

STATE OF NORTH CAROLINA  
COUNTY OF ROCKINGHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 1504

ROCKINGHAM COUNTY,

Plaintiff,

v.

NTE ENERGY, LLC; NTE  
CAROLINAS II LLC; NTE  
CAROLINAS II HOLDINGS, LLC;  
CASTILLO INVESTMENT  
HOLDINGS II, LLC; NTE ENERGY  
SERVICES COMPANY, LLC; JOHN  
DOE, NATURAL PERSON; and  
JOHN DOE, CORPORATE ENTITY,

Defendants.

**ORDER AND OPINION  
ON MOTIONS TO DISMISS**

**THIS MATTER** comes before the Court on Defendant Castillo Investment Holdings II, LLC's Amended Motion to Dismiss (ECF No. 27), Defendant NTE Carolinas II Holdings, LLC's Motion to Dismiss (ECF No. 31), Defendant NTE Carolinas II LLC's Motion to Quash Service of Process and Motion to Dismiss (ECF No. 33), and Defendants NTE Energy, LLC and NTE Energy Services Company, LLC's Motion to Dismiss Amended Complaint, or, in the Alternative, for a More Definite Statement (ECF No. 36) (collectively, the "Motions").

**THE COURT** concludes that the Motions should be **GRANTED**, in part, **DENIED AS MOOT**, in part, and **DEFERRED**, in part, as set forth below.

*Frazier, Hill & Fury, RLLP, by William Hill and Clyde B. Albright, for Plaintiff Rockingham County.*

*Nelson Mullins Riley & Scarborough LLP, by Lee D. Wedekind & Kelly Reid, for Defendants NTE Energy LLC and NTE Energy Services Co. LLC.*

*Rayburn Cooper & Durham, P.A., by Matthew Tomsic & Rachel E. Brinson, for Defendants Castillo Investment Holdings II LLC, NTE Carolinas II Holdings LLC, and NTE Carolinas II LLC.*

Davis, Judge.

## INTRODUCTION

1. This case arises out of a failed economic development project. Plaintiff Rockingham County entered into a series of agreements with a company called NTE Carolinas II LLC (“Carolinas”) in which the County agreed to provide economic development assistance to Carolinas in exchange for Carolinas’ construction of a 500-megawatt natural gas electric generating facility in Rockingham County. The County contends that pursuant to the project agreements, it agreed to make certain infrastructure improvements for which it would be reimbursed by Carolinas in the event that Carolinas terminated the project.

2. The project has stalled, and it is unclear when—if ever—it will resume. As a result, Rockingham County has brought the present lawsuit seeking various forms of relief, including reimbursement of its infrastructure improvement costs (which allegedly total \$1,573,429.18), from Carolinas. In addition to suing Carolinas, however, Rockingham County has also named as defendants four additional companies that, according to Rockingham County, are affiliated with Carolinas and are likewise liable to the County.

3. The primary issue raised by the present Motions is whether the case should proceed against these additional defendants in addition to Carolinas. In order

to resolve this question, the Court must apply North Carolina law regarding corporate veil piercing, joint enterprise liability, and conspiracy.

### **FACTUAL AND PROCEDURAL BACKGROUND**

4. The Court does not make findings of fact on a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure and instead recites pertinent facts contained in the Complaint and in documents attached to, referred to, or incorporated by reference in the Complaint that are relevant to the Court's determination of the motion.

5. On 13 October 2015, representatives from "NTE Energy"<sup>1</sup> contacted the Rockingham County Manager about plans to develop a power plant in North Carolina. Over the next several months, meetings took place between county officials and NTE Energy representatives. NTE Energy represented that it was planning to build a 500-megawatt natural gas electric generating facility in Rockingham County that would be known as the Reidsville Energy Center ("REC") and would ultimately be capable of providing power to approximately 450,000 homes. NTE Energy represented to county officials that the REC Project would involve a \$500 million investment that would, among other things, provide increased revenues from the County's sale of water and treatment of wastewater and serve as a substantial addition to the local tax base. (*See* Am. Compl. ¶¶ 1–6, 28–29, ECF No. 20.)

---

<sup>1</sup> As discussed in detail later in this Opinion, details concerning the legal status of NTE Energy, the principals behind it, and its precise relationship to Carolinas (and to the other named Defendants in this action) are presently unclear. (*See* Am. Compl. ¶ 6.)

6. Rockingham County ultimately entered into an “economic development package” with Carolinas consisting of a series of written agreements, including a Letter of Intent (Am. Compl. Ex. 36), an Economic Development Incentive Performance Agreement (the “Performance Agreement,” Am. Compl. Ex. 38a), an Agreement for Infrastructure Improvements (the “Infrastructure Agreement,” Am. Compl. Ex. 39a), and a Utilities Agreement (Am. Compl. Ex. 40). (See Am. Compl. ¶¶ 35–40.)

7. Pursuant to the Infrastructure Agreement, the County agreed to provide specified water and wastewater infrastructure improvements by 1 September 2019 and that it would make certain preliminary expenditures in order to meet this deadline. (Am. Compl. ¶ 39.) The Infrastructure Agreement also provided that if Carolinas terminated the REC Project, it would reimburse Rockingham County for expenditures incurred through the date of termination. (Am. Compl. ¶ 39.)

8. Rockingham County issued a Special Use Permit for a Public Utilities Facility to Carolinas on 27 October 2016. (Am. Compl. ¶ 31; Am. Compl. Ex. 31.) In addition, the North Carolina Utilities Commission issued Carolinas a Certificate of Convenience and Public Necessity for the REC on 19 January 2017. (Am. Compl. ¶ 41; Am. Compl. Ex. 41.)

9. On 16 June 2017, Rockingham County proceeded to execute an Installment Financing Contract with Branch Banking and Trust Company (“BB&T”) for funding in the amount of \$1,452,000 for the design of water and wastewater infrastructure improvements in connection with the REC Project. (Am. Compl. ¶ 44.)

10. On or about 8 November 2017, Carolinas entered into a Large Generator Interconnection Agreement (“LGIA”) with Duke Energy.<sup>2</sup> (Am. Compl. ¶ 45.) Carolinas subsequently defaulted on its obligations under the LGIA, resulting in the filing of a lawsuit by Duke Energy against Carolinas. (Am. Compl. ¶¶ 45–47, 51–54.)

11. At some point during its dispute with Duke Energy, Carolinas made the decision to suspend work on the REC Project. (Am. Compl. ¶ 52.)

12. On or about 20 September 2019—after Carolinas halted work on the REC Project and after Duke Energy filed its lawsuit against Carolinas—Rockingham County completed its preliminary work on the engineering and design of the project, for which it spent \$1,294,842.23 of funds from the Installment Financing Contract. (Am. Compl. ¶ 61.)

13. In an email sent to the Rockingham County Manager on 3 March 2020, an individual affiliated with NTE Energy provided assurance that the REC “[P]roject would be resumed as soon as possible[.]” (Am. Compl. ¶ 62; Am. Compl. Ex. 62.) A letter offering similar reassurance to the County was sent by an attorney associated with Carolinas on 13 May 2022. (Am. Compl. ¶ 68; Am. Compl. Ex. 68.)

14. To date, no construction activities have begun on the REC Project. (Am. Compl. ¶ 72.) On 8 March 2023, Carolinas “withdrew from North Carolina and represented to the NC Secretary of State that it was no longer doing business in the

---

<sup>2</sup> Pursuant to the Federal Power Act, the nature of the REC Project required the execution of the LGIA between Carolinas and Duke Energy, which “establish[es] the terms and conditions under which public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce must provide interconnection service to large generating facilities.” *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 83 FR 21,342 (May 9, 2018), 163 FERC ¶ 61,043 (2018).

state.” (Am. Compl. ¶ 74.) However, Carolinas has never informed Rockingham County that the project has been terminated. (Am. Compl. ¶ 74.)

15. Rockingham County initiated this action by filing a Complaint in Rockingham County Superior Court on 21 July 2023. (Compl., ECF No. 3.) On 21 November 2023, this case was designated a mandatory complex business case and assigned to the undersigned. (ECF Nos. 1, 2.)

16. On 26 October 2023, Rockingham County filed an Amended Complaint. (Am. Compl., ECF No. 20.) The Amended Complaint asserts the following claims: (1) declaratory judgment (against Carolinas); (2) breach of contract (against Carolinas); (3) breach of the duty of good faith and fair dealing (against Carolinas); (4) breach of fiduciary duty/constructive fraud (against Carolinas); (5) account stated (against Carolinas); (6) unjust enrichment (against Carolinas); (7) promissory estoppel (against Carolinas); (8) negligent misrepresentation (against Carolinas); (9) unfair and deceptive trade practices (against Carolinas); (10) piercing the corporate veil (against all Defendants); (11) civil conspiracy/facilitation of fraud (against all Defendants); (12) fraudulent inducement (against all Defendants); and (13) attachment (against Carolinas). (Am Compl. ¶¶ 75–212.)

17. In addition to Carolinas, the Amended Complaint also named the following additional Defendants<sup>3</sup>: NTE Energy, LLC; NTE Carolinas II Holdings,

---

<sup>3</sup> All but one of the named entity Defendants in this case (as well as the joint enterprise in which these entities are alleged to have participated) have very similar names. In this Opinion, the Court has strived to provide some degree of clarity when distinguishing between these various entities, but it is unfortunately impossible to completely eliminate the confusion resulting from the similarity of their names.

LLC (“Holdings”); Castillo Investment Holdings II, LLC (“Castillo”); NTE Energy Services Company, LLC (“NTE Energy Services”); John Doe, Natural Person; and John Doe, Corporate Entity.<sup>4</sup>

18. Each of the named Defendants subsequently filed Motions to Dismiss. In its Motion, Carolinas seeks dismissal only as to several of the claims asserted against it. However, the Remaining Defendants<sup>5</sup> contend that the dismissal of all claims asserted against them is proper based on the failure to state a valid claim for relief against them pursuant to Rule 12(b)(6). In addition, three of the Remaining Defendants—NTE Energy, LLC, NTE Energy Services, and Castillo—also seek dismissal for lack of personal jurisdiction under Rule 12(b)(2).

19. A hearing on the pending Motions was held on 20 March 2024. The Motions are now ripe for resolution.

### LEGAL STANDARD

20. In ruling on a motion to dismiss under Rule 12(b)(6), the Court may only consider the pleading and “any exhibits attached to the [pleading,]” *Krawiec v. Manly*, 370 N.C. 602, 606 (2018), in order to determine whether “as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief can be granted under some recognized legal theory.” *Forsyth Mem’l Hosp., Inc.*

---

<sup>4</sup> The Amended Complaint also named as an additional Defendant Vitis Energy, LLC (“Vitis”). However, on 26 March 2024, Rockingham County took a voluntary dismissal as to its claims against Vitis. (Vol. Dismiss., ECF No. 57.) As a result, Vitis is no longer a party to this action.

<sup>5</sup> Throughout this Opinion, the Court refers to the entity Defendants other than Carolinas as the “Remaining Defendants.”

*v. Armstrong World Indus., Inc.*, 336 N.C. 438, 442 (1994) (cleaned up). The Court must view the allegations in the complaint “in the light most favorable to the non-moving party.” *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 5 (2017) (cleaned up).

21. “It is well-established that dismissal pursuant to Rule 12(b)(6) is proper when (1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Corwin v. British Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (cleaned up). Additionally, the Court may “reject allegations [in the complaint] that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint.” *Laster v. Francis*, 199 N.C. App. 572, 577 (2009); *see also Oberlin Capital, L.P v. Slavin*, 147 N.C. App. 52, 60 (2001) (stating that in deciding a Rule 12(b)(6) motion, the Court may consider documents to which the complaint specifically refers).

## ANALYSIS

### I. Summary of Defendant Companies

22. At the outset, it is helpful to understand the general nature of the companies Rockingham County has sued in this action and how they are alleged to be affiliated with each other. The Amended Complaint contains the following pertinent allegations about these entities:



23. Carolinas is a Delaware company with its principal place of business in Florida. It is a wholly-owned subsidiary of Holdings and an affiliate of NTE Energy, LLC. Filings on its behalf with the North Carolina Secretary of State were made in March of 2023 by Stephanie Clarkson, who signed the filings as the Manager of Holdings. (Am. Compl. ¶ 10.)

24. NTE Energy, LLC is a Florida limited liability company. The sole member of the company was formerly Seth Shortlidge, but he was later replaced by Clarkson, Michael Green, and Timothy Eves. NTE Energy, LLC is the managing member of NTE Energy Services. (Am. Compl. ¶ 11.)

25. NTE Energy Services is a Florida limited liability company. Its registered agent is Shortlidge. The sole manager of NTE Energy Services is NTE Energy, LLC. (Am. Compl. ¶ 12.)

26. Holdings is a Delaware company with its principal place of business in Florida. It is wholly owned by Castillo. (Am. Compl. ¶ 13.)

27. Castillo is a Florida limited liability company. As noted above, it is the sole owner of Holdings. Shortlidge is the manager of Castillo. (Am. Compl. ¶ 14.)

## **II. The Remaining Defendants' Motions to Dismiss Under Rule 12(b)(6)**

28. As noted above, the Remaining Defendants seek dismissal of all claims against them in this action for failure to state a valid claim for relief under Rule 12(b)(6). In addition, NTE Energy, LLC, NTE Energy Services, and Castillo have moved for dismissal based on lack of personal jurisdiction pursuant to Rule 12(b)(2). Normally, the Court would address the personal jurisdiction arguments first.

However, the Court, in the exercise of its discretion and in accordance with its inherent authority to do all things reasonably necessary for the proper administration of justice, instead deems it appropriate to analyze the Remaining Defendants' motions under Rule 12(b)(6) and defer ruling on their Rule 12(b)(2) motions. *See Adams v. Aventis, S.A.*, 2003 NCBC LEXIS 10, at \*\*25 (N.C. Super. Ct. Aug. 26, 2003) (ruling on defendants' motion to dismiss under Rule 12(b)(6) and deferring ruling on defendants' motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2)).

29. The Amended Complaint alleges a contractual relationship solely between Rockingham County and Carolinas. (*See* Am. Compl. ¶ 10.) Of the thirteen claims in the Amended Complaint, the only ones asserted against the Remaining Defendants are the County's claims for piercing the corporate veil, civil conspiracy/facilitation of fraud, and fraudulent inducement. (*See* Am. Compl. ¶¶ 166–207.) The Court will discuss each of these in turn.

### **A. Veil Piercing**

30. As discussed in detail below, Rockingham County has failed to plead the traditional elements of a veil piercing claim. Instead, it seeks to pierce the corporate veil of the Remaining Defendants by alleging that they—along with Carolinas—were engaged at all relevant times in a joint enterprise known as NTE Energy.<sup>6</sup> The County's present allegations, however, are legally insufficient to support such a theory of recovery against them.

---

<sup>6</sup> For clarity, it is important to note that the Amended Complaint uses the name "NTE Energy" to refer to the alleged joint enterprise that allegedly existed between the various Defendants. The Amended Complaint *separately* uses the name "NTE Energy, LLC" to refer to the named Defendant who bears that actual name.

31. As an initial matter, this Court has recognized that “piercing the corporate veil is not a theory of liability.” *Gallaher v. Ciszek*, 2022 NCBC LEXIS 131, at \*\*34 (N.C. Super. Ct. Nov. 4, 2022). Instead, “it provides an avenue to pursue legal claims against corporate officers or directors who would otherwise be shielded by the corporate form. . . . [T]he party that seeks to disregard the corporate form must also establish an independent claim on which to hold the controlling person or entity liable.” *Id.* at \*\*34–35 (cleaned up).

32. It is well settled that “a corporation is an entity distinct from its shareholders, even if all of its stock is owned by a single individual or corporation.” *Griffin Mgmt. Corp. v. Carolina Power & Light Co.*, 2009 NCBC LEXIS 28, at \*\*7 (N.C. Super. Ct. Nov. 12, 2009) (citing *Troy Lumber Co. v. Hunt*, 251 N.C. 624, 627 (1960)). “That a parent company wholly owns the capital stock of its subsidiary and members of the board of directors of both corporations are the same, nothing else appearing, ‘is not sufficient to render the parent corporation liable for the contracts of its subsidiary.’” *Id.* (quoting *Whitehurst v. FCX Fruit and Vegetable*, 224 N.C. 628, 637 (1944)). “Indeed, there must be additional circumstances showing fraud, actual or constructive, or agency, to establish such liability.” *Id.* As this Court has explained:

The parent-subsidiary relationship exists, in part, to limit the liability of a corporation’s shareholders. *Excel Staffing Serv., Inc. v. HP Reidsville*, 172 N.C. App. 281, 290, 616 S.E.2d 349 (2005). Indeed, “a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.” N.C. Gen. Stat. § 55-6-22. The limited liability rule applies whether the shareholders are individuals or another corporation. *Excel* at 290, 616 S.E.2d 349.

*Id.* at \*\*7–8.

33. This Court has summarized the doctrine of veil piercing as follows:

In North Carolina, “[t]he general rule is that in the ordinary course of business, a corporation is treated as distinct from its shareholders.” *Ridgeway Brands Mfg., LLC*, 362 N.C. at 438, 666 S.E.2d 107. In proper circumstances, however, a court can look behind the corporate form and disregard the corporation’s separate and independent existence. *Id.* at 438–39, 666 S.E.2d 107. Our appellate courts have repeatedly cautioned that disregarding the corporate form, or piercing the corporate veil, is a remedy that “should be invoked only in an extreme case where necessary to serve the ends of justice.” *Dorton v. Dorton*, 77 N.C. App. 667, 672, 336 S.E.2d 415 (1985). “Piercing the corporate veil . . . allows a plaintiff to impose legal liability for a corporation’s obligations, or for torts committed by the corporation, upon some other company or individual that controls and dominates a corporation.” *Green v. Freeman*, 367 N.C. 136, 145, 749 S.E.2d 262 (2013). Courts will pierce the corporate veil to prevent the misuse of the corporate form for a fraudulent purpose or to avoid an unconscionable result. *See Ridgeway Brands Mfg., LLC*, 362 N.C. at 438–39, 666 S.E.2d 107.

In order to pierce the corporate veil, a party must show “that the corporation is so operated that it is a mere instrumentality or alter ego of the sole or dominant shareholder and a shield for his activities in violation of the declared public policy or statute of the State.” *Green*, 367 N.C. at 145, 749 S.E.2d 262 (citation omitted). The “instrumentality rule” inquiry involves three elements:

(1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and

(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of [a] plaintiff’s legal rights; and

(3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

*Id.* at 145–46, 749 S.E.2d 262 (internal citations omitted). Factors relevant to the Court’s analysis include “inadequate capitalization, noncompliance with corporate formalities, lack of a separate corporate identity, excessive fragmentation, siphoning of funds by the dominant shareholder, nonfunctioning officers and directors, and absence of corporate records.” *Id.* at 145, 749 S.E.2d 262 (internal citations omitted).

*State ex rel. Cooper v. Western Sky Fin., LLC*, 2015 NCBC LEXIS 87, \*13–17 (N.C. Super. Ct. Aug. 27, 2015).

34. North Carolina also recognizes the related doctrine of “reverse veil piercing.” Under this doctrine, “where one entity is the alter-ego, or mere instrumentality, of another entity, shareholder, or officer, the corporate veil may be pierced to treat the two entities as one and the same, so that one cannot hide behind the other to avoid liability.” *Fischer Inv. Capital, Inc. v. Catawba Dev. Corp.*, 200 N.C. App. 644, 650 (2009) (cleaned up).

35. In the Amended Complaint, Rockingham County does not allege that complete control is exercised by any of the Remaining Defendants over Carolinas (or vice versa). Moreover, rather than specifically stating which corporate forms the Court should disregard, the County instead asks the Court to treat each of the Defendant entities “as one and the same.” (Am. Compl. ¶ 186.)

36. Thus, Rockingham County’s allegations do not properly allege the elements of veil piercing as that doctrine has been historically recognized by North Carolina courts. *See Blue Ridge Pediatric & Adolescent Med., Inc. v. First Colony Healthcare*, 2012 NCBC LEXIS 52, at \*38 (N.C. Super. Ct. Oct. 3, 2012) (holding that

plaintiffs “fail[ed] to point to specific acts of control or domination by the Individual Defendants over [Corporate] Subsidiaries” in dismissing veil piercing claim); *see also* *W&W Partners, Inc. v. Ferrell Land Co., LLC*, 2018 NCBC LEXIS 52, \*25–26 (N.C. Super. Ct. May 22, 2018) (dismissing claim for piercing the corporate veil when allegations consisted of “rote recitation of the factors enunciated by North Carolina’s appellate courts” without any supporting facts).

37. Rockingham County does not seriously dispute the Remaining Defendants’ argument that it has not properly alleged a standard theory of veil piercing.<sup>7</sup> Instead, it contends that veil piercing should be permitted in this case because all of the named Defendants have operated as a joint enterprise under the name “NTE Energy” and that all of the acts alleged in the Amended Complaint were carried out pursuant to the affairs of this joint enterprise.

38. This Court has stated the following regarding liability under a joint enterprise theory:

Like conspiracy, claims of joint enterprise . . . do not constitute independent causes of action in North Carolina; these claims form the basis of an agency relationship whereby one party’s conduct may be imputed to another. *Pike v. Wachovia Bank & Trust Co.*, 274 N.C. 1, 10–11, 161 S.E.2d 453, 461 (1968).

A joint enterprise is an alliance between two or more people in pursuit of a common purpose. *Slaughter v. Slaughter*, 93 N.C. App. 717, 720, 379 S.E.2d 98, 100 (1989). “Parties may be said to be engaged in a joint enterprise when there is a community of interest in the objects or purposes of the undertaking, and an equal right to direct and govern the movement of each with respect thereto.” *Id.*

---

<sup>7</sup> At the 20 March hearing, Rockingham County’s counsel admitted that the County is not disputing the compliance of the named Defendants with requisite corporate formalities. (Hr’g Tr., at 74.)

*BDM Investments v. Lenhil, Inc.*, 2012 NCBC LEXIS 7, at \*\*70–71 (N.C. Super. Ct. Jan. 18, 2012); *see also BDM Invs. v. Lenhil, Inc.*, 2014 NCBC LEXIS 6, at \*\*46–48 (N.C. Super. Ct. Mar. 20, 2014). “When the parties to a joint enterprise . . . agree to pursue illegal activity, there is a conspiracy, and each conspirator is jointly and severally liable for any resulting harm from the overt act of one of the parties.” *State ex rel. Cooper v. Orion Processing, LLC*, 2017 NCBC LEXIS 20, at \*\*18–19 (N.C. Super. Ct. Mar. 7, 2017).

39. As with veil piercing claims generally, joint enterprise liability is not a standalone claim. *See BDM Investments*, 2012 NCBC LEXIS 7, at \*\*70–72 (“[C]laims of joint enterprise . . . do not constitute independent causes of action in North Carolina; these claims form the basis of an agency relationship whereby one party’s conduct may be imputed to another.”).

40. Here, although Rockingham County seeks to litigate this action under a theory of joint enterprise liability, it has not properly made allegations that are sufficient to invoke this doctrine. Notably, there are no specific allegations of a right on the part of each Defendant to govern and direct the actions of all the other Defendants in furtherance of the aims of the enterprise.

41. To be sure, the Amended Complaint contains allegations as to various statements and representations made in press releases, articles, and public filings purporting to be on behalf of “NTE Energy” relating to the operation of power plants throughout the country, including the REC Project. Indeed, attached to the Amended Complaint are numerous exhibits containing such statements. Moreover,

Rockingham County has alleged a degree of commonality in ownership of the companies that comprise the Remaining Defendants. Rockingham County has raised legitimate questions as to what exactly “NTE Energy” is and who the principals are behind it, as well as their potential involvement in the events described in the Amended Complaint. Rockingham County will have the opportunity to explore these issues in depth during discovery and potentially seek leave from the Court to further amend its pleading based on new information obtained therein.

42. But that does not mean that the Remaining Defendants must continue to remain in the case as Defendants in the meantime. Despite filing a pleading that contains 212 separate paragraphs along with hundreds of pages of attached exhibits, Rockingham County has largely lumped the Remaining Defendants together in its allegations without meaningfully differentiating between them or alleging specific and tangible acts of wrongdoing by them. The closest the County comes to a tangible theory of wrongdoing is its assertion that the assets of Carolinas have been intentionally depleted by the Remaining Defendants in order to render Carolinas judgment-proof and prevent the County from recovering its alleged losses from Carolinas in this action. However, this theory fails for lack of specificity in the County’s allegations.

43. In short, Rockingham County has alleged that it has been injured not merely by Carolinas but also by NTE Energy. It is presently unclear, however, which natural persons or entities are legally responsible for any wrongful acts that may



have been committed through the use of the NTE Energy brand name (if, in fact, it is properly deemed to be a brand name).

44. Therefore, the Court agrees with the Remaining Defendants that the veil piercing allegations against them should be dismissed. However, the Court possesses discretion as to whether a dismissal pursuant to Rule 12(b)(6) will be with or without prejudice. *See First Fed. Bank v. Aldridge*, 230 N.C. App. 187, 191 (2013) (“The decision to dismiss an action with or without prejudice is in the discretion of the trial court[.]”). Here, the Court elects to exercise that discretion by dismissing the claims against the Remaining Defendants *without prejudice* such that Rockingham County shall retain the ability to seek leave to file a new amended complaint in the event it obtains facts during discovery that would provide it with a good faith basis for seeking to hold one or more of the Remaining Defendants liable in this action.<sup>8</sup>

45. Therefore, Rockingham County’s claim for veil piercing is **DISMISSED WITHOUT PREJUDICE**.

### **B. Fraudulent Inducement**

46. Our Supreme Court has recently observed that the elements of fraud and fraudulent inducement are identical. *Value Health Sols., Inc. v. Pharm. Res. Assocs., Inc.*, 385 N.C. 250, 264 (2023). Those elements consist of the following:

To state a claim for fraud in the inducement, a claimant must allege: (i) that the defendant made a false representation or concealed a material

---

<sup>8</sup> In the event that scenario occurs, NTE Energy, LLC, NTE Energy Services, and Castillo will be free to renew their personal jurisdiction arguments pursuant to Rule 12(b)(2) at that time.

fact he had a duty to disclose; (ii) that the false representation related to a past or existing fact; (iii) that the defendant made the representation knowing it was false or made it recklessly without knowledge of its truth; (iv) that the defendant made the representation intending to deceive the claimant; (v) that the claimant reasonably relied on the representation and acted upon it; and (vi) the claimant suffered injury.

*Vestlyn BMP, LLC v. Balsam Mt. Group, LLC*, 2016 NCBC LEXIS 48, at \*17 (N.C. Super. Ct. June 22, 2016) (citing *Harton v. Harton*, 81 N.C. App. 295, 298–99 (1986)).

47. Defendants make several arguments as to why Rockingham County’s fraudulent inducement claim should be dismissed, including the assertion that its allegations do not satisfy the heightened pleading requirement for such claims as required by Rule 9(b) of the North Carolina Rules of Civil Procedure. The Court agrees.

48. Rule 9(b) requires that “the circumstances constituting fraud” be alleged “with particularity.” N.C. R. Civ. P. 9(b). “The purpose of Rule 9(b) is to provide a defendant with sufficient notice of the fraud alleged in order to meet the charges.” *Provectus Biopharm., Inc. v. RSM US LLP*, 2018 NCBC LEXIS 101, at \*63 (N.C. Super. Ct. Sept. 28, 2018) (cleaned up). Our Supreme Court has held that “in pleading actual fraud[,] the particularity requirement is met by alleging time, place[,] and content of the fraudulent representation, identity of the person making the representation[,] and what was obtained as a result of the fraudulent acts or representations.” *Terry v. Terry*, 302 N.C. 77, 85 (1981).

49. Here, the Amended Complaint fails to comply with the requirements of Rule 9(b). Rockingham County's broad and conclusory allegations that Defendants acted fraudulently in connection with the REC Project are legally insufficient.

50. Therefore, the County's claim for fraudulent inducement against the Remaining Defendants is **DISMISSED WITHOUT PREJUDICE**.

### **C. Civil Conspiracy/Facilitation of Fraud**

51. In Rockingham County's eleventh cause of action, it combines a claim for civil conspiracy with a claim for facilitation of fraud. These claims are not dissimilar.

52. "The law permits one defrauded to recover from anyone who facilitated the fraud by agreeing for it to be accomplished." *Brown v. Secor*, 2020 NCBC LEXIS 134, at \*26 (N.C. Super. Ct. Nov. 13, 2020). "A claim based upon facilitation of fraud extends liability to those persons where (a) they operate under an agreement to do an unlawful act, or to do a lawful act in an unlawful way; (b) wrongful acts were in fact done in furtherance of that agreement; and (c) that resulted in injury to plaintiff." *Estate of Capps v. Blondeau*, 2015 NCBC LEXIS 41, at \*\*41-42 (N.C. Super. Ct. Mar. 5, 2015). Thus, on a meritorious facilitation of fraud claim, "all of the conspirators are liable, jointly and severally, for the act of any one of them done in furtherance of the agreement." *Bucci v. Burns*, 2018 NCBC LEXIS 37, at \*14 (N.C. Super. Ct. Apr. 25, 2018) (cleaned up).

53. This Court has stated that in order to establish liability under a theory of civil conspiracy,

the plaintiff must first offer “proof of an agreement between two or more persons.” *Sellers*, 191 N.C. App. at 83, 661 S.E.2d 915. Second, the plaintiff “must present evidence of an ‘overt act’ committed by at least one conspirator in furtherance of the ‘common objective.’ ” *Holt v. Williamson*, 125 N.C. App. 305, 319, 481 S.E.2d 307 (1997) (citation omitted). Third, the plaintiff must prove that the overt act committed in furtherance of the conspiracy resulted in damages to the plaintiff.

*Slattery v. Appycity, LLC*, 2021 NCBC LEXIS 24, at \*27 (N.C. Super. Ct. Mar. 24, 2021).

54. Moreover, civil conspiracy “must be alleged in conjunction with an underlying claim for unlawful conduct” because it “is not an independent cause of action in North Carolina.” *Global Textile Alliance, Inc. v. TDI Worldwide, LLC*, 2018 NCBC LEXIS 104, at \*\*18 (N.C. Super. Ct. Oct. 9, 2018).

55. Both of these claims fail for essentially the same reasons. Rockingham County makes general allegations against the “NTE Energy components,” asserting that “[e]ach member of the conspiracy committed an overt act in furtherance of the conspiracy by fraudulently accepting funds from [Carolinas] when they knew that these funds should have been preserved.” (Am. Compl. ¶ 195.)

56. However, these allegations fail to satisfy the above-quoted pleading requirements. For one thing, they beg the question as to who NTE Energy actually is. In addition, the Amended Complaint is devoid of any specific allegation that goes beyond a rote and conclusory assertion that the Remaining Defendants actually entered into an agreement for this purpose. In addition, it does not provide sufficient specificity regarding the acts committed by each of the members of the alleged conspiracy that were committed in furtherance of said conspiracy. As such, the

County's allegations are legally deficient. *See Worley v. Moore*, 2017 NCBC LEXIS 15, at \*78 (N.C. Super. Ct. Feb. 28, 2017) (dismissing civil conspiracy claim because allegation that defendants “agreed, colluded and conspired among themselves . . . to defraud Plaintiffs, which scheme or artifice included fraudulent inducement, constructive fraud, and common law fraud” was merely a legal conclusion).

57. Finally, the Court notes that the Amended Complaint is vague as to whether Carolinas even does, in fact, lack the ability to reimburse the County for the sums for which the County seeks repayment under the contracts. It merely states that “[u]pon information and belief, . . . Carolinas . . . does not possess the present ability to reimburse Rockingham County for its expenditures as required by the Agreements[.]” (Am. Compl. ¶ 73.) Notably, at the 20 March hearing, counsel for Rockingham County candidly admitted that the County does not know whether Carolinas is actually insolvent. (Hr’g Tr., at 70.)

58. Accordingly, Rockingham County’s civil conspiracy and facilitation of fraud claims against the Remaining Defendants are **DISMISSED WITHOUT PREJUDICE**.<sup>9</sup>

### **III. Carolinas’ Motion to Dismiss Under Rule 12(b)(6)**

59. Unlike the Remaining Defendants, Carolinas does not seek the dismissal of all claims asserted against it in this action. Instead, it seeks only the

---

<sup>9</sup> Moreover, to the extent that Rule 9(b) likewise applies to a facilitation of fraud claim—which is logical—Rockingham County’s failure to comply with this Rule serves as an additional basis for dismissing the facilitation of fraud claim.

dismissal of Rockingham County's claims for account stated, promissory estoppel, piercing the corporate veil, civil conspiracy/facilitation of fraud, and attachment.<sup>10</sup>

60. The defects in the Amended Complaint discussed above regarding Rockingham County's attempt to state claims for piercing the corporate veil and civil conspiracy/facilitation of fraud apply equally to Carolinas. Each of those claims is therefore also **DISMISSED WITHOUT PREJUDICE** as to Carolinas. Similarly, although Carolinas has not overtly moved for dismissal of the claim for fraudulent inducement, it would make little sense for the Court to allow that claim to survive in light of the Court's analysis above explaining the deficiencies with the claim. Accordingly, the County's fraudulent inducement claim against Carolinas is likewise **DISMISSED WITHOUT PREJUDICE**.

61. The Court now turns its attention to the claims as to which Carolinas expressly seeks dismissal in its Motion.

#### **A. Account Stated**

62. "There are four basic elements to an account stated cause of action: (1) a calculation of the balance due; (2) submission of a statement to the party to be charged; (3) acknowledgment of the correctness of that statement by the party to be charged; and (4) a promise, express or implied, by the party to be charged to pay the balance due." *Mast et al. v. Lane*, 228 N.C. App. 294, 296–97 (2013) (cleaned up); *see also Carroll v. McNeill Indus., Inc.*, 296 N.C. 205, 209 (1978) ("An account stated is

---

<sup>10</sup> Carolinas initially contended that it was not properly served with process in this case and, based on this assertion, filed a Motion to Quash Service of Process. However, at the 20 March hearing in this matter, counsel for Carolinas conceded that proper service had subsequently been effectuated. Therefore, the Motion to Quash Service of Process is **DENIED** as moot.

by nature a new contract to pay the amount due based on the acceptance of or failure to object to an account rendered.”).

63. Rockingham County has alleged the following in support of its claim for account stated:

131. On February 10, 2023, Rockingham County calculated the balance due under the Infrastructure Improvements Agreement, which was \$1,573,429.18. This letter is attached as Exhibit 131.

132. That balance due October 18, 2023, was submitted to Defendant [Carolinas], the party to be charged, in a February 10, 2023 letter to its General Counsel, Maribel Zambrana-Garcia from Clyde B. Albright, Rockingham County Attorney.

133. Defendant [Carolinas] never challenged the accuracy of the balance due to Rockingham County.

134. Defendant [Carolinas] acknowledged the correctness of the balance due when neither Ms. Zambrana-Garcia nor any other [Carolinas] representative objected to it.

135. Defendant [Carolinas] by its contractual agreement promised to pay the \$1,573,429.18 balance due as set forth in the letter.

136. Defendant [Carolinas] also implicitly agreed to pay the balance due when neither Ms. Zambrana-Garcia nor any other NTE Energy representative objected to it.

137. Defendant [Carolinas] owes the balance due to Rockingham County plus accruing interest.

138. Defendant [Carolinas] failed to pay the balance due.

(Am. Compl. ¶¶ 131–38.)

64. The Court agrees with Carolinas that this claim should be dismissed. The question of whether Carolinas is required to reimburse Rockingham County for the infrastructure improvement sums is one of the central issues in this lawsuit and one of the questions as to which the County seeks a declaratory judgment in its

Amended Complaint. Moreover, a number of the exhibits attached to the Amended Complaint expressly state Carolinas' position that the project has not actually been terminated but rather has been merely delayed by the Duke Energy litigation. Therefore, Carolinas' liability for the sums sought by Rockingham County remains a disputed issue.

65. For these reasons, Rockingham County's claim for account stated is **DISMISSED WITHOUT PREJUDICE**. See *Kapur v. IMW EMR, LLC*, 2020 NCBC LEXIS 148, at \*19 (N.C. Super. Ct. Dec. 18, 2020) (holding that even taking the plaintiff's allegations as true, dismissal of claim for account stated was proper where it was clear a dispute existed as to amounts owed).

### **B. Promissory Estoppel**

66. Although the Amended Complaint attempts to state a claim for promissory estoppel, North Carolina courts have made clear that promissory estoppel cannot exist as an affirmative claim for relief. *TG Equip. & Supply, LLC v. EBay, Inc.*, 2015 NCBC LEXIS 9, at \*12 n.24 (N.C. Super. Ct. Jan. 23, 2015) (cleaned up); see, e.g., *Value Health Sols. Inc. v. Pharm. Res. Assocs., Inc.*, 2020 NCBC LEXIS 65, at \*34–35 (N.C. Super. Ct. May 22, 2020) (refusing to recognize promissory estoppel as an affirmative claim); *Haddock v. Volunteers of Am., Inc.*, 2021 NCBC LEXIS 8, at \*18–19 (N.C. Super. Ct. Jan. 22, 2021) (same).



67. Accordingly, Rockingham County's claim for promissory estoppel is **DISMISSED WITH PREJUDICE**.<sup>11</sup>

### **C. Attachment**

68. Finally, Rockingham County has also asserted a claim for prejudgment attachment against Carolinas. In support of this claim, the Amended Complaint requests "that the Court issue an order for attachment in the amount of \$4.5 million in order to bring property of Defendant [Carolinas] within the legal custody of the court in order that it may subsequently be applied to the satisfaction of any judgment for money which may be rendered against Defendant [Carolinas]." (Am. Compl. ¶ 210.)

69. "The attachment of property owned by a defendant is proper when the plaintiff seeks a money judgment in the principal action and shows a need for a prejudgment remedy in order to insure that funds will be available to satisfy that judgment." *Loman Garrett, Inc. v. Timco Mech., Inc.*, 93 N.C. App. 500, 502 (1989).

70. In order to comply with N.C.G.S. § 1-440.11—the statute authorizing attachment as a remedy—a claimant "must submit an affidavit setting forth that plaintiff has commenced an action to secure a judgment for money, the amount of the potential judgment, the nature of the action, and the grounds for the attachment." *GMAC Mortg., LLC v. Mathews*, 2011 U.S. Dist. LEXIS 75275, at \*2 (W.D.N.C. July 12, 2011).

---

<sup>11</sup> To be clear, nothing herein shall preclude Rockingham County from asserting the doctrine of promissory estoppel in this case in the event the need should arise. Rather, the Court's ruling is simply that North Carolina law does not recognize an offensive claim for monetary damages premised solely upon a theory of promissory estoppel.

71. Prejudgment attachment has been described as an “extraordinary remedy[.]” *RDLG, LLC v. RPM Group, LLC*, 2011 U.S. Dist. LEXIS 56816, \*\*4–5 (W.D.N.C. May 26, 2011).

72. Rockingham County concedes in its briefing that it has not yet filed an affidavit, as required, in order to show an entitlement to the remedy of attachment. Moreover, even assuming that the Amended Complaint (as to which Rockingham County filed a belated verification) could potentially serve as the type of affidavit required under N.C.G.S. § 1-440.11, the broad and conclusory allegations contained therein about the alleged depletion of Carolinas’ assets are insufficient to show the propriety of prejudgment attachment at the present time. Nor does the Amended Complaint explain how it arrives at the requested \$4.5 million figure or identify the specific property of Carolinas as to which it is seeking attachment.

73. Therefore, this claim is **DISMISSED WITHOUT PREJUDICE**. *See Estate of Chambers v. Vision Two Hospitality Mgmt., LLC*, 2013 NCBC LEXIS 49, \*\*19-22 (N.C. Super. Ct. Nov. 21, 2013) (dismissing plaintiff’s request for prejudgment attachment in amount of \$1,500,000 premised on allegation that defendant had transferred assets while insolvent with intent to defraud plaintiffs and observing that plaintiff’s request failed to “specify . . . assets or property” of defendants for which attachment was being sought).

## CONCLUSION

**THEREFORE, IT IS ORDERED** as follows:

1. The Remaining Defendants' Motions to Dismiss pursuant to Rule 12(b)(6) are **GRANTED**, and all claims asserted against them are **DISMISSED WITHOUT PREJUDICE**;

2. The Court **DEFERS** ruling on Defendants NTE Energy, LLC, NTE Energy Services, and Castillo's Motions to Dismiss pursuant to Rule 12(b)(2) without prejudice to their right to refile said Motions, if necessary, at a later date if Plaintiff seeks leave to file a new amended pleading containing claims against them;

3. Defendant Carolinas' Motion to Dismiss is **GRANTED** as to the claims against it for account stated, piercing the corporate veil, civil conspiracy/facilitation of fraud, fraudulent inducement, and attachment, and those claims are **DISMISSED WITHOUT PREJUDICE**;

4. Defendant Carolinas' Motion to Dismiss as to the claim against it for promissory estoppel is **GRANTED**, and that claim is **DISMISSED WITH PREJUDICE**;

5. Defendant Carolinas' Motion to Quash Service of Process is **DENIED AS MOOT**; and

6. The parties are **DIRECTED** to use a caption on all future filings in this matter that is consistent with the Court's rulings contained herein.

**SO ORDERED**, this the 15th day of April, 2024.

/s/ Mark. A. Davis  
Mark A. Davis  
Special Superior Court Judge  
for Complex Business Cases