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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1011

Filed 2 September 2026

Craven County, No. 22CVS001525-240

JOSHUA ARNOLD, ROBERT CLEMENT, THOMAS DEBATT, AUSTIN EUBANKS, GAUTHIER KABENGELE, MATTHEW LAMBERT, and BRANDON MARSTELLER, Plaintiffs,

v.

TRADEWIND FLIGHT SERVICES, INC., D2 GOVERNMENT SOLUTIONS, LLC, DARRYL CENTANNI, DAVID RICKER, WALLYH CALABREESE, and THE TRUSTEES OF CRAVEN COMMUNITY COLLEGE, Defendants.

Appeal by defendant The Trustees of Craven Community College (“CCC”) from order entered 14 April 2025 by Judge R. Kent Harrell in Carteret County Superior Court. Heard in the Court of Appeals 19 May 2026.

Steven A. Bader, Vince Eisinger, and Benton L. Toups for defendant-appellant The Trustees of Craven Community College.

Bryson Harris Suciu & DeMay, PLLC, by Scott C. Harris and Michael Dunn, and Cheshire Parker Schneider & Abrams, PLLC, by Elliot Abrams, for plaintiffs-appellees.

DILLON, Judge.

This is an appeal from a Rule 12(b)(6) motion to dismiss. On appeal, CCC argues the trial court erred in denying its motion to dismiss pertaining to the

Plaintiffs' breach of implied contract claim and the breach of contract (third party beneficiary) claim. For the reasoning below, we affirm.

I. Background

Plaintiffs are all former students at CCC, specifically in CCC's Aviation Management and Career Pilot Training Program (the "Program"). In January 2019, CCC promoted the Program as a Part 141 program under federal regulation, in partnership with Defendant Tradewind Flight Services, Inc. ("Tradewind"). This program would allow Program graduates (who are pursuing a career as a commercial airline pilot) to complete the requirements necessary to earn a Restricted Airline Transport Pilot certificate ("R-ATP").

In early spring 2019, CCC published its course catalog for the 2019-2020 academic year. At the end of the course catalog, CCC put a "notice to students" stating the catalog was not a contract or an offer to enter into a contract. The catalog stated the Program would "prepare[] individuals for a variety of aviation and aviation-related careers including commercial airlines, general aviation, the aerospace industry, the military, and the state and federal aviation organizations."

On 3 July 2019, CCC and Tradewind entered into an agreement (the "Training Agreement") in which Tradewind agreed to provide flight training services in accordance with Part 141. During this time, the Federal Aviation Administration ("FAA") notified CCC that its application for Part 141 approval would be returned for corrections. Students started the Program during fall 2019 and fall 2020. However,

by January 2021, the FAA still had still not given CCC its approval for the Program. As a result, CCC notified its students they were not eligible for an R-ATP certificate. CCC offered remedial options to the Program students including tuition refunds, a scholarship equal to tuition paid, or paid training at Tradewind to obtain further flight hours and instrument training.

Plaintiffs filed suit against CCC, Tradewind, and other defendants (collectively “Defendants”) for: (1) unfair and deceptive trade practices, (2) unjust enrichment, (3) breach of contract (third-party beneficiary), (4) breach of implied contract, (5) constructive fraud, (6) gross negligence, and (7) negligent misrepresentation.

In December 2024, CCC moved to dismiss Plaintiffs’ complaint pursuant to Rule 12(b)(1) and Rule 12(b)(6).

After a hearing on the matter, the trial court granted the motion to dismiss in part and denied the motion to dismiss in part. Specifically, the trial court held CCC is a state institution protected by sovereign immunity¹ but that Plaintiffs were allowed to proceed for claims of breach of implied contract and breach of contract as third-party beneficiaries. CCC appealed.

II. Appellate Jurisdiction

The order from which this appeal is taken is interlocutory. “As a general

¹ Technically, CCC’s argument is based on “governmental immunity,” as “sovereign immunity” applies to the state of North Carolina and its agencies, while “governmental immunity” applies to a county agency. *See Craig v. New Hanover County BOE*, 363 N.C. 334, 335 n.3 (2009).

proposition, interlocutory orders are not immediately appealable unless the order in question affects a substantial right.” *State ex rel. Stein v. Kinston Charter Acad.*, 379 N.C. 560, 571 (2021) (citation omitted).

Here, CCC argues that its motion to dismiss should have been allowed in its entirety based on governmental immunity. Our Supreme Court has recognized that a county agency has a substantial right to appeal an interlocutory order denying its motion to dismiss. *Craig v. New Hanover Cnty. BOE*, 363 N.C. 334, 337 (2009) (cleaned up). We, therefore, consider the issues raised by CCC in this appeal.

III. Analysis

CCC raises two issues on appeal, we address each in turn.

A. Contract Terms

First, Defendant CCC claims the former Program students did not state a claim against CCC for breach of contract because CCC did not offer contract terms to them.

CCC enjoys governmental immunity, which it can agree to waive.

Our Supreme Court has held that “whenever the State of North Carolina, through its authorized officers and agencies, enters into a valid contract, the State implicitly consents to be sued for damages on the contract in the event it breaches the contract.” *Smith v. State*, 289 N.C. 303, 320 (1976). A contract may be express or implied. “[A] contract implied in fact arises where the intent of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed

from their acts.” *Creech v. Melnik*, 347 N.C. 520, 526 (1998). “To determine whether an implied-in-fact contract exists, courts look to whether the parties’ conduct would be understood to create legal obligations in the ordinary course of dealing.” *Lannan v. BOG of University of North Carolina*, 387 N.C. 239, 250 (2025) (quotation omitted).

“Because this appeal stems from a Rule 12(b)(6) motion to dismiss, we must base our decision on the amended complaint’s factual allegations.” *Id.* (citing *Morris v. Rodeberg*, 385 N.C. 405, 406 (2023)). The complaint must allege offer, acceptance, and consideration. “To serve as the foundation for a valid contract, the offer must be intended to create legal obligations if accepted.” *Lannan*, 387 N.C. at 250 (citing *Yeager v. Dobbins*, 252 N.C. 824, 828 (1960)). “Acceptance occurs only if the parties “assent to the same thing in the same sense . . . and their minds must meet as to all the terms.” *Lannan*, 387 N.C. at 250. “Consideration is present if there is a benefit to the promisor or a detriment to the promisee.” *Lannan*, 387 N.C. at 250 (citing *Carolina Helicopter Corp. v. Realty Co.*, 263 N.C. 139, 147 (1964)).

We conclude Plaintiffs here have adequately pleaded the existence of a contractual relationship with CCC to support their breach of contract claim. Although the course catalog put a “notice to students” stating the catalog was not a contract or an offer to enter into a contract, assuming the allegations in the complaint are true, both parties acted in a manner sufficient to show there was a contract. The amended complaint alleges offer, acceptance, and consideration. It asserts that CCC offered prospective students classes and courses which would result in R-ATP

eligibility. It further alleges the prospective students accepted this offer by paying tuition and beginning the coursework. Because there are sufficient factual allegations alleged, the trial court did not err in denying the motion for summary judgment pertaining to the breach of implied contract claim against CCC.

B. Third-party Beneficiary

Second, Defendant argues the former students did not state a claim for breach of contract (third-party beneficiary) based on CCC's contract with Tradewind.

“North Carolina recognizes the right of a third-party beneficiary to sue for breach of a contract executed for his benefit.” *Raritan River Steel Co. v. Cherry, Bekaert & Holland*, 329 N.C. 646, 651 (1991) (citation omitted). To assert rights under a contract as third-party beneficiaries, one must show: “(1) that a contract exists between two persons or entities; (2) that the contract is valid and enforceable; and (3) that the contract was executed for the direct, and not incidental, benefit of the [third party].” *Spaulding v. Honeywell, Int’l, Inc.*, 184 N.C. App. 317, 324 (2007).

As previously stated, “[b]ecause this appeal stems from a Rule 12(b)(6) motion to dismiss, we must base our decision on the amended complaint’s factual allegations.” *Lannan*, 387 N.C. at 250 (citing *Morris*, 385 N.C. at 406).

Here, there are ample factual allegations alleged in the complaint to support the argument that the prospective students were third-party beneficiaries of the contract between CCC and Onvoi (agent for Tradewind), referred to as the “Training Agreement”. It is undisputed that there was a contract between CCC and Onvoi. The

amended complaint also sufficiently alleges that the Training Agreement between CCC and Onvoi was created to secure training services for CCC's properly enrolled students. Because there are sufficient factual allegations alleged, the trial court did not err in denying the motion for summary judgment pertaining to the breach of contract (third-party beneficiary) claim against CCC.

IV. Conclusion

For the reasoning stated above, we affirm the trial court's order denying CCC's motion to dismiss Plaintiffs' claims for breach of implied contract and breach of contract (third party beneficiary).

AFFIRMED.

Judges GORE and STADING concur.

Report per Rule 30(e).