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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PLAINTIFF-APPELLANT'S REPLY BRIEF

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INTRODUCTION

The Tribe says that KMLD has tried to "take advantage" of the Tribe's casino project. Tribe Br. 3. But if not for KMLD, the Tribe would not even *have* a casino project. Among other things, KMLD sold the Tribe the land for the casino itself and granted the Tribe easements on KMLD's remaining land so the Tribe could build the casino. (R pp 7-8)

How has the Tribe repaid KMLD? By trampling KMLD's property rights and deceiving KMLD, all to expedite casino construction to boost the Tribe's bottom line. (R pp 3, 5, 9-11, 13-18; Doc. Ex. 246) It is thus *the Tribe* that has taken advantage of KMLD. This appeal asks whether the Tribe can do so with impunity.

It cannot. In the parties' agreements, the Tribe waived its sovereign immunity for "any" claims that are "directly or indirectly related to" the agreements or to "any" transactions contemplated under them, including tort claims. (R pp 6, 30-31, 47-48, 66-67) Under applicable dictionary definitions and controlling precedent, those waivers sweep broadly: They cover all claims that have some connection, even an indirect one, to the parties' agreements or the transactions the agreements contemplate.

KMLD Br. 21-32. Those connections exist for all of KMLD's claims in this case. *Id.* at 32-43.

The trial court, however, erroneously narrowed the waivers to claims that are "based on the express rights or restrictions in the Agreement[s]." (R p 134) The Tribe's defense of that holding fails. It cites no authority that has ever interpreted "related to" to mean "based on the express rights or restrictions in," let alone any authority that has interpreted "*indirectly* related to" so narrowly. Nor does the Tribe rebut KMLD's showing that the trial court violated bedrock rules of contract interpretation by nullifying multiple parts of the waivers at issue.

When the court applied its erroneous interpretation of the waivers, it gutted KMLD's case. The court dismissed KMLD's claims for the Tribe's most damaging conduct—such as sloping and regrading of KMLD's property that caused the loss of substantial developable land—and allowed KMLD to pursue only a small subset of its claims and damages. KMLD Br. 19-20. Because the waivers as written cover all of KMLD's claims, this Court should reverse the decision below and reinstate KMLD's claims in full. That way, as the parties agreed, KMLD can hold the Tribe accountable for its misconduct.

STANDARD OF REVIEW

The Tribe asks this Court to review the trial court's factual findings for evidentiary support. Tribe Br. 11. But those findings merely describe the complaint and its attachments. (R pp 132-33) Those descriptions are not at issue here. KMLD instead challenges the trial court's legal conclusions. KMLD Br. 21-43. As the Tribe admits, this Court reviews those conclusions de novo. Tribe Br. 12.

ARGUMENT

I. The Tribe does not successfully defend the trial court's narrow interpretation of the broad immunity waivers in this case.

The Tribe concedes that the parties' agreements include waivers of the Tribe's immunity. Tribe Br. 1-2. The Tribe defends the trial court's transformation of those broad waivers into narrow ones, but that defense fails.

A. A waiver of tribal immunity requires clarity, not magic words.

The parties agree that contractual waivers of tribal immunity must be clear. *E.g.*, *id.* at 14; KMLD Br. 21.

The Tribe argues that waivers must also be strictly construed. Tribe Br. 13-14. But as the Tribe appears to admit, and as the decisions it cites

confirm, a strict-construction requirement applies only if a waiver is ambiguous. *See id.* at 14-15, 22; *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1444-45 (1988) (holding that *ambiguous* statutory provisions are construed to favor tribes). Thus, this requirement merely restates the rule that a waiver must be clear.

At times, however, the Tribe implies that strict construction requires even more. For example, the Tribe argues that KMLD could pursue claims related to "the construction of the casino" only if the waivers included "precisely that language." Tribe Br. 26; *see id.* at 23, 33 (making similar arguments).

Those arguments go too far. Waivers of tribal immunity do not require any particular words. *E.g.*, *Rosebud Sioux Tribe v. Val-U Constr. Co. of S.D.*, 50 F.3d 560, 563 (8th Cir. 1995); *cf. Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 388, 394 (2023) (same for statutes that abrogate tribal immunity). For example, in *C & L Enterprises*, the Supreme Court found a waiver in a form contract that did not even mention sovereign immunity. *C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 414, 420-21, 423 (2001). Likewise, in *AQuate*, the Eleventh Circuit held that

a tribe's waiver was broad enough to include trade-secret claims, even though the waiver did not mention trade secrets specifically. *See AQuate II LLC v. Myers*, 100 F.4th 1316, 1320 (11th Cir. 2024). As these decisions show, waivers of tribal immunity require clarity, not magic words.

B. The waivers in this case are clear.

Here, the Tribe's immunity waivers are clear. As shown by governing dictionary definitions and precedent, these waivers unambiguously cover all claims that have some connection, direct or indirect, to the parties' agreements or the transactions the agreements contemplate. KMLD Br. 21-32. Because the waivers are unambiguous, no strict-construction requirement applies. *Supra* pp. 4-5.

The trial court's contrary interpretation of the waivers does not show any ambiguity. A contract is ambiguous only if it has multiple *reasonable* interpretations. *E.g.*, *Wachovia Bank & Tr. Co. v. Westchester Fire Ins. Co.*, 276 N.C. 348, 354, 172 S.E.2d 518, 522 (1970). Here, the court's interpretation is unreasonable: It violates ordinary meaning, precedent, and settled rules of contract interpretation. KMLD Br. 21-32. The Tribe does not show otherwise.

1. The waivers require *a* connection, not a "logical or causal" one.

The trial court erred first by holding that the waivers here require a "logical or causal connection." (R p 134) The phrase "related to" requires only *some* connection, not a "logical or causal" one. KMLD Br. 23-29.

The Tribe does not defend the "causal" part of the court's holding. *See* Tribe Br. 17. It instead defends only the holding that the waivers require a "logical" connection. *Id.*

The Tribe never says how a "logical" connection might differ from a "causal" one. But whatever a "logical" connection might be, the waivers here do not require it.

The trial court mistakenly based its requirement of a "logical" connection on a definition of the verb "relate," as opposed to the definition of the adjective "related." *See* R p 134; KMLD Br. 24. The Tribe now recognizes that the latter definition—which does not require a "logical" connection—applies here. *See* Tribe Br. 15. In fact, the Tribe does not even cite the definition the court used. *See id.* The Tribe calls this discrepancy "trivial." *Id.* at 16 n.5. But defining the wrong word is not a trivial error.

The trial court's interpretation also conflicts with caselaw. This Court has held that "related to" requires only "a" connection. KMLD Br. 25-26 (discussing, for example, *Everhart v. O'Charley's, Inc.*, 200 N.C. App. 142, 683 S.E.2d 728 (2009)). The Tribe does not address—or even cite—this controlling precedent.

The Tribe instead cites *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). Tribe Br. 15. But there, the U.S. Supreme Court recognized that the ordinary meaning of "relate to" is to have "*a* connection with." 532 U.S. at 147 (emphasis added; internal quotation marks omitted). Thus, *Egelhoff* supports KMLD, not the Tribe.

The Tribe also cites decisions that did not even interpret the phrase "related to," and that instead applied the rational-basis test for constitutional claims. Tribe Br. 16-17, 19-20; *Turner v. Safley*, 482 U.S. 78, 89-91 (1987); *In re N.C. Pesticide Bd. File Nos. IR94-128, IR94-151, IR94-155*, 349 N.C. 656, 671-72, 509 S.E.2d 165, 175-76 (1998). That test is irrelevant here.

The Tribe fares no better with the other decisions it cites. Tribe Br. 16. Although those decisions mentioned the concept of a logical connection, they ultimately stressed that phrases like "relating to" are

"extremely broad" and include things that are connected "in any way." *In re Remicade (Direct Purchaser) Antitrust Litig.*, 938 F.3d 515, 523 (3d Cir. 2019) (internal quotation marks omitted); *see John Wyeth & Bro. Ltd. v. CIGNA Int'l Corp.*, 119 F.3d 1070, 1075 (3d Cir. 1997) (similar).

Finally, even if any of the above decisions actually held that "related to" requires a "logical" connection, that still would not help the Tribe. The waivers here use the broader phrase "directly *or indirectly* related to." (R pp 30, 47, 66 (emphasis added)) None of the Tribe's cases even addresses this broader phrase, much less holds that it requires a "logical" connection.

2. In any event, the waivers do not require claims to be "based on the express rights or restrictions in the Agreement[s]."

Even if the waivers here did require a logical connection, the trial court still erred by further limiting the waivers to claims that are "based on the express rights or restrictions in the Agreement[s]." R p 134; KMLD Br. 29-32. It is telling that when the Tribe discusses the court's reasoning, it repeatedly omits this further limitation. *See* Tribe Br. 12-13, 15. When the Tribe does try to defend this part of the court's decision, its arguments fail.

The Tribe cites no authority that has ever interpreted "related to" to mean "based on the express rights or restrictions in." In fact, the Tribe cites a decision that *rejected* that interpretation. In *John Wyeth*, the Third Circuit held that a forum-selection clause that covered disputes arising "in relation to" an agreement *was not* limited to claims that were "based upon" the agreement. 119 F.3d at 1074; *see* Tribe Br. 16 (citing *John Wyeth*). This decision refutes the trial court's interpretation here.

The Tribe cites other decisions to argue that "related to" excludes "tangential or incidental connection[s]." Tribe Br. 18-19 (internal quotation marks omitted). But even if, in isolation, "related to" might exclude tangential or incidental connections, the waivers here do not use that phrase in isolation. They instead say "directly or indirectly related to." (R pp 30, 47, 66) The Tribe cites no case that holds that "indirectly related to" excludes tangential or incidental connections.

In any event, even if the waivers here did exclude those types of connections, the Tribe's argument would still fail. The Tribe leaps from its assertion that the waivers exclude tangential connections to the conclusion that the waivers cover only claims that are based on the express rights or restrictions in the agreements. Tribe Br. 19-20. But the

Tribe offers no support for that leap. It merely asserts that any other interpretation would make the waivers meaningless. *Id.* The Tribe's own cases show otherwise. In all of those cases, courts applied "related to" or similar phrases without interpreting them the way the trial court did here. *See id.* at 18-19.

In addition, limiting the waivers here to claims that are "based on the express rights or restrictions in the Agreement[s]" violates multiple rules of contract interpretation. KMLD Br. 29-32. For example, that limitation violates the rule against inserting unwritten words into contracts. *Id.* at 30. The Tribe mentions this rule but does not say how the court's interpretation could comport with it. *See* Tribe Br. 21.

The court's interpretation also violates the rule that all parts of a contract must be given effect. KMLD Br. 31-32. For instance, by limiting the waivers to claims that are based on the express rights or restrictions "in the Agreement[s]" (R p 134), the court nullified the waivers' inclusion of claims related to "any transactions contemplated" under the agreements (R pp 30, 47, 66). The Tribe responds that the court *mentioned* this language about contemplated transactions. Tribe Br. 21.

But that is no answer to KMLD's point that the court's interpretation gives this language *no effect*.

The court's interpretation also gives no effect to the word "indirectly." KMLD Br. 31-32. The Tribe says that "[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," and that the court's decision preserves that type of claim. Tribe Br. 21. But the court's order says no such thing. It limits the waivers to claims that are based on the express rights or restrictions in the agreements—a limitation that ignores the word "indirectly." (R p 134)

Finally, by definition, claims that are based on the express rights or restrictions in agreements are contract claims, so the court's interpretation negates the waivers' express inclusion of tort claims. KMLD Br. 31. The Tribe points out that the court let some of KMLD's tort claims survive in part. Tribe Br. 20. But that point just highlights the arbitrariness of the court's order. It is unclear how the court could have concluded that any of KMLD's tort claims were based on the express

rights or restrictions in the agreements, let alone how it decided which parts of the tort claims satisfied that unwritten test.

In sum, the waivers here cannot be reasonably confined to claims that are based on the express rights or restrictions in the parties' agreements. By confining the waivers that way, the trial court erred.[1]

II. The Tribe has waived its immunity for all of KMLD's claims.

When the Tribe's waivers are interpreted as written to include claims with even an indirect connection to the parties' agreements or the transactions they contemplate, the waivers cover all of KMLD's claims. KMLD Br. 32-43. In fact, all of KMLD's claims would satisfy even a "logical or causal connection" standard. *Id.* at 35 n.4, 39 n.5.

The Tribe does not respond to these points. It argues only that the trial court correctly dismissed KMLD's claims by applying *the court's*

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[1] KMLD has also pointed out that even if the waivers here were ambiguous, a jury should resolve the ambiguity. KMLD Br. 22. The Tribe says that by making this point, KMLD "suggests that the language is ambiguous" and "implicitly concedes that it cannot win on appeal." Tribe Br. 21-22. But KMLD made this point in the alternative, after stating its primary position that "[t]he language in the waivers can only reasonably be interpreted fully to waive the Tribe's immunity for all three tort claims that KMLD asserts." KMLD Br. 22. That was no concession.

"express rights or restrictions" interpretation. *See* Tribe Br. 22-33. Because that interpretation is wrong, the Tribe's arguments about its application are irrelevant. But even if the Tribe's arguments could be understood to address the application of the waivers as written, those arguments would still fail.

A. KMLD's trespass and conversion claims fall within the waivers.

For multiple reasons, KMLD's claims for trespass and conversion have at least an indirect connection—and even a logical or causal one—to the parties' easements and to the transactions contemplated under those easements. KMLD Br. 33-38. The Tribe does not show otherwise.

First, these claims are intertwined with the easements because the claims' validity depends on whether the easements authorized the Tribe's conduct. *Id.* at 33-34. The Tribe responds that the easements "address only a narrow range of activities." Tribe Br. 29. But that is KMLD's point: Whether the Tribe committed trespass and conversion depends on whether it exceeded the narrow range of activities the easements allow.

The Tribe fares no better when it argues that the easements address only "specific portions of KMLD's land." *Id.* The Easement

Agreement actually grants the Tribe access to *all* of KMLD's land to the extent "reasonable or necessary" for the Tribe to use the rights in the easement. (R p 44) Thus, KMLD's claims depend on whether the Tribe's activities throughout KMLD's land were "reasonable or necessary" to the Tribe's use of its easement rights. As a result, the claims and the Easement Agreement are related.

Second, the waivers cover KMLD's trespass and conversion claims because those claims are connected to the Tribe's construction of its casino, and because the casino construction is a transaction contemplated under the easements. KMLD Br. 34.

The Tribe appears to argue that the casino construction is not a "transaction." Tribe Br. 27. But as the Tribe admits, "transaction" means "something transacted." *Id.* "Transact," in turn, means "to carry to completion." *Transact*, Merriam-Webster, https://www.merriam-webster.com/dictionary/transact (last visited Mar. 25, 2026). The casino construction is something carried to completion, so it is a transaction.

In addition, the Tribe itself treats "transactions" as synonymous with "activities." *See* Tribe Br. 23, 28 (referring to the "activities"

contemplated under the agreements). This point confirms that the activity of constructing the casino is, in ordinary speech, a transaction.

The Tribe also argues that the casino construction is not "under" the easements. *Id.* at 27. The waivers, however, refer to transactions "contemplated" under the easements. (R pp 30, 47) "Contemplated" means "view[ed] as likely or probable or as an end or intention." *Contemplate*, Merriam-Webster, https://www.merriam-webster.com/dictionary/contemplate (last visited Mar. 25, 2026). Thus, the question is whether the casino construction was viewed as likely or intended under the easements.

It was. The Temporary Construction Easement states that its purpose was to enable the Tribe to make "Improvements" on the Trust Land, and that the easement would expire when those improvements were complete. (R pp 27-28) The Easement Agreement likewise states that the Tribe's stormwater system would service any "improvements" on the Trust Land. (R p 44) The improvements on the Trust Land *were* the casino. (*See* R pp 7-8) Thus, the casino construction was contemplated under both easements. As a result, KMLD's trespass and conversion claims relate to a transaction contemplated under the easements.

Third, these claims fall within the waivers because they are temporally connected to the easements. KMLD Br. 35. The Tribe repeats its argument that the waivers exclude incidental connections. Tribe Br. 28. That argument is wrong. *Supra* p. 10. But either way, the connection here is not incidental: The Tribe started violating KMLD's property rights within just three months of the easements' execution. KMLD Br. 35.

Fourth, the Tribe's own statements in its counterclaim confirm that the conduct at issue here relates to the easements. *Id.* at 35-36. The Tribe now recasts its counterclaim as admitting only that its conduct relates to KMLD's land, not to the easements. Tribe Br. 30-31. But the easements are *on* KMLD's land. Thus, at a minimum, the Tribe has admitted that its conduct is indirectly connected to the easements.

Finally, it would ignore common sense to interpret the broad waivers here to deny KMLD a remedy for the Tribe's trespasses and conversion. KMLD Br. 36-38. The Tribe responds that KMLD can still pursue part of its trespass claim. Tribe Br. 32. But as that response implicitly admits, the decision below leaves KMLD with *no* remedy for the Tribe's most harmful conduct, such as its sloping and regrading that

caused KMLD to lose substantial developable land, and its conversion of KMLD's rocks and soil. KMLD Br. 19-20. The Tribe's assertion that the waivers could have covered those violations of KMLD's property rights more explicitly is another version of the Tribe's erroneous magic-words argument. *See* Tribe Br. 33; *supra* pp. 5-6.

B. KMLD's claim for unfair and deceptive trade practices also falls within the waivers.

The Tribe has also waived its immunity against KMLD's claim for unfair and deceptive trade practices. As KMLD has shown, this claim has four bases, each of which relates to the agreements or the transactions they contemplate. KMLD Br. 38-42.

The Tribe does not address three of these bases at all: (1) its egregious trespasses and conversion, *id.* at 38-39; (2) its inducement of KMLD to execute the easements when the Tribe had no intention to honor them, followed by the Tribe's egregious breaches, *id.* at 40; and (3) the Tribe's misrepresentations to KMLD after the easements were executed, *id.* at 41. The Tribe's failure to address these points is dispositive on its own.

The Tribe also misses the mark on the only basis for this claim it does address. This fourth basis involves the Tribe's oral misrepresentations that it would let KMLD build and operate a parking facility for the new casino on KMLD's land. *Id.* at 39.

That deception relates to the easements because it induced KMLD to grant the easements. *Id.* at 40. It also relates to the Restrictive Covenant, because Parcel C was subject to that covenant, and the Tribe's misrepresentations induced KMLD to transfer Parcel C. *Id.* Thus, this claim falls within the waivers in all three agreements. *Id.*

The Tribe argues that KMLD cannot rely on the waiver in the Restrictive Covenant because the complaint did not refer to that waiver in particular. Tribe Br. 31. To make that argument, the Tribe states that a complaint must "specifically allege a waiver of governmental immunity." *Id.* (brackets omitted) (quoting *Can Am S., LLC v. State*, 234 N.C. App. 119, 125, 759 S.E.2d 304, 309 (2014)). But the *Can Am* Court held that "[t]he requirement that a plaintiff specifically allege waiver of governmental immunity does not mandate that a complaint use any particular language." 234 N.C. App. at 126, 759 S.E.2d at 310 (internal quotation marks and alteration omitted). Here, KMLD specifically

alleged that the Tribe had waived its immunity, and KMLD attached the Restrictive Covenant to the complaint and expressly incorporated it by reference. (R pp 6, 8-9, 62-74) That was enough to "provide a reasonable forecast of waiver," which is all that the law requires. *Can Am*, 234 N.C. App. at 125, 759 S.E.2d at 309 (internal quotation marks omitted).[2]

Finally, the Tribe makes various arguments about the merits of KMLD's unfair and deceptive trade practices claim, such as an argument about the statute of frauds. Tribe Br. 23 & n.7. But this appeal involves immunity, not the merits. KMLD will address the Tribe's erroneous merits arguments at the appropriate time.

C. KMLD's claim for injunctive relief falls within the waivers as well.

The Tribe does not address KMLD's claim for injunctive relief, much less rebut KMLD's showing that the Tribe also waived its immunity for this claim. KMLD Br. 42.

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[2] If KMLD's complaint needed to refer specifically to the Restrictive Covenant's waiver provision, KMLD requests that this Court instruct the trial court to allow KMLD to amend its complaint to add that reference.

CONCLUSION

KMLD respectfully requests that this Court reverse the order granting the Tribe's partial motion to dismiss and for judgment on the pleadings.

Respectfully submitted, this 27th day of March, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for plaintiff-appellant certifies that the foregoing brief, which is prepared using a proportional font, contains fewer than 3,750 words (excluding the cover, captions, index, table of authorities, signature block, certificate of service, and this certificate of compliance) as reported by the word-processing software.

This 27th day of March, 2026.

Electronically Submitted
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CERTIFICATE OF SERVICE

Pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, I certify that the foregoing has been served today on defendant-appellee by email to the following counsel:

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This the 27th day of March, 2026.

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