STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 9247
F-L LEGACY OWNER, LLC, Plaintiff, v. THE LEGACY AT JORDAN LAKE HOMEOWNERS ASSOCIATION, INC., Defendant/ Counterclaim Plaintiff, v. F-L LEGACY OWNER, LLC, FREEHOLD CAPITAL MANAGEMENT, LLC, THOMAS C. TISCHER, STAN BROWN, ANDREW T. SMITH, and MICHAEL McCOLLUM, Counterclaim Defendants.	**ORDER AND OPINION ON COUNTERCLAIM DEFENDANTS' MOTION TO DISMISS**

1. **THIS MATTER** is before the Court on Counterclaim Defendants F-L Legacy Owner, LLC ("F-L Legacy"), Freehold Capital Management, LLC ("Freehold"), Thomas C. Tischer ("Tischer"), Stan Brown ("Brown"), Andrew T. Smith ("Smith"), and Michael McCollum's ("McCollum"; collectively, the "Freehold Defendants") Motion to Dismiss[1] (the "Motion") certain counterclaims in Counterclaim Plaintiff The Legacy at Jordan Lake Homeowners Association, Inc.'s (the "HOA") Answer and Affirmative Defenses to Plaintiff's Complaint and Counterclaim (the "Answer and

[1] (ECF No. 19.)

Counterclaim")[2] pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure (the "Rule(s)"), filed on 5 December 2022 in the above-captioned case. After considering the Motion, the parties' briefs in support of and in opposition to the Motion, the relevant pleadings, and the arguments of counsel at the hearing on the Motion, the Court hereby **GRANTS** in part and **DENIES** in part the Motion as set forth below.

Parker Poe Adams & Bernstein, LLP, by Eric H. Cottrell and Russell Killen, for Plaintiff/Counterclaim Defendant F-L Legacy Owner, LLC and Counterclaim Defendants Freehold Capital Management, LLC, Thomas C. Tischer, Stan Brown, Andrew T. Smith, and Michael McCollum.

Morningstar Law Group, by William J. Brian, Jr. and Harrison M. Gates, and Cranfill Sumner, LLP, by RaShawnda Murphy Williams, for Defendant/Counterclaim Plaintiff The Legacy at Jordan Lake Homeowners Association.

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

2. The Court does not make findings of fact when ruling on a motion to dismiss under Rule 12(b)(6). Rather, the Court recites the allegations asserted and documents referenced in the challenged pleading—here, Defendant's Answer and Counterclaim—that are relevant to the Court's determination of the Motion.

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[2] (ECF No. 7.) The Court shall hereafter cite the Counterclaim portion of the Answer and Counterclaim as the "Counterclaims" for ease of reference.

3. The Legacy at Jordan Lake (the "Community") is a residential subdivision located in Chapel Hill, North Carolina.[3]

4. F-L Legacy is "a wholly-owned subsidiary of Freehold or companies affiliated with, related to, or controlled by Freehold or by Freehold's members, managers, or officers" and uses all monies it collects for the benefit of Freehold and its affiliates.[4] F-L Legacy was the Community's developer from 23 April 2014 until 31 December 2020.[5]

5. The HOA is the Community's homeowner's association and is a North Carolina nonprofit corporation formed to maintain the Community's common areas.[6]

6. The Community is subject to a Declaration of Covenants, Conditions, and Restrictions (the "Declaration"),[7] which "imposes upon [the real property comprising the Community] mutually beneficial restrictions under a general plan of

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[3] The HOA alleges that the Community is a "Planned community" as defined in the North Carolina Planned Community Act (the "NCPCA"), N.C.G.S. § 47F-1-103(23). (*See* Def.'s Answer and Affirmative Defenses Pl.'s Compl. and Countercl., ECF No. 7, ¶¶ 13, 17.) Defendant's Answer to Plaintiff's allegations and Defendant's Counterclaim are numbered separately within ECF No. 7. Accordingly, citations to paragraph numbers shall be to either the "Answer" or "Countercl.," as appropriate.

[4] (Countercl. ¶¶ 25, 26.)

[5] (Countercl. ¶¶ 19–22, 48.)

[6] (Countercl. ¶¶ 1, 13–14.)

[7] (*See generally* Countercl. Ex. 1 [hereinafter "Declaration"].) Defendant alleges that the Declaration constitutes a "Declaration" as defined in the NCPCA. *See* N.C.G.S. § 47F-1-103(10); (Countercl. ¶ 16).

improvement for the benefit of the owners of each portion of [the real property comprising the Community]."[8]

7. Under the Declaration, the "Declarant"—which initially was the original developer of the Community—is granted numerous rights and obligations.[9] The Declaration also vests the HOA with various rights and obligations.[10] Among these are the HOA's right to have Class A Members and a sole Class B Member.[11] Class A members are all those persons who hold record title to any Unit[12] in the Community that are not the Class B member.[13] The Class B member is the Declarant, which, beginning on 23 April 2014, was F-L Legacy.[14]

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[8] (Countercl. ¶ 16; Declaration.)

[9] (Declaration Art. 13.) Defendant alleges that the original developer was a "Declarant" as defined in the NCPCA. *See* N.C.G.S. § 47F-1-103(9); (Countercl. ¶ 18).

[10] (*See generally* Declaration Art. 4.)

[11] (Declaration Arts. 3.2(a)–(b).) Although the Declaration refers to Class "A" and Class "B" members, the Court has elected to omit the quotation marks surrounding A and B in this Order and Opinion.

[12] "Unit" is defined in the Declaration as

> [a] portion of the Properties legally subdivided pursuant to one of the Plats, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon.

(Declaration Art. 1.47.)

[13] (Declaration Arts. 1.34, 3.2(a).)

[14] (Declaration Art. 3.2(b); Countercl. ¶¶ 22, 28.)

8. The Declaration provides for a "Class B Control Period," during which the Class B Member has the right to appoint a majority of the HOA's directors.[15] The Class B Control Period was in effect when F-L Legacy became the Declarant in 2014 and, according to the HOA, terminated under the Declaration's terms on 31 December 2020.[16]

9. Pursuant to its authority as Declarant under the Declaration, F-L Legacy appointed Tischer, Brown, and Smith as the Association's three and only directors on or about 1 June 2014.[17] According to the HOA, each of these directors was an officer and director of Freehold throughout the period F-L Legacy served as the Declarant. Tischer was an owner and co-founder of Freehold, and throughout the relevant period, he and Brown were principals of Freehold while Smith served as Freehold's Senior Vice President for Development Operations.[18] At the same time and in accordance with the HOA's bylaws, the three Freehold-affiliated directors elected Tischer as the HOA's president, Brown as the HOA's vice president, and Smith as the HOA's secretary and treasurer.[19]

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[15] (Declaration Arts. 1.10, 3.2.)

[16] (Countercl. ¶¶ 30, 48; Declaration Art. 3.2(b)(ii).)

[17] (Countercl. ¶ 31.)

[18] (Countercl. ¶¶ 7–9.)

[19] (Countercl. ¶ 33.) The HOA's bylaws provide that the HOA's officers shall be a president, vice president, secretary, and treasurer and shall be elected by the HOA's board of directors. (*See* Declaration Ex. C Art. 4.1 [hereinafter "Bylaws"].)

10. On or about 21 May 2019, Tischer resigned as an officer and director, and McCollum, one of Freehold's division presidents, was appointed to replace him.[20] Brown, Smith, and McCollum, acting as the HOA's sole directors, then elected Brown as the HOA's president, Smith as its vice president, and McCollum as the HOA's secretary and treasurer during the remainder of the relevant period.[21]

11. According to Plaintiff, when the Class B Control Period ended, Brown, Smith, and McCollum should have held an election in which the Class A members elected a new board of directors with a majority of Class A members. But rather than hold an election, the HOA alleges that Brown, Smith, and McCollum improperly remained as directors and officers of the HOA until 17 August 2021.[22]

12. Through this lawsuit, the HOA challenges certain actions Tischer, Brown, Smith, and McCollum (collectively, the "Freehold Directors") took while they served as the HOA's officers and directors that the HOA contends intentionally benefited Freehold at the HOA's expense in violation of the Freehold Directors' fiduciary duties to the HOA.[23] Relevant to this contention is the Declaration's requirement that the HOA's board of directors adopt a budget each year for the coming year's "Common Expenses."[24] Those expenses are defined in the Declaration as those that are

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[20] (Countercl. ¶ 45.)

[21] (Countercl. ¶¶ 10, 45.)

[22] (Countercl. ¶¶ 48–51; *see* Bylaws Art. 3.5(b).)

[23] (Countercl. ¶¶ 116–53.)

[24] (Declaration Art. 8.3; Bylaws Art. 3.19(a).)

incurred or are anticipated to be incurred by the HOA "for the general benefit of all Owners, including any reasonable reserve[.]"[25]

13. Under the Declaration, the budget is funded by "General Assessments" levied against all occupied units "at a level which is reasonably expected to produce total income for the [HOA] equal to the total budgeted Common Expenses, including reserves."[26] During the Class B Control Period, F-L Legacy, as the Declarant, was required to pay, for each Unit that it owned, an assessment equal to 50% of the assessment paid by the other Unit owners, as well as, at its election, "either to pay an amount equal to its regular assessment amount on all of its unsold Units or to pay the difference in the amount of the assessments levied on all other Units subject to assessment and the amount of actual expenditures by the [HOA] during the fiscal year."[27] The HOA alleges that once the Class B Control Period ended, the Declaration required F-L Legacy, as Declarant, to pay the same assessment for each Unit it owned as all other owners but that it would not owe any assessments if it no longer owned any Units.[28]

14. By the Declaration's terms, therefore, F-L Legacy was able to appoint the HOA's board of directors during the Class B Control Period, who then had the right to determine the amount of Common Expenses, in turn the amount of General

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[25] (Declaration Art. 1.12.)

[26] (Declaration Art. 8.3.)

[27] (Declaration Art. 8.2.)

[28] (Countercl. ¶¶ 34–38.)

Assessments, and ultimately the amount that F-L Legacy had to pay in assessments. The HOA alleges that the Freehold Directors intentionally set the amount of "Common Expenses" below the level of anticipated actual expenses in order to lower F-L Legacy's required assessments and then funded the resulting budget shortfall by causing the HOA to issue promissory notes (the "Notes") to F-L Legacy that the Freehold Directors caused to mature after F-L Legacy no longer owned any Units and had no further assessment obligations.[29] These Notes required the HOA to pay all principal balances by their due dates and set a per-annum interest rate of 12% on any unpaid principal.[30] Most of the Notes were authorized in writing without an in-person board meeting.[31]

[29] (Countercl. ¶¶ 37–40.) The specific notes at issue in this litigation are: (i) a $65,000 note issued in October 2014 with an original maturity date of 31 December 2018, which was later extended to 31 December 2021 (the "October 2014 Note") (Countercl. ¶¶ 41, 53; Am. Compl. ¶¶ 5–8, ECF No. 36; Verified Compl. Exs. A–C, ECF No. 3); (ii) a $65,000 note issued in March 2015 with an original maturity date of 31 December 2019, which was later extended to 31 December 2023 (the "March 2015 Note") (Countercl. ¶¶ 42, 54; Am. Compl. ¶¶ 13–15, Exs. D–F, ECF No. 36.1); (iii) a $40,000 note issued in December 2017 with an original maturity date of 31 December 2021, which was later extended to 31 December 2023 (the "December 2017 Note") (Countercl. ¶¶ 43, 55; Am. Compl. ¶¶ 20–21, Exs. G–H, ECF No. 36.1); (iv) a $185,788.30 note issued in September 2018 with a maturity date of 31 December 2022 (the "September 2018 Note") (Am. Compl. ¶ 26, Ex. I, ECF No. 36.1); (v) a $102,539.41 note issued in August 2019 with a maturity date of 31 December 2023 (the "August 2019 Note") (Countercl. ¶ 46; Am. Compl. ¶ 31, Ex. J, ECF No. 36.1); and (vi) a $67,171.26 note issued in October 2020 with a maturity date of 31 December 2024 (the "October 2020 Note") (*see* Countercl. ¶ 47; Am. Compl. ¶ 36, Ex. K, ECF No. 36.1).

[30] (Am. Compl. Exs. A, D, G, I, J, K.)

[31] (Countercl. ¶¶ 42–47.)

15. F-L Legacy initiated this action on 1 August 2022 to recover all sums due on the October 2014 Note and subsequently filed an Amended Complaint on 8 March 2023 seeking to recover the sums due on the other Notes as well.[32]

16. The HOA filed its Answer and Counterclaim in response to F-L Legacy's original complaint on 3 October 2022,[33] asserting among the seventeen causes of action listed in the Counterclaims, (i) six separate counterclaims for breach of fiduciary duty, each based on a specific Note, against the Freehold Directors who approved the issuance of each Note (Counts 1–6);[34] and (ii) an action for an accounting against the Freehold Defendants to detail the HOA's receipts and expenditures during the period the Freehold Directors served on the HOA's board (Count 8).[35]

17. The Freehold Defendants filed the Motion to Dismiss on 5 December 2022, seeking the dismissal of Counts 1–6 and 8 of the HOA's Counterclaims. After full briefing, the Court held a hearing on the Motion on 14 February 2023, at which all parties were represented by counsel. The Motion is now ripe for resolution.

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[32] (ECF No. 36.)

[33] (ECF No. 7.)

[34] (Countercl. ¶¶ 116–48.) Counts 1–4 are based on the October 2014, March 2015, December 2017, and September 2018 Notes, respectively, and are against Tischer, Brown, and Smith. Counts 5 and 6 are based on the August 2019 and October 2020 Notes and are against Brown, Smith, and McCollum.

[35] (Countercl. ¶¶ 154–59.)

II.

LEGAL STANDARD

18. Under Rule 12(b)(6), "the [challenged pleading] is construed liberally, viewing the allegations as true and in the light most favorable to the non-moving party, and the claim is not dismissed unless it appears beyond doubt that the [non-moving party] could prove no set of facts in support of [its] claim which would entitle [it] to relief." *Krawiec v. Manly*, 370 N.C. 602, 618 (2018) (cleaned up). While "the well-pleaded material allegations of the [challenged pleading] are taken as true[,] conclusions of law or unwarranted deductions of fact are not admitted." *Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 599 (2018).

19. Dismissal under Rule 12(b)(6) is proper when " '(1) the [challenged pleading] on its face reveals that no law supports [its claims]; (2) the [pleading] on its face reveals the absence of facts sufficient to make a good claim; or (3) the [pleading] discloses some fact that necessarily defeats the [non-moving party's] claim.' " *Corwin v. British Am. Tobacco, PLC*, 371 N.C. 605, 615 (2018) (quoting *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)).

III.

ANALYSIS

A. Counts 1–6—Breach of Fiduciary Duty Counterclaims Based on the Notes

20. The HOA argues that the Freehold Directors acted in their own self-interests and breached their fiduciary duties as directors of the HOA by first approving General Assessments after 2014 in an amount less than total budgeted

Common Expenses, including reserves, and later by eliminating the resulting budget deficits by causing the HOA to borrow funds from F-L Legacy that the HOA would not repay until after F-L Legacy was no longer subject to assessments as a Unit owner.[36] Through this stratagem, the HOA avers, the Freehold Directors shifted the financial burden of supporting the HOA from F-L Legacy to the HOA and its future members.[37] The HOA contends that these actions were intended to benefit, and did benefit, Freehold and caused injury to the HOA.[38] As a result, the HOA alleges, the Freehold Directors breached their fiduciary duties to the HOA by acting to further Freehold's best interests at the expense of the HOA.[39]

21. The Freehold Directors argue in opposition that their actions complied with the Declaration and benefitted the HOA by keeping the General Assessments for existing owners low until those assessments could be spread over a greater number of owners, which did not harm the HOA and its individual members.[40] As such, they contend that the transaction was entirely fair to the HOA and that Counts 1–6 of the HOA's Counterclaims should be dismissed.[41]

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[36] (*See* Def. Countercl. Pl. The Legacy at Jordan Lake Homeowners Association's Mem. Resp. Countercl. Defs.' Mot. Dismiss 6–8 [hereinafter "Br. Opp'n"], ECF No. 26.)

[37] (Br. Opp'n 8.)

[38] (*See* Br. Opp'n 6–9.)

[39] (Br. Opp'n 3.)

[40] (*See* Mem. Law Supp. F-L Legacy Owner LLC, Freehold Capital Management, LLC, Thomas C. Tischer, Stan Brown, Andrew T. Smith, and Michael McCollum's Mot. Dismiss 4–7 [hereinafter "Br. Supp."], ECF No. 20.)

[41] (*See generally* Br. Supp.)

22. Under North Carolina law, each Freehold Director was required to discharge his or her duties to the HOA: "(1) In good faith; (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) In a manner the director reasonably believe[d] to be in the best interests of the corporation." N.C.G.S. § 55A-8-30(a). Even if the Directors' conduct in setting Common Expenses and General Assessments and in incurring debt to make up for budget shortfalls was permitted under the Declaration as they contend, the Freehold Directors were still "under a statutory mandate to act in good faith and not to engage in any self[-]dealing." *Freese v. Smith*, 110 N.C. App. 28, 38 (1993).

23. After careful review, the Court concludes that the HOA has alleged facts that, if taken as true, show that the Freehold Directors engaged in conduct with the intent and effect of benefitting Freehold at the expense of the HOA. As such, the HOA's allegations permit a factfinder to conclude that the Freehold Directors were involved in self-dealing, *see, e.g.*, *Self-Dealing*, *Black's Law Dictionary* (10th ed. 2014) (defining "self-dealing" as "[p]articipation in a transaction that benefits oneself instead of another who is owed a fiduciary duty"), and in conflict of interest transactions, *see* N.C.G.S. § 55A-8-31(a) ("A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest.").

24. By statute, a transaction is not voidable "solely because of the director's interest" if the board approved or ratified the transaction with knowledge of the

material facts, if the members entitled to vote approved or ratified the transaction with knowledge of the material facts, or if the transaction was fair to the corporation. *See* N.C.G.S. § 55A-8-31(a). Because the HOA has pleaded facts showing that all board members were interested in the challenged transactions and that the HOA members did not approve or ratify any of the board's decisions, the issue for the Court on the Motion is whether, applying the appropriate standards to the pleaded facts, it can conclude as a matter of law that the challenged transactions were entirely fair to the HOA. The Court concludes that it cannot.

25. To begin, whether a transaction is entirely fair depends on "the facts and circumstances as they were known or they should have been known at the time the transaction was entered into." *Ehmann v. Medflow, Inc.*, 2017 NCBC LEXIS 88, at *53 (N.C. Super. Ct. Sept. 26, 2017) (quoting N.C.G.S. § 55-8-31, cmt. 4). Where, as here, the party challenging the transaction pleads that it was approved by interested directors, the burden of proof as to the transaction's entire fairness lies with the party seeking to sustain the transaction—in this instance, F-L Legacy.[42] *See Highland Cotton Mills v. Ragan Knitting Co.*, 194 N.C. 80, 88 (1927) ("[W]here the fairness of [conflicted] transactions is challenged, the burden is upon those who would maintain them to show their entire fairness[.]"); *Ehmann*, 2017 NCBC LEXIS 88, at *46;

[42] For this burden-shifting to apply, a conflict of interest must be adequately pleaded. *See, e.g.*, *Scott v. Lackey*, 2012 NCBC LEXIS 60, at *32 (N.C. Super. Ct. Dec. 3, 2012) (reasoning that by showing that a majority of board members had a financial interest in a transaction, the business judgment rule was rebutted, and the entire fairness standard of review was applicable, which consequently shifted the burden to the transaction's proponents). As stated above, the Court concludes that the HOA has pleaded facts showing that the Freehold Directors engaged in conflict-of-interest transactions by approving the issuance of the Notes.

Russell M. Robinson II, *Robinson on North Carolina Corporation Law* § 14.06 n.7 (7th ed. 2022) ("Whenever a material transaction of any nature is challenged as involving self-dealing or some other conflict of interest with a . . . party dominating the corporation's action, the transaction must substantively pass the test of 'entire fairness,' and procedurally, the burden of persuasion shifts to the directors or others defending the transaction.").

26. For that reason, motions to dismiss are rarely granted where an entire fairness analysis is required. *See, e.g.*, *Scott*, 2012 NCBC LEXIS 60, at *32 (concluding that since the entire fairness standard shifts the burden to the defendant, a plaintiff can survive a 12(b)(6) motion by sufficiently pleading that a transaction was self-interested); *see also Salladay v. Lev*, 2020 Del. Ch. LEXIS 78, at *1 (Del. Ch. Feb. 27, 2020) ("It is nearly . . . axiomatic that, where entire fairness is the standard of review, a motion to dismiss is rarely granted [ ] because review under entire fairness requires a record to be meaningful.").

27. Here, the HOA has sufficiently pleaded facts that, when taken as true, show that the Freehold Directors have engaged in a series of self-interested transactions in violation of their fiduciary duties by shifting to the HOA and its future members the financial burden F-L Legacy would have otherwise shouldered. The burden is thus on the Freehold Directors to show that, based on the HOA's pleading, the Notes were entirely fair to the HOA as a matter of law.

28. The Freehold Directors attempt to carry their burden by arguing that the HOA has not suffered any harm from the transactions. But even if that were so,

viewing the Counterclaim allegations in the light most favorable to the HOA, the Court cannot conclude as a matter of law, in light of all "the facts and circumstances as they were known or . . . should have been known at the time the transaction[s were] entered into," *Ehmann*, 2017 NCBC LEXIS 88, at *53, that the issuance of the Notes "carrie[d] the earmarks of an arm's length bargain," *Hill v. Erwin Mills, Inc.*, 239 N.C. 437, 444 (1954), or that the Notes "might have been entered into at arm's length by disinterested persons," *Ehmann*, 2017 NCBC LEXIS 88, at *52. To the contrary, the transactions as pleaded permit a factfinder to conclude that the Directors used the HOA for their own purposes and in a way that disinterested directors would not have authorized.

29. As a result, the Court concludes that the Freehold Defendants have not shown as a matter of law that the conflict-of-interest transactions in which they engaged were entirely fair to the HOA based on the allegations of the Counterclaims and its attachments. Their Motion must therefore be denied as to Counts 1–6.

B. Count 8—Counterclaim for Accounting

30. The Freehold Defendants move to dismiss the HOA's counterclaim for accounting (Count 8) on grounds that an accounting is a remedy and not a cause of action.[43] While Defendants are correct that the HOA's purported counterclaim is not properly captioned as a cause of action, *see, e.g.*, *Elhulu v. Alshalabi*, 2021 NCBC LEXIS 44, at *20 (N.C. Super. Ct. Apr. 29, 2021) (an equitable accounting "is a remedy, not an independent cause of action"), the Court is nevertheless satisfied that

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[43] (Br. Supp. 7–8.)

the HOA has pleaded facts in support of its counterclaims for unjust enrichment, breach of fiduciary duty, and constructive fraud that would, if proven, permit a court to order an equitable accounting. *See, e.g.*, *Starling v. Alexander Place Townhome Ass'n*, 2010 N.C. App. LEXIS 488, at *10 (N.C. Ct. App. Mar. 16, 2010) ("An accounting is an equitable remedy, usually sought pursuant to claims of constructive fraud or breach of fiduciary duty."); *Pender v. Bank of Am. Corp.*, 788 F.3d 354, 364 (4th Cir. 2015) ("An accounting for profits is a restitutionary remedy based upon avoiding unjust enrichment." (cleaned up)); *see generally Howard v. IOMAXIS, LLC*, 2022 NCBC LEXIS 146, at *22 (N.C. Super. Ct. Dec. 5, 2022) ("The scope and depth of the remedy of equitable accounting depends on the nature of the harm and the information necessary to remedy that harm. An equitable accounting can be specific and deep, or it can be general and cover a breadth of information.").

31. As a result, the Court will grant the Freehold Defendants' motion as to Count 8 of the HOA's Counterclaims and dismiss the HOA's action for an accounting to the extent it is asserted as an independent cause of action, but without prejudice to the HOA's right to pursue the equitable accounting remedy to the extent one or more of its causes of action may warrant that relief.

IV.

CONCLUSION

32. **WHEREFORE**, the Court, for the reasons set forth above, hereby **ORDERS** as follows:

a. The Motion is hereby **DENIED** as to Counts 1–6 of the HOA's Counterclaims; and

b. The Motion is hereby **GRANTED** as to Count 8 of the HOA's Counterclaims and that Count is hereby **DISMISSED without prejudice** to the HOA's right to pursue the equitable accounting remedy against the Freehold Defendants to the extent one or more of its counterclaims may justify that remedy.

SO ORDERED, this the 3rd day of April, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge