

NORTH CAROLINA
HALIFAX COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-922

MILTON JAMES GARRETT, on behalf of
himself and the CITY OF ROANOKE RAPIDS
and its TAXPAYERS

Plaintiff,

vs.

RANDLE "RANDY" H. PARTON; RICHARD
"RICK" G. WATSON; MOONLIGHT
BANDIT PRODUCTIONS, LLC;
MOONLIGHT BANDIT PROPERTIES, LLC;
FRIENDS OF MOONLIGHT BANDIT, LLC;
MOONLIGHT BANDIT CONCESSIONS,
LLC; MOONLIGHT BANDIT
MERCHANDISING, LLC; NORTHEASTERN
NORTH CAROLINA REGIONAL
ECONOMIC DEVELOPMENT
COMMISSION; AND NORTH CAROLINA'S
NORTHEAST PARTNERSHIP,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION TO QUASH
PURSUANT TO RULE 45 and
MOTION FOR RULE 26(c) PROTECTIVE
ORDER**

Defendants Randle "Randy" H. Parton, Moonlight Bandit Productions, LLC, Moonlight Bandit Properties, LLC, Friends of Moonlight Bandit, LLC, Moonlight Bandit Concessions, LLC, and Moonlight Bandit Merchandising, LLC ("Defendants"), by and through their attorneys Poyner Spruill LLP, hereby submit the following in support of their Rule 45 Motion to Quash and Rule 26(c) Motion for a Protective Order filed contemporaneously herewith.

STATEMENT OF THE FACTS

The detailed allegations of the Complaint are summarized in Defendants' memorandums in support of their motions to dismiss. Essentially, Plaintiff attempts in this action to bring a derivative action on behalf of the City of Roanoke Rapids and its taxpayers against Defendants

and alleges that Defendants misappropriated public funds by tricking Roanoke Rapids to build a theater for Defendants' benefit.

The North Carolina Institute for Constitutional Law filed the Complaint in this case on behalf of Plaintiff on June 19, 2008 in Halifax Superior Court. Defendants filed a Notice of Designation of Action as Mandatory Complex Business Case on July 25, 2008. On August 4, 2008, all parties stipulated to the assignment of Judge R. Jolly, Jr. to the case and further stipulated that the time for all Defendants to answer or otherwise respond to the Complaint was extended to and included August 29, 2008. All defendants filed Motions to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6). Plaintiff filed an Amended Complaint on September 26, 2008, and all defendants filed Motions to Dismiss Plaintiff's Amended Complaint pursuant to Rules 12(b)(1) and 12(b)(6), arguing, among other things, that Plaintiff lacks standing to bring the lawsuit and that the Release signed by the City of Roanoke Rapids bars Plaintiff's claim. All motions were briefed, and after an extensive hearing on the Motions to Dismiss on October 14, 2008, the Court took the motions under advisement.

On December 4, 2008, after being informed of Defendants' objections to proceeding with discovery until after notice of the Court's ruling on the Motions to Dismiss, Plaintiff served a subpoena on Cathy Scott for her appearance at a deposition on December 17, 2008. (As of the time of this filing, Plaintiff had not filed or served a Notice of Deposition). Defendants move to quash the subpoena pursuant to Rule 45 and also move for a Rule 26(c) Protective Order staying the deposition of Cathy Scott and all other discovery until after the Court's ruling on Defendant's motions to dismiss. All other defendants consent to these motions.

LEGAL AUTHORITY

Rule 45 of the North Carolina Rules of Civil Procedure allows the Court to quash or modify a subpoena if it subjects a person to an undue burden or is otherwise unreasonable or oppressive. Rule 26(c) gives a judge the discretion to make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, including that discovery not be had. “When the court is confronted with a threshold motion that may lead to the dismissal of the case, discovery may be stayed until the issue has been resolved. . . .” G. Gray Wilson, North Carolina Civil Procedure, 3d ed. § 26-11; see e.g., Rae v. Union Bank, 725 F.2d 478 (9th Cir. 1984) (holding that the district court did not abuse its discretion in staying discovery pending resolution of a Rule 12(b) motion).

In this case, all Defendants have raised motions to dismiss pursuant to Rule 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(6) (failure to state a claim), and the Court is considering all arguments of counsel with respect to these motions, including arguments regarding Plaintiff’s standing and Plaintiff’s ability to bring suit in light of the Release signed by the City of Roanoke Rapids. The deposition of Cathy Scott is not directed to discovering information relevant to the threshold questions of standing or the Release presented by the motions to dismiss.

Discovery in the present case, including the deposition of Cathy Scott, will involve numerous attorneys and parties, and will require time-consuming analysis of complex business and political associations and transactions. Such discovery will be oppressive and will constitute an undue burden, expense, and annoyance on any Defendant that is successful in his pending motion to dismiss. Further, there will be no prejudice to Plaintiff if discovery is stayed for the short time that the Court has the Defendants’ motions under advisement.

For these reasons, Defendants respectfully request that the Court quash the subpoena to Cathy Scott and enter a Protective Order staying discovery until such time as it enters its ruling on Defendants' motions to dismiss.

This the 9th day of December, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO QUASH PURSUANT TO RULE 45 and MOTION FOR RULE 26(c) PROTECTIVE ORDER** by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following person(s) at the following address which is the last address known to me:

Jeanette K. Doran North Carolina Institute for Constitutional Law 333 E. Six Forks Road, Suite 180 Raleigh, NC 27609 <i>Attorneys for Plaintiff</i>	Cathleen M. Plaut Bailey & Dixon P.O. Box 1351 Raleigh, NC 27602 <i>Attorneys for Richard G. Watson</i>
Gary J. Rickner Ward and Smith, P.A. P.O. Box 2091 Raleigh, NC 27602-2091 <i>Attorneys for Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership</i>	Mary Webb McAngus, Goudelock & Courie, LLC P.O. Box 30516 Raleigh, NC 27622 <i>Attorneys for Northeastern North Carolina Regional Economic Development Commission and North Carolina's Northeast Partnership</i>
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This the 9th day of December, 2008.

POYNER & SPRUILL LLP

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