

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

IN RE SOUTHEASTERN EYE
CENTER-PENDING MATTERS

15CVS001648-910

GUILFORD COUNTY

IN RE SOUTHEASTERN EYE
CENTER-JUDGMENTS

12CVS011322-400

**ORDER APPROVING JDPW TRUST SETTLEMENT WITH THE CASTLE
MCCULLOCH DEFENDANTS AND DOUGLAS HARRIS
(ALL MATTERS)**

THIS MATTER is before the Court upon the RECEIVER’S REPORT AND MOTION TO APPROVE AND CONFIRM SETTLEMENT WITH THE CASTLE MCCULLOCH DEFENDANTS AND DOUGLAS HARRIS (the “Motion”). (ECF No. 1726.)¹ The Court held a hearing on the Motion on 20 November 2025. The Receiver, counsel for the Receiver, counsel for the Castle McCulloch Defendants, and counsel for the Nivison Plaintiffs appeared at the hearing. Douglas Harris and Mark McDaniel appeared *pro se*.

Having considered the Motion, all documents filed in support of and in opposition to the Motion, the arguments of counsel and persons appearing *pro se*,

¹ For ease of reference, all ECF citations in this Order are to the Court’s electronic docket in Wake County 15CVS1648.

testimony and agreements put on the record at the hearing, and other pertinent matters of record, the Court **GRANTS** the Motion as set forth below.

1. The Receiver was appointed by Order of this Court dated 25 February 2015, (ECF No. 20), as Receiver for Central Carolina Surgical Eye Associates, P.A., HUTA Leasing, LLC, Southeastern Eye Management, Inc., Southeastern Cataract Laser Center, PLLC, and EMS Partners, LLC (hereinafter collectively known as the “Corporate Defendants”). The Corporate Defendants are entities in which Dr. C. Richard Epes or his wife Bessie K. Epes (“Dr. and Mrs. Epes”) hold or held ownership and control interests.

2. The Receiver was appointed by Order of this Court dated 14 July 2015, (ECF No. 117), as Receiver for two entities, KEPES Newco, LLC and DRE Newco, LLC, which were established to receive and hold substantially all of the assets of Dr. and Mrs. Epes. In the same Order, the Receiver was appointed as Receiver for Surgical Eye Center, Inc., ME Greensboro, LLC, HUTA Leasing Company, and MEM of High Point, LLC, companies that served as holding companies for various business assets owned in whole or in part by Dr. and Mrs. Epes.

3. The Receiver was appointed by Order of this Court dated 28 April 2016 as Receiver for JDPW Trust. (ECF No. 472.) Also, on 28 April 2016, the Court approved a settlement between the Receiver and the Nivison Plaintiffs. (ECF No. 471.) In its Order Approving Nivison Settlement and Related Transactions Including Release of CEA Sale Proceeds (All Matters), the Court approved an allowed claim against JDPW Trust by the Nivison Plaintiffs in the amount of \$2.1 million plus interest. (ECF No. 471.) This claim was assigned to KEPES Newco, LLC as part

of the settlement, and that entity and the Nivison Plaintiffs agreed to divide proceeds using a formula from joint prosecution of their efforts to collect the allowed claim as well as other claims asserted by the Nivison Plaintiffs. Those parties further agreed in that settlement that any disagreement as to whether or not joint prosecution claims should be settled would be resolved by the Court.

4. The Receiver has investigated claims available to JDPW Trust against Douglas Harris, Richard Harris, Castle McCulloch, Inc., and Historic Castle McCulloch, LLC (“Defendants”). In October 2016, the Receiver filed and served claims against Defendants seeking legal and equitable relief related to four notes that JDPW Trust acquired from NewBridge Bank. These claims were heavily litigated in the ensuing years.

5. On 19 December 2024, this Court entered judgments against Defendants, providing JDPW Trust some (but not all) of the relief the Receiver requested. (ECF Nos. 1683–88.) The Court dismissed the claims that the Nivison Plaintiffs asserted against Defendants by Order dated 7 May 2019. (ECF No. 1148.) Defendants, JDPW Trust, and the Nivison Plaintiffs all appealed from various aspects of the 19 December 2024 judgments. The Nivison Plaintiffs did not appeal the 7 May 2019 summary judgment order that dismissed their claims.

6. On 20 October 2025, the Receiver moved on behalf of JDPW Trust for approval of a settlement (the “Settlement Agreement”) with Defendants. (ECF No. 1726.) The Settlement Agreement provides for the payment to JDPW Trust of \$2 million, with \$1.5 million to be paid by the end of February 2026 and the

remainder to be paid over five years secured by a deed of trust on real estate worth at least \$700,000.

7. The Court provided the parties to these consolidated proceedings, as well as interested persons, an opportunity to assert objections to the Settlement Agreement. Objections were timely asserted by the Nivison Plaintiffs and by one of the beneficiaries of JDPW Trust (each an “Objection” and collectively, the “Objections”). The Court also received responses from Defendants, Mark McDaniel, Lee Thomas, and the Nivison Plaintiffs (responding to the beneficiary Objection).

8. On 20 November 2025, the Court held a hearing on the Motion and the Objections, providing all interested persons an opportunity to be heard on the Motion and the Objections. All counsel and *pro se* parties appearing at the hearing were heard. The Court has independently reviewed the terms of the Settlement Agreement, the Motion, and the Objections, as well as the arguments and submissions of counsel and interested parties.

9. The Nivison Plaintiffs objected to the Settlement Agreement on numerous grounds. (ECF No. 1728.) Ultimately, at the hearing, counsel for the Nivison Plaintiffs moved in open court to withdraw the Objection, provided the Receiver agreed on behalf of KEPES Newco, LLC that money distributable to the Nivison Plaintiffs would not be paid out of the portion of the Settlement Agreement that is being paid with a five-year promissory note. The Receiver agreed. The Court therefore granted the motion to withdraw the Nivison Plaintiffs’ Objection to the Settlement Agreement.

10. Counsel for the beneficiary who filed an Objection did not appear at the hearing, but authorized counsel for the Receiver to communicate to the Court that the beneficiary's Objection was being withdrawn as part of a settlement in which KEPES Newco, LLC acquired the interests of all three beneficiaries in JDPW Trust, LLC. Counsel for the Receiver made a motion in open court to approve the resolution of this Objection by KEPES Newco, LLC's purchase of the three beneficiaries' entire interests for the total sum of \$100,000.02, with payment of an attorney's fee of \$5,000 to the attorney who filed the Objection on behalf of one of the beneficiaries. Counsel for the objecting beneficiary subsequently filed a Notice of Withdrawal of the Objection. (ECF No. 1738.) Based upon assurances from the Receiver that acquisition of these interests by KEPES Newco, LLC will not reduce the amounts available to pay non-subordinated creditors of KEPES Newco, LLC, the Court approves the withdrawal of this Objection and authorizes the Receiver to consummate this settlement with the beneficiaries.

11. To exercise its own independent business judgment and discretion, the Court has considered the opening briefs filed by the parties to the appeals pending before the North Carolina Supreme Court. Based upon a review of the briefs, the Court is of the opinion that there is no certainty of outcome in any of the appeals and that the appeals involve issues of first impression in North Carolina that cannot be predicted with any certainty.

12. In addition to the issues on the merits as to whether the judgments against Defendants will survive, there are the follow-up questions of whether the judgments are collectible, and in what amount, if they do survive. Douglas Harris

testified under oath at the hearing on 20 November 2025 as to the status of his assets and income, and it appears that the monetary judgment against him is uncollectible absent the premature death of his wife. As for the value of the Castle McCulloch note, with default interest, the Nivison Plaintiffs and the Receiver assert that it is worth approximately \$5,285,000 now and accrues interest of \$705.18 per day. Defendants assert that the Castle McCulloch note was paid off long ago. (ECF No. 1723, ¶8.) The evidence before the Court on the value of the collateral for the Castle McCulloch note is a lay opinion of \$7 million. (ECF No. 1723, ¶15.) The Court is mindful that the actual value received in a foreclosure often is less than the value of the note secured, and that the value of the secured Castle McCulloch note caps the recovery to JDPW Trust from the foreclosure. As a result, monetary recovery to JDPW Trust in excess of the value of the Castle McCulloch note is very doubtful and the range of reasonably foreseeable current recovery values is \$0 to \$5,285,000.

13. Our Court of Appeals has commented on the Receiver's role as follows:

Generally, “[w]ith respect to the court, the parties to the suit in which he is appointed, creditors and other interested persons, and the property in receivership, the position of the receiver is that of an officer of the court.” *Lowder v. All Star Mills, Inc.*, 309 N.C. 695, 701, 309 S.E.2d 193, 198 (1983). Thus, while “[t]he receiver is a representative and protector of the interests of creditors and shareholders alike,” *see id.*, “[p]roperty in the actual or constructive possession of the receiver is *in custodia legis*, as the possession of the receiver is that of the court,” *see Pelletier v. Greenville Lumber Co.*, 123 N.C. 596, 599, 31 S.E. 855 (1898) (emphasis in original). As the receiver “is not appointed for the benefit of either party and does not derive his authority from either one,” *see Lowder*, 309 N.C. at 701, 309 S.E.2d at 198, the receiver's authority inheres not in the agency of an owner or creditor, but rather in “the applicable statutes, together with the directions and instructions of the court in its order appointing him,” *see First Citizens Bank & Trust Co. v. Berry*, 2 N.C. App. 547, 551, 163 S.E.2d 505, 508 (1968). Accordingly, “[t]he receiver [h]olds and disposes of all property coming into his hands in his official capacity under the direction of the court.” *Id.*

EHP Land Co. v. Boshier, No. COA15-881, 2016 N.C. App. LEXIS 325, at *8–9 (Apr. 5, 2016) (unpublished). “[T]he receiver, and the trial court, in approving the receiver’s recommendation, [is] required to act in the best interests of all parties concerned” *Id.* at *9–10.

14. The Receiver reports that in his judgment the Settlement Agreement terms are within the range of reasonable settlement outcomes. The Court concurs. While the Settlement Agreement amount is below the midpoint, it represents a substantial payment that avoids the risk and delay of continued litigation. The Court notes that given the reasonably expected range of recovery values and the amount of the allowed claim, the probability of an ultimate recovery through litigation that would be sufficient to fund a payment to trust beneficiaries is extremely low with or without settlement. The proposed Settlement Agreement appears to the Court to be a better alternative than the continued expenditure of Receivership resources in litigation. The resolution reached is a reasonable middle ground among the multiple potential outcomes.

15. The Court also notes that certain Objections observed that some aspects of the Settlement Agreement are subject to future implementation pursuant to criteria agreed upon in the Settlement Agreement including, by way of example, selection of real estate with suitable value to secure the promissory note. At the hearing, the parties to the Settlement Agreement agreed for the Court to resolve any dispute that may arise in implementing the Settlement Agreement. The Court agrees to do so and retains jurisdiction for this purpose.

16. The Court has independently reviewed the terms of the Settlement Agreement, the Motion, the Objections, and the arguments and submissions of counsel, the parties, and interested persons. Exercising the Court's discretion and its own independent business judgment, the Court finds the Settlement Agreement to be in the best interests of JDPW Trust and to be fair and reasonable to JDPW Trust, its creditors, and all other parties and persons with direct or indirect interests in JDPW Trust. Accordingly, the Court authorizes the Receiver to proceed to consummate the Settlement Agreement on the terms set forth in the Motion and to purchase the beneficiary interests on the terms set forth herein.

IT IS THEREFORE ORDERED, in the exercise of the Court's discretion and independent business judgment, that the Receiver's MOTION TO APPROVE AND CONFIRM SETTLEMENT WITH THE CASTLE MCCULLOCH DEFENDANTS AND DOUGLAS HARRIS is **GRANTED** as follows:

17. The Settlement Agreement between JDPW Trust and Defendants is **APPROVED** and **CONFIRMED**.

18. The Agreement for KEPES Newco, LLC to purchase the interests of the beneficiaries is **APPROVED** and **CONFIRMED**.

19. The Receiver is authorized to take all actions necessary to implement both agreements.

20. The Court retains jurisdiction to address and resolve any disputes or matters arising in implementation of these settlements.

SO ORDERED, this 10th day of December 2025.

/s/ A. Todd Brown
A. Todd Brown
Special Superior Court Judge
for Complex Business Cases