IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-459

No. COA21-264

Filed 5 July 2022

Nash County, No. 20 CVS 1555

(formerly Duplin County, No. 17 CVS 466)

EASTPOINTE HUMAN SERVICES, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, MANDY K. COHEN, in her official capacity as Secretary of the North Carolina Department of Health and Human Services, RICHARD O. BRAJER, in his individual and former official capacity as Secretary of North Carolina Department of Health and Human Services, NASH COUNTY, and EDGECOMBE COUNTY, Defendants.

Appeal by Plaintiff from orders entered 5 November 2020 and 19 November 2020 by Judge J. Stanley Carmical in Duplin County Superior Court. Heard in the Court of Appeals 14 December 2021.

The Charleston Group, by R. Jonathan Charleston and Jose A. Coker, for Plaintiff-Appellant.

Poyner Spruill LLP, by J. Nicholas Ellis, for Defendant-Appellee Edgecombe County.

Battle, Winslow, Scott & Wiley, P.A., by G. Vincent Durham, Jr., W. Dudley Whitley, III, and M. Greg Crumpler; and Womble Bond Dickinson, LLC, by Bradley O. Wood, for Defendant-Appellee Nash County.

No Brief Filed for North Carolina Department of Health and Human Services, Richard O. Brajer, Mandy K. Cohen, Defendants-Appellees.

WOOD, Judge.

¶ 1 Eastpointe Human Services ("Plaintiff") appeals from orders granting Edgecombe County's ("Defendant Edgecombe County") and Nash County's ("Defendant Nash County") (collectively, the "Defendants") motions to change venue and motions to dismiss. Plaintiff also appeals from an order denying its motion for continuance. On appeal, Plaintiff argues the trial court erred by 1) denying its motion to continue, 2) granting Defendants Nash County's and Edgecombe County's motions to dismiss, and 3) denying its claim for injunctive relief. After a careful review of the record and applicable laws, we affirm the orders of the trial court.

I. Factual and Procedural Background

¶ 2 In 1985, Defendant Nash County, Defendant Edgecombe County, and Edgecombe-Nash Mental Health Disabilities and Substance Abuse Area Authority ("ENMH") collectively determined that ENMH's facilities were at risk of condemnation, and as such, a new building was required. To fund this new building, ENMH transferred $98,691.00 from its building fund to Defendant Nash County to pay for the development of architectural designs. Architects developed plans for the new ENMH building, which would sit on 3.23 acres of land. On April 2, 1990, Defendant Edgecombe County approved a resolution authorizing ENMH to acquire and own real property. However, when construction was ready to begin, ENMH

lacked the cash to fund the construction in its entirety. Defendants could not finance the project because prior to 1995, N.C. Gen. Stat. § 122C-147(c) prevented Area Authorities from purchasing real property financed by installment financing agreements. Thus, to fund the building's construction, Defendant Edgecombe County, Defendant Nash County, and ENMH all agreed that ENMH would initially contribute $500,000.00 from State grants and its fund balance. Defendants would finance the remaining costs through a land installment financing agreement wherein ENMH would pay off the remaining balance over time.

¶ 3 On September 11, 1990, Defendant Edgecombe County, Defendant Nash County, and ENMH formalized this arrangement under the Intergovernmental Agreement for the acquisition, construction, equipment, financing, and ownership of the new building, a mental health facility (the "Facility"). The Intergovernmental Agreement provided, *inter alia*,

> 5. That upon completion of the project and final acceptance of the construction of the facility and after retirement of the long term financing obligations of Edgecombe and Nash Counties the title to the property secured for the facility and all improvements will vest in Mental Health and this agreement shall terminate.
>
> . . .
>
> 10. In the event of dissolution or termination of the Area Authority the title to the said land and buildings thereon acquired under this agreement shall revert to Edgecombe Count [sic] and Nash County in the same proportion as

> funds provided by each County respectively for the project and shall be sold as soon thereafter as reasonably possible and the net proceeds of the sale apportioned to each of said Counties accordingly.

¶ 4 On December 19, 1990, the Nash General Hospital Board approved selling 3.14 acres to ENMH. Thereafter, the property was purchased with ENMH buying 3.14 acres of land from the Nash General Hospital Board and 0.09 acres of land from Nash County. A deed recorded in the Nash County Register of Deeds titled the property in Defendants Nash County's and Edgecombe County's names with Defendant Nash County having an undivided 55% interest, and Defendant Edgecombe County having an undivided 45% interest. On April 3, 1991, Defendants and ENMH executed an Installment Finance Agreement and an Installment Purchase Contract funded by First Union National Bank. The same day, Defendants executed a deed of trust and security agreement with First Union National Bank. Therein, Defendants conveyed to First Union National Bank a deed of trust to the property, and in return, the bank advanced to Defendants the funding necessary to complete the construction of the Facility. By its terms, the deed of trust was to remain in force until all amounts were "paid in full in accordance with the terms of the [Installment] Contract and this Deed of Trust."

¶ 5 Construction of the Facility began in 1991. ENMH paid $761,347.29 directly to construction vendors toward the remaining construction costs. The remaining cost

of construction, totaling $1,322,284.30, were paid by funds from the Installment Finance Contract Escrow Account. In late 1992, ENMH began occupying the Facility. Approximately one year later, ENMH sought to expand the Facility and began planning construction on an additional three acres. Defendant Nash County and the Nash General Hospital Board sold ENMH the land adjacent to the Facility so ENMH could expand the Facility. On June 23, 1993, ENMH issued a check to Nash General Hospital in the amount of $113,294.50 for the purchase of 2.82 acres and another check to Defendant Nash County in the amount of $3,877.00 for the purchase of 0.18 acres. Upon completion of the expansion, ENMH operated from the combined buildings as a singular office space on the combined tracts of land.

¶ 6 The debt incurred from the total construction of the Facility was satisfied in May 1997. Per the Intergovernmental Agreement, upon payment of the debt incurred to construct the building, title was to vest in ENMH. However, neither Defendant Nash County nor Defendant Edgecombe County executed a deed to ENMH transferring the ownership of the Facility. ENMH, likewise, did not take action under the terms of the Intergovernmental Agreement to acquire the deed to the Facility.

¶ 7 On July 1, 2007, ENMH merged with Wilson-Greene Mental Health, with ENMH named the surviving entity. ENMH was then renamed as The Beacon Center ("Beacon"). On June 7, 2012, Beacon merged with Southeastern Regional Mental

Health ("Southeastern"), and Plaintiff. Under the terms of the Merger Agreement,

> [t]he parties intend to merge Beacon and Southeastern Regional into Eastpointe effective on July 1, 2012 . . . .
>
> . . .
>
> 2. Surviving Entity. Eastpointe shall be the surviving legal entity.
>
> . . .
>
> 9. Assets
>
> (a) Assets and Fund Balances. All assets and fund balances, designated or undesignated, currently owned by Beacon, Eastpointe, or Southeastern Regional will be transferred to the surviving entity on the Merger Date."

¶ 8 A few years after the merger occurred, Plaintiff filed a complaint in the United States District Court for the Eastern District of North Carolina, seeking a temporary restraining order to obtain relief relating to Defendant Nash County's impending disengagement from Plaintiff on June 8, 2017. On June 29, 2017, the U.S. District Court dismissed Plaintiff's complaint. The day after Plaintiff's complaint was dismissed by the U.S. District court, Plaintiff filed its original complaint in the case *sub judice* in Dublin County Superior Court on June 30, 2017, asking for declaratory judgment, a temporary restraining order, and a preliminary and permanent injunction. Plaintiff also claimed a violation of the Medicaid Act, breach of contract, tortious interference with a contractual relationship, civil conspiracy, breach of implied covenant of good faith and fair dealing, and violations of both the United

States Constitution and North Carolina Constitution. On July 1, 2017, Defendant Nash County disengaged from Plaintiff and realigned with Trillium Health Resources.

¶ 9 Plaintiff continued to operate the Facility without objection from either Defendant. The trial court judge granted an ex parte temporary restraining order as requested by Plaintiff on June 30, 2017, which was dissolved a few days later. Thereafter, Plaintiff made a renewed, oral motion in open court for a temporary restraining order. This oral motion was denied. On August 4, 2017, Plaintiff appealed to this Court challenging the trial court's denial of its oral motion for a temporary restraining order and dissolution of the ex parte temporary restraining order. This Court dismissed Plaintiff's appeal on April 12, 2018.

¶ 10 On January 3, 2019, Chief Justice Mark Martin designated this case to be an exceptional case pursuant to Rule 2.1 and designated Judge Stanley Carmical to preside over this case. Plaintiff then filed a second motion for leave to amend its complaint on October 25, 2019, which was subsequently granted on June 29, 2020. Plaintiff's newly amended complaint asserted ten claims for relief. Defendant Nash County filed motions to change venue, motions to dismiss, and motions to strike. Defendant Edgecombe County also filed a motion to dismiss and motion to change venue that same day. Both motions allege that part of Plaintiff's second amended complaint was barred by the statute of limitations.

¶ 11 Defendant Nash County's motions to change venue, dismiss, and strike and Defendant Edgecombe County's motion to change venue and dismiss motion came on for hearing on September 28, 2020. Thereafter, Plaintiff raised, for the first time, the issue of the potential need to disqualify counsel. When the trial court inquired if Plaintiff's position was that "the Court needs to make a ruling on that before proceeding on the motions today[,]" Plaintiff's attorney replied, "I'm going to allow the Court to exercise its discretion, but I wanted it to be on the record." The trial court then proceeded to hold a hearing on Defendants' motions. At the end of the hearing, the trial court asserted it "anticipate[d] having a decision on all the motions by the end of the week." On October 2, 2020, Plaintiff's counsel sent an e-mail to the trial court judge, requesting he "not issue . . . [his] order on the pending motions to dismiss until . . . [he has] reviewed the Motion to Disqualify." The trial court, in its discretion, construed Plaintiff's e-mail as a motion to continue. The trial court denied this motion, stating it would "proceed to issue its ruling on the pending motions and those rulings shall be additional orders of the Court." Three days later, Plaintiff filed a motion to disqualify counsel.

¶ 12 On November 5, 2020, the trial court entered an order granting Defendant Edgecombe County's motion to dismiss. On the same day, the trial court entered a separate order granting Defendant Edgecombe County's motion to change venue. On November 19, 2020, the trial court denied Plaintiff's motion to continue and entered

an order granting Defendant Nash County's motion to change venue, and an order granting Defendant Nash County's motion to dismiss. The trial court found the venue for this case properly lies in Nash County. Plaintiff filed a timely notice of appeal. On March 15, 2021, the trial court also entered an order denying Plaintiff's motion to disqualify counsel.

II. Jurisdiction

¶ 13 An appeal is either interlocutory or a final determination of the rights of the parties. N.C. Gen. Stat. § 1A-1, R. 54(a). "An appeal is interlocutory when noticed from an order entered during the pendency of an action, which does not dispose of the entire case and where the trial court must take further action in order to finally determine the rights of all parties involved in the controversy." *Beroth Oil Co. v. N.C. Dep't. of Transp.*, 256 N.C. App. 401, 410, 808 S.E.2d 488, 496 (2017) (quoting *Peterson v. Dillman*, 245 N.C. App. 239, 242, 782 S.E.2d 362, 365 (2016)). Generally, a party has no right to appeal from an interlocutory order. *Id.* "The reason for this rule is to prevent fragmentary, premature and unnecessary appeals by permitting the trial court to bring the case to a final judgment before it is presented to the appellate courts." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (quotation omitted).

¶ 14 There are two instances where a party has an immediate right of appeal from an interlocutory order. *Watts v. Slough*, 163 N.C. App. 69, 71, 592 S.E.2d 274, 276

(2004) (citation omitted). First, "the order is final as to some but not all of the claims or parties and the trial court certifies there is no reason to delay the appeal pursuant to N.C.R. Civ. P. 54(b)[,]" then an interlocutory appeal may be heard. *Woody v. Vikrey*, 276 N.C. App. 427, 2021-NCCOA-105, ¶ 13 (quoting *CBP Res., Inc. v. Mountaire Farms, Inc.*, 134 N.C. App. 169, 171, 517 S.E.2d 151, 153 (1999)). Second, an appeal from an interlocutory order may be granted "if the trial court's decision deprives the appellant of a substantial right." *Id.* (internal ellipses omitted) (quoting *CBP Res., Inc.*, 135 N.C. App. at 171, 517 S.E.2d at 153). In determining whether a substantial right is affected, we first look to see whether the right itself is substantial, and if so, whether the deprivation of such right will work an injury to the plaintiff "if not corrected before appeal from final judgment." *Hull v. Brown*, 2021-NCCOA-525, ¶7 (quoting *Goldston v. Am. Motors. Corp.*, 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990)); *see Stanback v. Stanback*, 287 N.C. 448, 453, 215 S.E.2d 30, 34 (1975). When applying this test, the court must consider the particular facts of the case and the "procedural context in which the order from which appeal is sought was entered." *Hull*, at ¶ 7 (quoting *Waters v. Qualified Pers. Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978)).

¶ 15 In the case *sub judice*, Plaintiff concedes its appeal is interlocutory, but nonetheless contends we should reach the merits of its appeal because it affects a substantial right. We agree.

¶ 16 In *Watson v. Millers Creek Lumber Co.*, this Court held that interlocutory orders concerning title affect a substantial right and thus must be immediately appealed. *Watson v. Millers Creek Lumber Co.*, 178 N.C. App. 552, 554-55, 631 S.E.2d 839, 840-41; *see also N.C. DOT v. Stagecoach Vill.*, 360 N.C. 46, 48, 619 S.E.2d 495, 496 (2005) ("[I]nterlocutory orders concerning title or area taken must be immediately appealed as 'vital preliminary issues' involving substantial rights adversely affected."); *Highway Comm'n v. Nuckles*, 271 N.C. 1, 14, 155 S.E.2d 772, 784 (1967) (holding an interlocutory appeal from an order addressing the taking of property affected a substantial right and, as such, could be immediately appealed), *modified, DOT v. Rowe*, 351 N.C. 172, 521 S.E.2d 707 (1999).

¶ 17 Here, like in *Watson*, this case concerns title. Because Plaintiff's appeal affects a substantial right, we address the merits of its arguments.

III. Discussion

¶ 18 Plaintiff raises multiple issues on appeal; each will be addressed in turn.

A. Motion to Continue

¶ 19 Plaintiff first argues the trial court erred by failing to address its motion to continue as its motion to disqualify counsel was "imminent." Specifically, Plaintiff argues: (1) a motion to disqualify an attorney must be resolved before deciding substantive motions, and (2) the trial court had a duty to consider the issue before ruling on the substantive motions because the fairness of the proceeding was at risk.

We disagree.

¶ 20 This court reviews a trial court's decision regarding a motion to continue or motion to disqualify counsel to determine whether an abuse of discretion occurred. *Braun v. Tr. Dev. Grp, LLC*, 213 N.C. App. 606, 609, 713 S.E.2d 528, 530 (2011); *Morin v. Sharp*, 144 N.C. App. 369, 373, 549 S.E.2d 871, 873 (2001) (citation omitted). The trial court has discretion to determine whether to grant a motion to continue, and such determination will be reviewed only upon a showing that its actions are manifestly unsupported by reason. *Patton v. Vogel*, 267 N.C. App. 254, 259, 833 S.E.2d 198, 202 (2019); *see Edmundson v. Lawrence*, 187 N.C. App. 799, 801, 653 S.E.2d 922, 924 (2007).

¶ 21 Here, Plaintiff would have us hold that verbal notice, followed by an e-mail of intent to file a motion to disqualify, is sufficient to toll the trial court's deliberations. It is not. Plaintiff failed to file a motion to continue or to disqualify counsel either prior to or at the September 28 hearing. Rather, Plaintiff merely gave oral notice of a potential attorney conflict at the hearing and then proceeded with the hearing without the tender of a written motion. At the end of the hearing, the trial court judge put Plaintiff on notice he would be returning his "decision on all the motions by the end of the week." Plaintiff's e-mail to the trial court requesting it "not issue . . . [its] order on the pending motions to dismiss until . . . [it] ha[s] review the motion to disqualify[,]" which the trial court construed as a motion to continue, was also not

accompanied by a filing of a motion to disqualify. Although Plaintiff filed a motion to disqualify counsel a few days thereafter, the trial court was not required to postpone the entry of its orders. Therefore, we conclude the trial court did not abuse its discretion by denying Plaintiff's motion to continue.

B. Motion to Dismiss

¶ 22 Plaintiff next contends the trial court erred by granting Defendants' motions to dismiss.

¶ 23 We review a trial court's decision to grant a motion to dismiss *de novo*. *Holleman v. Aiken*, 193 N.C. App. 484, 668 S.E.2d 579 (2008). Under a *de novo* standard of review, this Court considers the matter anew and without deference to the trial court's ruling. *In re Lynn v. Fed. Nat'l Mortg. Ass'n*, 235 N.C. App. 77, 80-81, 760 S.E.2d 372, 375 (2014). Dismissal pursuant to Rule 12(b)(6) is proper "(1) when the complaint on its face reveals that no law supports the plaintiff's claim; (2) when the complaint reveals on its face the absence of facts sufficient to make a claim; or (3) when some fact disclosed in the complaint necessarily defeats the plaintiff's claim." *Broad St. Clinic Found v. Weeks*, 273 N.C. App. 1, 5, 848 S.E.2d 224, 228 (2020) (internal quotation marks omitted).

1. Declaratory Judgment and Action to Quiet Title

¶ 24 Plaintiff argues the trial court erred by holding its claims for declaratory judgment and action to quiet title were barred by the statute of limitations. We

disagree.

¶ 25 A claim to quiet title may be brought by "any person against another who claims an estate or interest in real property adverse to him for the purpose of determining such adverse claims." N.C. Gen. Stat. § 41-10 (2021). By bringing such a claim, "a plaintiff is not demanding possession of the land but is merely stating that defendant has no right, title or interest adverse to his interest." *Chicago Title Ins. Co. v. Wetherington*, 127 N.C. App. 457, 461, 490 S.E.2d 593, 597 (1997) (citing *Resort Development Co. v. Phillips*, 278 N.C. 69, 77, 178 S.E.2d 813, 818 (1971)). Two elements must be satisfied in a claim to quiet title: "(1) the plaintiff must own or have some interest in the property at issue, and (2) the defendant must have a claim adverse to the plaintiff's title or interest in the property." *MTGLQ Inv'rs, L.P. v. Curnin*, 263 N.C. App. 193, 195, 823 S.E.2d 409, 411 (2018) (citing *Wells v. Clayton*, 236 N.C. 102, 107, 72 S.E.2d 16, 20 (1952)); *see Chicago Title Ins. Co. v. Wetherington*, 127 N.C. App. at 461, 490 S.E.2d at 597. Because a claim to quiet title does not state a specific statute of limitations, we refer to Plaintiff's "underlying theory of relief to determine which statute, if any, applies." *Walter v. Walter*, 275 N.C. App. 956, 966, 853 S.E.2d 318, 325 (2020) (quoting *Poore v. Swan Quarter Farms, Inc.*, 79 N.C. App. 286, 289, 338 S.E.2d 817, 819, (1986)).

¶ 26 A careful review of Plaintiff's brief reveals Plaintiff's claims to ownership or interest in the Facility are primarily based in contract. Specifically, Plaintiff asserts

its right to the Facility lies in the Intergovernmental Agreement and Merger Agreement. To the extent Plaintiff argues it showed a prima facie case for an action to quiet title, we must first determine whether Plaintiff owns or has an interest in the Facility per the terms of the Intergovernmental Agreement and Merger Agreement.

¶ 27 It is firmly established "the intention of the parties to a contract controls the interpretation of the contract." *Litvak v. Smith*, 180 N.C. App. 202, 206, 636 S.E.2d 327, 330 (2006); *see State v. Philip Morris USA Inc.*, 359 N.C. 763, 773, 618 S.E.2d 219, 225 (2005) ("Interpreting a contract requires the court to examine the language of the contract itself for indications of the parties' intent at the moment of execution."); *Salvaggio v. New Breed Transfer Corp.*, 150 N.C. App. 688, 689, 564 S.E.2d 641, 643 (2002). "If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract." *Hodgin v. Brighton*, 196 N.C. App. 126, 129, 674 S.E.2d 444, 446 (2009) (quoting *Walton v. City of Raleigh*, 342 N.C. 879, 881, 467 S.E.2d 410, 411 (1996)). Absent ambiguity, a judge determines the contract as a matter of law. *Lane v. Scarborough*, 284 N.C. 407, 410, 200 S.E.2d 622, 624 (1973) ("When a contract is in writing and free from any ambiguity which would require resort to extrinsic evidence, or the consideration of disputed fact, the intention of the parties is a question of law."); *see Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 691, 821 S.E.2d 360, 372 (2018) (Beasley, J., dissenting).

¶ 28 Here, the intent of the parties was clearly conveyed through the language of the Intergovernmental Agreement:

> 5. That upon completion of the project and final acceptance of the construction of the facility and after retirement of the long term financing obligations of Edgecombe and Nash Counties the title to the property secured for the facility and all improvements will vest in Mental Health and this agreement shall terminate.
>
> . . .
>
> 10. In the event of dissolution or termination of the Area Authority the title to the said land and buildings thereon acquired under this agreement shall revert to Edgecombe Count [sic] and Nash County in the same proportion as funds provided by each County respectively for the project and shall be sold as soon thereafter as reasonably possible and the net proceeds of the sale apportioned to each of said Counties accordingly.

Per the plain language of Section 5 to the Intergovernmental Agreement, the parties intended for title to the Facility to vest to ENMH upon payment of the debt incurred for the construction of the Facility. This debt was satisfied in May 1997. Therefore, title to the Facility *should* have vested to ENMH *at that time*. However, Defendants never issued a deed transferring the ownership of the Facility to ENMH.

¶ 29 This Court has held a breach of contract occurs when there is (1) a valid contract and (2) a breach occurs of the terms therein. *Supplee v. Miller-Motte Bus. Coll., Inc.*, 239 N.C. App. 208, 216, 768 S.E.2d, 582, 590 (2015); *see Branch v. High Rock Lake Realty, Inc.*, 151 N.C. App. 244, 250, 565 S.E.2d 248, 252 (2002). It is

undisputed the Intergovernmental Agreement and Merger Agreement were valid contracts. Defendants breached the terms of this agreement when they did not vest title of the Facility to ENMH, Plaintiff's predecessor, in May 1997.

¶ 30 Because we conclude Defendants breached the Intergovernmental Agreement, the crucial question is whether Plaintiff has a right to bring forth a claim based on this breach.

¶ 31 Here, Plaintiff's claim to the Facility is against two local governmental entities. As such, it is subject to a two-year statute of limitations. N.C. Gen. Stat. § 1-53(1) (2019) ("Within two years[] [a party must bring] [a]n action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied."). "The statute of limitations begins to run when plaintiff's right to maintain an action for the alleged wrong accrues." *Rowell v. N.C. Equip. Co.*, 146 N.C. App. 431, 434, 552 S.E.2d 274, 276 (2001) (citing *Federal Deposit Ins. Corp. v. Loft Apartments Ltd. Partnership*, 39 N.C. App. 473, 476, 250 S.E.2d 693, 695 (1979)). Applying the two-year statute of limitation to the facts in the case *sub judice*, Defendants failure to transfer title of the Facility in May 1997 constituted a breach of the Intergovernmental Agreement; consequently, ENMH must have brought suit against Defendants by May 1999. Since Plaintiff's predecessor failed to do so, title to the property did not vest to ENMH and any claim under Section 5 of the Intergovernmental Agreement became barred as of May 1999.

¶ 32 Plaintiff, as the surviving entity of the Merger Agreement, took whatever title its predecessor had to the Facility. *See* N.C. Gen. Stat. § 55-11-01 (2012) ("When a merger pursuant to G.S. 55-11-01, 55-11-04, 55-11-07, 55-11-09 takes effect: . . . (2) The title to all real estate and other property owned by each merging corporation is vested in the surviving corporation without reversion or impairment."). At the time of the merger, ENMH, operating as the Beacon Center, had no title to the Facility and any right to bring such claim was barred by the statute of limitation. Plaintiff then, in turn, has no title to the Facility under the Merger Agreement and Intergovernmental Agreement, and any right to bring a claim for title under such agreements is barred by the statute of limitation.

¶ 33 Based on the record before us, the face of Plaintiff's complaint shows it had no right or interest to Facility at the time of the June 7, 2012 merger and is barred by the statute of limitation from bringing any claim to the contrary. *See MTGLQ Inv'rs, L.P.*, 263 N.C. App. at 195, 823 S.E.2d at 411; *see also Asheville Lakeview Props., LLC v. Lake View Park Comm'n, Inc.*, 254 N.C. App. 348, 356, 803 S.E.2d 632, 638 n.5 (2017). Therefore, the trial court correctly dismissed Plaintiff's claim to quiet title.

2. Breach of Contract

¶ 34 Plaintiff contends its claims for, and any claims based in, breach of contract

are not barred by the statute of limitations.[1] We disagree.

¶ 35 We are unpersuaded by Plaintiff's argument that since it was not aware of the May 1997 breach until 2019, its claim to the Facility is not barred by the two-year statute of limitations. Our Supreme Court has found the statute of limitations for a breach of contract claim "begins to run on the date the promise is broken." *Penley v. Penley*, 314 N.C. 1, 20, 332 S.E.2d 51, 62 (1985) (citing *Pickett v. Rigsbee*, 252 N.C. 200, 204, 113 S.E.2d 323, 326 (1960)); *see Harrold v. Dowd*, 149 N.C. App. 777, 781, 561 S.E.2d 914, 918 (2002). Here, the promise under the Intergovernmental Agreement was broken in 1997 when the Defendants failed to vest title in ENMH. Thus, pursuant to the two-year statute of limitations, Plaintiff's predecessor must have brought a claim by May 1999.

¶ 36 Presuming *arguendo* the statute of limitations for the May 1997 breach had not accrued in 2019, we find Plaintiff's contractual claims would nevertheless be barred. On June 7, 2012, Beacon, Southeastern, and Plaintiff merged and named Plaintiff as the surviving entity. As a result, ENMH ceased to exist. *See* N.C. Gen. Stat. § 55-11-06(a)(1) (2012) ("When a merger . . . takes effect: (1) Each other merging corporation merges into the surviving corporation and the separate existence of each merging corporation except the surviving corporation ceases."). Our careful review

[1] These claims include Plaintiff's action to quiet title, claim for unjust enrichment, and claim for breach of contract.

of the record reveals the plain language of Section 10 of the Intergovernmental Agreement required the "title to the" Facility and "buildings thereon" to revert back to "Edgecombe Count [sic] and Nash County." Thus, even if Plaintiff had a claim to ownership of the Facility, such claim was forfeited under Section 10 of the Intergovernmental Agreement when ENMH ceased to exist pursuant to the Merger Agreement because ENMH did not have title to the Facility.

¶ 37 Accordingly, facts alleged on the face of the complaint necessarily defeat Plaintiff's claims because these claims regarding breach of contract are barred by the statute of limitations. *See Broad St. Clinic Found*, 273 N.C. App. at 7, 848 S.E.2d at 228. We hold the trial court properly dismissed Plaintiff's claims for, and based on, breach of contract.

3. Resulting Trust

¶ 38 Plaintiff also contends the trial court erred by dismissing its claim for constructive or resulting trust and/or equitable lien. Specifically, Plaintiff argues it sufficiently alleged facts in its complaint for a resulting trust, a claim for a resulting trust does not require allegations of fraud, and the resulting trust is not barred by the statute of limitations. We disagree.

¶ 39 As a threshold matter, we note Plaintiff did not assert any argument regarding its claim for constructive trust or equitable lien. Since Plaintiff did not present an argument on these claims, it is "deemed abandoned." N.C.R. App. P. 28(a). As such,

our "scope of review on appeal is limited" to whether the trial court erred in dismissing Plaintiff's claim for resulting trust. *Id.*

¶ 40 A resulting trust "arise[s] when a person becomes invested with the title to real property under circumstances which in equity obligate him to hold the title and to exercise his ownership for the benefit of another." *Teachey v. Gurley*, 214 N.C. 288, 292, 199 S.E. 83, 86 (1983); s*ee Cury v. Mitchell*, 202 N.C. App. 558, 562-63, 688 S.E.2d 825, 828 (2010); *Upchurch v. Upchurch*, 122 N.C. App. 172, 175, 468 S.E.2d 61, 63 (1996) ("A resulting trust is one arising from the presumed intent of the parties at the time title is taken by one party under facts and circumstances showing that the beneficial interest in the real or personal property is in another." (cleaned up)). "Under such circumstances equity creates a trust in favor of such other person commensurate with his interest in the subject matter." *Teachey*, 214 N.C. at 292, 199 S.E. at 86-87; *see also Mims v. Mims*, 305 N.C. 41, 46, 286 S.E.2d 779, 784 (1982).

¶ 41 To the extent Plaintiff contends it has a justiciable claim for resulting trust, we need not address this argument as "fact[s] disclosed in the complaint necessarily defeat[] the plaintiff's claim." *Broad St. Clinic Found*, 273 N.C. App. at 5, 848 S.E.2d at 228. Plaintiff premises its claim for resulting trust upon the Intergovernmental Agreement. However, any resulting trust which may have arisen under these circumstances was effectively dissolved when Plaintiff became the surviving entity under the Merger Agreement. As stated *supra*, under the Intergovernmental

Agreement, title to the Facility reverted back to Defendants when ENMH ceased to exist under the Merger Agreement. Thus, even if equity required Defendants to hold title to the Facility in a resulting trust *for ENMH*, the terms of the Intergovernmental Agreement required title to the Facility to revert back to Defendants once ENMH ceased to exist and Plaintiff became the surviving entity on June 7, 2012. Moreover, since this reversion is based in contract, any claim Plaintiff may have to ENMH's resulting trust is likewise barred by the two-year statute of limitations. *See* N.C. Gen. Stat. § 1-53(1) (2019).

¶ 42 Although Plaintiff correctly points out fraud is not required for a resulting trust to arise, this is immaterial. *See also Guy v. Guy*, 104 N.C. App. 753, 755, 411 S.E.2d 403, 405 (1991). Any resulting trust in this case between ENMH and Defendants was dissolved when title reverted to Defendants after the Merger Agreement per the terms of the Intergovernmental Agreement. Likewise, to the extent Plaintiff claims it possesses a *cestui que* of any potential trust between ENMH and Defendants, this argument also fails because any potential trust dissolved when ENMH ceased to exist. Accordingly, we affirm the trial court's orders and hold Plaintiff's claim for resulting trust was correctly dismissed under Rule 12(b)(6).

4. Equitable Estoppel

¶ 43 Plaintiff also argues Defendants are equitably estopped from asserting the statute of limitations as a defense. Specifically, Plaintiff argues the trial court erred

by not addressing equitable estoppel in its orders granting Defendants' motions to dismiss.

¶ 44 As a general rule, "[e]quitable estoppel arises when an individual by his acts, representations, admissions, or by his silence when he has a duty to speak, intentionally or through culpable negligence induces another to believe that certain facts exist, and such other person rightfully relies and acts upon that belief to his detriment." *Thompson v. Soles*, 299 N.C. 484, 487, 263 S.E.2d 599, 602 (1980) (citing *Boddie v. Bond*, 154 N.C. 359, 70 S.E. 824 (1911)). The doctrine of equitable estoppel is premised upon equitable principles and is created to aid the administration of justice in our legal system when, but for this doctrine, justice would not result. *Id.* at 486, 263 S.E.2d at 602.

¶ 45 Equitable estoppel "is an affirmative defense, which must be specifically *pled* to be properly before a trial court." *MCB, Ltd. v. McGowan*, 86 N.C. App. 607, 612-613, 359 S.E.2d 50, 53 (1987) (emphasis added) (first citing N.C. Gen. Stat. § 1A-1, R.8; then citing *Nationwide Mut. Ins. Co. v. Edwards*, 67 N.C. App. 1, 312 S.E.2d 656 (1984); and then citing *Smith v. Hudson*, 48 N.C. App. 347, 269 S.E.2d 172 (1980)). Rule 7 of our Rules of Civil Procedure defines a pleading as

> a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party complaint if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a

third-party complaint is served.

N.C. Gen. Stat. § 1A-1, R. 7(a).

¶ 46 Here, Plaintiff asserts it "timely raised equitable estoppel" in its 1) reply memorandum of law in support of Plaintiff's motion to leave to amend complaint and change case caption; 2) memorandum of law in opposition to Defendant Nash County's motion to change venue, motion to dismiss, and motion to strike; and 3) memorandum of law in opposition to Defendant Edgecombe County's motion to dismiss and motion to change venue. These memorandums of law, however, are not a pleading as set out in North Carolina Rules of Civil Procedure, Rule 7. Moreover, a careful review of Plaintiff's amended complaint reveals Plaintiff did not raise the affirmative defense of equitable estoppel therein.

¶ 47 Thus, Plaintiff failed to specifically plead equitable estoppel. The trial court was not required to address Plaintiff's claims to equitable estoppel which were raised in its memorandums of law. Accordingly, we conclude no error occurred when the trial court did not address equitable estoppel within its order granting Defendants' motions to dismiss.

5. Injunctive Relief

¶ 48 Finally, Plaintiff contends the trial court erred by finding it was not likely to succeed on the merits, and thus dismissing its request for a temporary restraining order and preliminary injunction. We find no error with the trial court's conclusion.

¶ 49 A temporary restraining order may be granted only if:

> (i) it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required.

N.C. Gen. Stat. § 1A-1, R. 65(b). As a general rule, the purpose of a temporary restraining order "is usually to meet an emergency when it appears that any delay would materially affect the rights of a plaintiff." *Beau Rivage Homeowners Ass'n v. Billy Earl, L.L.C.*, 163 N.C. App. 325, 329, 593 S.E.2d 120, 123 (2004) (internal quotation marks omitted) (quoting *Hutchins v. Stanton*, 23 N.C. App. 467, 469, 209 S.E.2d 348, 349 (1974)).

¶ 50 A preliminary injunction, likewise, is "an extraordinary measure taken by a court to preserve the status quo of the parties during litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759 (1983) (quoting *Ridge Community Investors, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977)). It may only be issued

> (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation. *Waff Bros., Inc. v. Bank*, 289 N.C. 198, 221 S.E.

2d 273; *Pruitt v. Williams*, 288 N.C. 368, 218 S.E. 2d 348; *Conference v. Creech*, 256 N.C. 128, 123 S.E. 2d 619.

Ridge Community Investors, Inc., 293 N.C. at 701, 239 S.E.2d at 574.

¶ 51 We are unpersuaded by Plaintiff's assertion that because "real property is unique, Eastpointe is likely to suffer immediate and irreparable harm if Nash County and Edgecombe County displace Eastpointe . . . ." A careful perusal of Plaintiff's amended complaint reveals its claim for a temporary restraining order and preliminary injunction is founded in its "right[] to ownership of the Facility . . . ." As discussed *supra*, Plaintiff has no right to ownership of the Facility, and any right it may have had is barred by the statute of limitations. Because of this, Plaintiff cannot prove "immediate and irreparable injury, loss, or damage will result[,]" nor that it is likely to succeed on the merits of its case. N.C. Gen. Stat. § 1A-1, R. 65(b). As such, we find no error in the trial court's dismissal of Plaintiff's claim for a temporary restraining order and preliminary injunction.

IV. Conclusion

¶ 52 Because we conclude Plaintiff has no ownership interest in the Facility and any right to bring such a claim is barred by the statute of limitations, we affirm the trial court's dismissal of Plaintiff's claims for declaratory judgment and action to quiet title, for a temporary restraining order and preliminary injunction, for breach of contract, and for resulting trust based in contract. Furthermore, because Plaintiff's

claim for equitable estoppel was not specifically pleaded, we hold the trial court did not err by not addressing it. The trial court, moreover, did not abuse its discretion by denying Plaintiff's motion to continue. Thus, we affirm the orders of the trial court.

AFFIRMED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).