. of Indians*, 471 U.S. 759, 766, 105 S. Ct. 2399, 2403, 85 L. Ed. 2d 753 (1985)). However, in the present case, we are concerned with issues of contract interpretation—not statutory construction—and we are not interpreting ambiguous provisions.

Moreover, in *Montana v. Blackfeet Tribe of Indians*, the Supreme Court of the United States explained: "the standard principles of statutory construction do not have their usual force in cases involving Indian law. . . . [T]he canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and the Indians." 471 U.S. at 766, 105 S. Ct. at 2403. But in the present case, we are faced with a series of Agreements Defendant entered into with Plaintiff, a private actor—not the State or federal government. *Cf. Choate v. Trapp*, 224 U.S. 665, 675, 32 S. Ct. 565, 569, 56 L. Ed. 2d 941 (1912) ("[T]ax exemptions are strictly construed . . . [b]ut in the *government's* dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal[.]" (emphasis added)).

Defendant has not produced any authority showing different principles of review apply to this Court's review of an express contractual waiver of liability entered into with a private actor. Nor has our research returned any such case. Accordingly, our review in this case is conducted in accordance with State law principles of contract interpretation.

viewing it from its four corners.' " *Id.* (quoting *Jones v. Palace Realty Co.*, 226 N.C. 303, 305, 37 S.E.2d 906, 907 (1946)). " 'When interpreting a contract, the Court should presume that the words of the agreement were deliberately selected and be given their plain meaning.' " *Id.* (quoting *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 385 N.C. 250, 267, 891 S.E.2d 100, 114 (2023)). "If 'only one reasonable interpretation exists, the courts must enforce the contract as written; they may not, under the guise of construing an ambiguous term, rewrite the contract . . . .' " *Id.* (alteration in original) (quoting *Woods v. Nationwide Mut. Ins. Co.*, 295 N.C. 500, 506, 246 S.E.2d 773, 777 (1978)).

Here, as the trial court found, the Waivers provide, in relevant part:

> [Defendant], on behalf of itself, each of its affiliates, and any of their respective successors and assigns (each, a "Tribal Party"), hereby expressly and irrevocably grants to [Plaintiff] 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; . . . .

Based on the Waivers, the trial court concluded:

> 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 [Defendant] has clearly and unequivocally waived its sovereign immunity under the Waiver (hereinafter, collectively, the "Actionable Allegations").

There is no support for the trial court's Conclusion "[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." Specifically, nothing in the plain language of the Waivers says anything about a claim needing to be "based on the express rights or restrictions in the Agreement." Rather, the Waivers simply provide a claim falls within the provision if it is "directly or indirectly related to this Agreement or any transactions contemplated hereunder[.]" *See Hodgin v. Brighton*, 196 N.C. App. 126, 128, 674 S.E.2d 444, 446 (2009) ("Where the language of a contract is plain and unambiguous, the construction of the agreement is a matter of law; and the court may *not* . . . *insert words into it*, but must construe the contract as written, in the light of the undisputed evidence as to the custom, usage, and meaning of its terms." (emphasis added) (citation omitted)).

Using the trial court's definition of "relate[d]," a claim falls within the Waivers if it "directly or indirectly has a logical or casual connection to an Agreement." However, although the trial court acknowledged the "Waiver in an Agreement applies to claims that are 'directly or indirectly related to' that Agreement[,]" it did not specifically address this language and did not consider what it means for a claim to be "directly" or "indirectly" related to an Agreement. Nor did the trial court explain how, or if, a claim related to a "transaction contemplated hereunder" differs from a claim which is related to an Agreement itself.

Moreover, the Order dismisses Plaintiff's claims for Continuing Trespass, Recurring Trespass, Unfair and Deceptive Trade Practices, and Injunctive Relief only "to the extent" any of these claims "rel[y] on the Actionable Allegations."[5] It is possible that one or all of these claims could partially or wholly rely on the Actionable Allegations. As such, the trial court's Order does not actually decide the central question at issue: what claims, if any, fall within the Waivers.

"[W]hen reviewing a matter de novo, the reviewing court considers the matter anew and freely substitutes its own judgment for that of the lower courts." *Savage v. N.C. Dep't of Transp.*, 388 N.C. 196, 200, 919 S.E.2d 144, 147 (2025) (citation and quotation marks omitted). Here, because the Order does not contain Findings of Fact and Conclusions of Law addressing the meaning of "directly or indirectly" or what

[5] The only claim the Order fully dismisses is Plaintiff's claim for Conversion.

constitutes a "transaction contemplated hereunder," "[a]t this point the Court is not in a position to determine whether plaintiff['s] last salvo hit its mark or not." *Krantz v. Owens*, 168 N.C. App. 384, 391, 607 S.E.2d 337, 342 (2005); *see also Parker v. Glosson*, 182 N.C. App. 229, 231, 641 S.E.2d 735, 737 (2007) (" 'The word *de novo* means fresh or anew; *for a second time*[.]' " (emphasis added) (internal quotation marks omitted) (quoting *In re Reassignment of Hayes*, 261 N.C. 616, 622, 135 S.E.2d 645, 649 (1964)).

Importantly, the parties on appeal present arguments about the trial court's interpretation of the term "indirectly" and "transactions contemplated hereunder." But the fact of the matter is the trial court did not address these issues. These questions are more properly left to the trial court, not this Court, to decide in the first instance. We should not conduct a de novo review of questions the trial court has simply not yet addressed. *See Finley Forest Condominium Ass'n v. Perry*, 163 N.C. App. 735, 738, 594 S.E.2d 227, 230 (2004) ("This Court is unable to review the issue . . . since there is nothing before this Court indicating the trial court's ruling on the question." (citing N.C. R. App. P. 10(b)(1) (2003))); *Crews v. Paysour*, 261 N.C. App. 557, 565, 821 S.E.2d 469, 474 (2018) (remand was appropriate for trial court to address counterclaim party raised but trial court "did not address . . . at all"); *McKnight v. Cagle*, 76 N.C. App. 59, 66, 331 S.E.2d 707, 712 (1985) (remanding "for resolution of plaintiff's claim" where the trial court's findings of fact did not address issues central to the claim); *see also* N.C. R. App. P. 10(a)(1) ("In order to preserve an

issue for appellate review, a party must . . . obtain a ruling upon the party's request, objection, or motion.").

Thus, we vacate the Order and remand this matter to the trial court for it to interpret the complete language of the Waivers and expressly determine which, if any, of Plaintiff's claims are barred by Defendant's sovereign immunity. In doing so, the trial court should consider what it means for a claim to be "directly or indirectly related to" the Agreements and/or whether such claims are related to "any transactions contemplated [t]hereunder."

Conclusion

Accordingly, for the foregoing reasons, we vacate the Order on Defendant's Partial Motion to Dismiss and for Judgment on the Pleadings and remand this matter to the trial court for further proceedings. The trial court may, in its discretion, elect to allow further argument on remand at the Judgment on the Pleadings stage or allow additional discovery and proceedings for the matter to advance to Summary Judgment.

VACATED AND REMANDED.

Chief Judge DILLON concurs.

Judge TYSON concurs in part and dissents in part by separate opinion.

TYSON, Judge, concurring in part, dissenting in part.

I fully concur with the majority opinion's conclusion: "The Order at bar is interlocutory because it dismisses Plaintiff's Complaint only in part. *See Veazey*, 231 N.C. at 361-62, 57 S.E.2d at 381."

The trial court properly defined the express restriction of "related to" as used in the "limited" waivers as: "to show or establish logical or causal connection between" and concluded a claim does not have a logical or causal connection to an Agreement or to the transactions contemplated under that Agreement unless "based on the express rights or restrictions in the Agreement."

The trial court properly dismissed Plaintiff's tort and statutory claims, except for its claims "related to" the easements and entered an Order on 9 July 2025. The trial court's order is presumed to be correct, and Plaintiff bears the burden to show both error and prejudice on appeal. The appeal is clearly interlocutory, and Plaintiff has not demonstrated a substantial right or risk of inconsistent verdicts to warrant immediate review. I respectfully dissent.

I. Sovereign Immunity of the Tribe

Federally recognized Indian tribes are sovereign nations and governments. Their existence predates the Constitution of the United States. The tribes retain inherent powers of nationhood and self-governance, which have not been extinguished or abrogated. *See United States v. Mazurie*, 419 U.S. 544, 557, 42 L. Ed.

2d 706, 716-17 (1975) ("Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory . . . they are a separate people possessing the power of regulating their internal and social relations . . . ." (citations and internal quotation marks omitted).

One power retained by the tribe is immunity from suit. Sovereign immunity is not merely an affirmative defense to claims, it is a "complete immunity from being sued in court." *Magana v. Charlotte-Mecklenburg Bd. of Educ.*, 183 N.C. App. 146, 147, 645 S.E.2d 91, 92 (2007). "Suits against Indian tribes are . . . barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509, 112 L. Ed. 2d 1112, 1119 (1991). The Supreme Court of the United States re-affirmed the baseline rule in *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 791, 188 L. Ed. 2d 1071, 1084 (2014). A tribe is subject to suit only when Congress has authorized it *or* the tribe has clearly waived immunity. *Id.* The Court held an Indian tribe's sovereign immunity can only be revoked by Congress. *Id.* at 803-04, 188 L. Ed. 2d at 1092-93.

The Indian Gaming Regulatory Act ("IGRA") provides if certain requirements are met, including a compact between the state and the tribe, an Indian tribe can lawfully operate a casino on Indian lands. 25 U.S.C. § 2701 (2024) *et seq*. Lands

bought with funds from a congressionally established trust are sovereign Indian lands. *See* 25 U.S.C. § 5108 *et seq*. (2024).

The Supreme Court's decision in *Kiowa Tribe of Okla. v. Manufacturing Technologies* extended an Indian tribe's sovereign immunity to lawsuits arising out of the tribe's commercial activity. 523 U.S. 751, 760, 140 L. Ed. 2d 981, 988 (1998). The issue before the Court in *Kiowa Tribe of Okla.* was whether Indian tribes can be sued in state courts for breaches of contract involving off-reservation commercial conduct. *Id.* at 754, 140 L. Ed. 2d at 984-85.

Under the IGRA, Class III gaming is conducted under an effective tribal-state compact. 25 U.S.C. § 2710 (2024). Contracts with tribal entities sometimes include waiver provisions. A well-drafted contract specifies whether the tribe has waived immunity for contract disputes, which court has jurisdiction, and what remedies are available. If the contract does not address these questions, a claimant, as here, may find itself without a forum, even if the purported breach is clear. *See id.* Any waiver of sovereign immunity is strictly construed and a potential claimant against the tribe must identify a valid waiver or abrogation before suing. *See Guthrie v. State Ports Authority*, 307 N.C. 522, 537-38, 299 S.E.2d 618, 627 (1983) (citations omitted).

Waivers must be clear and specific, and courts will not infer a waiver from a tribe's general conduct or participation in commercial activity. In *C & L Enterprises, Inc. v. Citizen Band Potawatomi Tribe of Oklahoma*, the Supreme Court of the United

States found a waiver where the tribe had agreed to binding arbitration and enforcement of the award in court. 532 U.S. 411, 423, 149 L. Ed. 2d 623, 634 (2001).

Tribes may expressly and partially waive immunity in specific and narrow circumstances and for specific purposes. Sovereign immunity remains in place for any claims not specifically waived. Before a tribe can be sued, a claimant must identify an express waiver of immunity, which covers its claim. If no or a limited waiver exists, the purported lawsuit, as here, is properly dismissed, not because of lack of a claim on the merits, but because the court lacks jurisdiction to hear it. *Id.*

II. Interlocutory Appeal

Plaintiff filed this action against Defendant for trespass, conversion, unfair and deceptive trade practices, injunctive relief, and breach of the easement agreements. Defendant filed a partial motion to dismiss and for judgment on the pleadings under Rules 12(b)(2) and 12(c). N.C. Gen. Stat. § 1A-1, Rules 12(b)(2) and 12(c) (2025). Defendant sought dismissal of all of Plaintiff's claims, except the breach of easement claims, based upon its asserted right of sovereign immunity. The trial court dismissed the conversion claim in full. It dismissed the claims for trespass, unfair and deceptive trade practices, and injunctive relief, except to the extent those claims are "based on the express rights or restrictions" in the agreements. Defendant filed a counterclaim for unjust enrichment, which also remains pending before the trial court.

TYSON, J., concurring in part, dissenting in part.

We all agree: "The Order at bar is interlocutory because it dismisses Plaintiff's Complaint only in part." *Veazey v. Durham*, 231 N.C. 354, 362, 57 S.E.2d 377, 382 (1950) (citation omitted). Interlocutory orders are generally not immediately appealable in order to prevent fragmentary and premature appeals, which unnecessarily delay the administration of justice. *Id.*

Nevertheless, "[a]n interlocutory appeal is ordinarily permissible . . . if (1) the trial court certified the order under Rule 54(b) of the Rules of Civil Procedure, or (2) the order affects a substantial right that would be lost without immediate review." *Boyd v. Robeson Cty.*, 169 N.C. App. 460, 464, 621 S.E.2d 1, 4, *disc. review denied*, 359 N.C. 629, 615 S.E.2d 866 (2005). The order before us is not certified by the trial court as immediately appealable under Rule 54(b). N.C. Gen. Stat. § 1A-1, Rule 54(b) (2025).

Plaintiff argues the order dismissing its claims is immediately appealable because (1) it is a ruling on sovereign immunity, (2) it is an adverse ruling on personal jurisdiction, and (3) it creates a risk of inconsistent verdicts. The majority's opinion relies on *Ballard v. Shelley*, 257 N.C. App. 561, 564, 811 S.E.2d 603, 605-06 (2018) and holds the order is immediately appealable because it is based upon sovereign immunity to dismiss Plaintiff's claims. This is a case of an independent and sovereign nation's immunity, not of local governmental immunity. *See id.* I disagree with the majority's assertion *Ballard* mandates immediate review of this admitted and clearly

interlocutory appeal.

The burden rests upon the appellant to "demonstrate that the challenged order deprives the appellant of a substantial right that will clearly be lost or irremediably adversely affected if the order is not review[ed] before final judgment." *Smith v. Polsky*, 251 N.C. App. 589, 595, 796 S.E.2d 354, 359 (2017) (citation and quotation marks omitted). This Court takes a "restricted view of the 'substantial right' exception to the general rule prohibiting immediate appeals from interlocutory orders." *Blackwelder v. Dept. of Human Resources*, 60 N.C. App. 331, 334, 299 S.E.2d 777, 780 (1983).

Here, Plaintiff is the party seeking review of the dismissal of its claims based upon *Defendant's sovereign immunity*. However, the non-appealing party, who holds immunity, is Defendant. It is non-sensical for Plaintiff to assert a claim of substantial right based upon sovereign immunity to obtain immediate appellate review when the immunity is not Plaintiff's substantial right.

In other words, the right to an immediate appeal is rooted in a substantial right, sovereign immunity from suit, that the non-immune party does not have. Sovereign immunity is not merely an affirmative defense to claims, it is a "complete immunity from being sued in court," belonging *solely* to the sovereign. *Magana,* 183 N.C. App. at 147, 645 S.E.2d at 92.

Plaintiff has not asserted any Rule 54(b) certification that the interlocutory order is immediately appealable. Plaintiff has not shown any substantial right would be lost or a risk of inconsistent verdicts unless the Order is reviewed immediately. In addition to Plaintiff's "related to" contract claims, Defendant's Counterclaim for unjust enrichment remains before the trial court. I vote this interlocutory appeal is properly dismissed. *Veazey*, 231 N.C. at 361-62, 57 S.E.2d at 381.

III. Disputed Waivers

Defendant's Answer was filed on 31 December 2024 and asserted, *inter alia,* the trial court lacked jurisdiction over "one or more claims" in the Complaint because Defendant possessed sovereign immunity. Defendant filed a Partial Motion to Dismiss and for Judgment on the Pleadings on 28 March 2025. Defendant argued the court lacked jurisdiction pursuant to Rule 12(b)(2) and moved for judgment on the pleadings pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure on all Plaintiff's claims, except for the two claims arising under the easements.

Defendant argued "except to the extent the claims relate directly or indirectly to the easements . . . and fall within [Defendant's] narrow, limited waiver of sovereign immunity contained therein," those claims were barred by the tribe's sovereign immunity. The trial court correctly defined the express restriction of "related to" as used in the limited waivers as "to show or establish logical or causal connection between" Plaintiff's claims and the three Agreements. It properly concluded a claim

does not have a "logical or causal connection" to an Agreement or to the transactions contemplated under that Agreement unless it is "based on the express rights or restrictions in the Agreement[s]."

The court defined any claim falling within these parameters as an "Actionable Allegation": allegations, which "could provide a basis for a claim for which [Defendant] has clearly and unequivocally waived its sovereign immunity under the Waiver[s.]"

In the light most favorable to the non- moving party, the trial court found and concluded eighteen allegations in Plaintiff's Complaint presented and pleaded facts that could be considered "Actionable Allegations." Plaintiff's claim for conversion and each of the other tort claims were dismissed with prejudice "except to the extent [a claim] relies on the Actionable Allegations." The trial court dismissed each of Plaintiff's claims, except for its claims "related to" the easements and entered an Order on 9 July 2025.

Courts interpret waivers of sovereign immunity narrowly. *See Guthrie*, 307 N.C. at 537-38, 299 S.E.2d at 627. If ambiguity exists over whether a waiver covers a particular claim, the presumption of sovereignty favors immunity. If the waiver specifies tribal court and a claimant sues in state court, the case gets dismissed. If the waiver covers contracts or agreements, as here, and Plaintiffs are suing in tort, they are properly dismissed out of court.

The specific language of the waiver matters enormously. A general statement that the tribe "consents to suit" should specify the forum, the claims covered, or the remedies available. Tribal contracts, as here, provide clear waiver provisions and counterparties should ensure they understand what and to the extent waiver provisions actually provide.

IV. Tribal Enterprises and Subdivisions

Defendant bought a 17-acre parcel from Plaintiff, and the United States government took title to this parcel in trust for Defendant's benefit in 2018 ("the Trust Land"). Lands bought with funds from a congressionally established trust are sovereign Indian lands. 25 U.S.C. § 5108 *et seq.* (2024). None of the three agreements or easements before us restrict Defendant's use of this sovereign property.

The trial court properly concluded a claim is barred by sovereign immunity because they did not have a logical or causal connection to an Agreement at issue, or to the transactions contemplated under that Agreement(s) and their limited waivers, unless the claim is "based on the express rights or restrictions in the Agreement." The trial court defined any claim falling within these parameters as an "Actionable Allegation"—that is, "allegations that could provide a basis for a claim for which [Defendant] has clearly and unequivocally waived its sovereign immunity under the Waiver[s.]"

The trial court determined Plaintiff's Complaint presented eighteen allegations of "Actionable Allegations." The trial court properly determined Plaintiff's tort claims for conversion, trespass, unfair and deceptive trade practices, and injunctive relief did not fall, within the "related to" provisions of the "limited Waivers" of sovereign immunity. Presuming Defendant's purported breach of the Agreements and even an egregious breach of contract, under the limited contract waivers, Plaintiff has not shown the limited waivers of the Tribe's immunity allows it to assert tort liability or Chapter 75 unfair and deceptive trade practices liability to revive Plaintiff's dismissed claims.

V. Conclusion

We all agree Plaintiff's appeal is interlocutory. Several claims by both parties remain pending before the trial court. Plaintiff is not a sovereign, who can assert immunity from suit, has not carried its burden to show a right to immediate appellate review, or error or prejudice in the trial court's Order. This interlocutory appeal is properly dismissed. I respectfully dissent.