

STATE OF NORTH CAROLINA
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 1101

MICRO MINIATURE BEARING CO.,)
INC.,)
)
Plaintiff,)
)
v.)
)
SHAWN BARNETT-SABATINO;)
VINCENT SABATINO; JOHN E.)
MILLER, III; WAYNE BAUM; and)
JUSTICE BEARING, LLC,)
)
Defendants.)
)

**ORDER ON DEFENDANTS’
DISCOVERY DISPUTE**

1. THIS MATTER is before the Court on Defendants Shawn Barnett-Sabatino; Vincent Sabatino; John E. Miller, III; and Wayne Baum’s (collectively, “Individual Defendants”) request pursuant to Rule 10.9 of the General Rules of Practice and Procedure for the North Carolina Business Court (“BCR”) submitted to the Court on May 23, 2017. Individual Defendants seek to resolve a discovery dispute regarding the place where the depositions of the Individual Defendants shall be taken in this action.

I. PROCEDURAL HISTORY

2. Micro Miniature Bearing Co., Inc. (“Plaintiff”) initiated this action by filing its Complaint in Iredell County Superior Court on May 6, 2016. Individual Defendants retained counsel to represent them whose office is located in Winston-Salem, Forsyth County, North Carolina.

3. This case was designated as a mandatory complex business case by order of the Chief Justice of the Supreme Court of North Carolina dated June 14, 2016 and assigned to the undersigned by order of Chief Business Court Judge James L. Gale dated July 6, 2016.

4. On February 10, 2017, the Court entered an Order Amending Case Management Order providing that all fact discovery, including depositions of fact witnesses, shall be completed by May 31, 2017.

5. On May 17, 2017, counsel for Plaintiff served on counsel for Individual Defendants four notices requesting that the Individual Defendants appear and provide deposition testimony as follows:

Name of Deponent	Date of Deposition	Time of Deposition	Location
Shawn Barnett-Sabatino	May 30, 2017	10:00 AM	113 N. Center St. Statesville, NC
Vincent Sabatino	May 30, 2017	2:00 PM	113 N. Center St. Statesville, NC
John E. Miller, III	May 31, 2017	10:00 AM	113 N. Center St. Statesville, NC
Wayne Baum	May 31, 2017	2:00 PM	113 N. Center St. Statesville, NC

6. Prior to service and receipt of the notices of deposition, and in communications leading up to issuance of the notices, counsel for Individual Defendants communicated with counsel for Plaintiff by e-mail seeking an agreement that Individual Defendants' depositions could take place in Individual Defendants' counsel's offices in Winston-Salem, Forsyth County, North Carolina. Plaintiff's counsel refused Individual Defendants' counsel's request.

7. On May 23, 2017, Individual Defendants’ counsel e-mailed the Court pursuant to BCR 10.9 seeking a ruling requiring Individual Defendants’ depositions to take place in Individual Defendants’ counsel’s office in Winston-Salem. In its BCR 10.9 e-mail, counsel for Individual Defendants indicates that, while not willing to come to Winston-Salem to conduct the depositions, Plaintiff’s counsel has offered to conduct the depositions “at another location in Iredell County.”

II. ANALYSIS

8. It is undisputed that Plaintiff has its principle place of business in Iredell County, North Carolina and that all four Individual Defendants reside in Iredell County.

9. Rule 30(b)(1) of the North Carolina Rules of Civil Procedure (“Rule(s)”), applicable to this dispute, provides that “[a] resident of the State may be required to attend for examination by deposition only in the county wherein he resides or is employed or transacts his business in person.”

10. In the first instance, the party noticing the deposition may choose the location of the deposition. N.C. Gen. Stat. § 1A-1, Rule 30(b)(1) (“The notice [of deposition] shall state the time *and place* for taking the deposition”) (emphasis added).

11. Notwithstanding the right of a party to initially select the location for the deposition, if the deponent or other interested party objects to the location, because it is inconvenient, embarrassing or otherwise objectionable, the deponent may seek a protective order from the Court. *Tennessee-Carolina Transp., Inc. v. Strick Corp.*, 291

N.C. 618, 626, 231 S.E.2d 597, 602 (1977); *see also* 1 G. Gray Wilson, *North Carolina Civil Procedure* § 30-3, at 30-11 (3d ed. 2007). The Court has broad discretion and authority, pursuant to Rule 26, to control the location of discovery depositions. Wilson, *North Carolina Civil Procedure* § 26-11.

12. Each of the four Individual Defendants have submitted nearly identical affidavits in which they testify that they are not comfortable having their testimony taken in Plaintiff's counsel's office, want to be able to confer with their counsel before and during the depositions, expect the depositions to be "especially emotional", and want to be able to "retreat to [their] attorney's office if [they] need a minute to relax." The Individual Defendants also testify that they want their attorneys to have access to the entire case file during the depositions.

13. While the Court is sympathetic to the emotional and psychological stress experienced by the Individual Defendants arising from and as a result of this litigation, specifically the upcoming depositions, the Court in its discretion does not believe it is appropriate to require Plaintiff's counsel to travel two counties away from the venue of this action and the county of residence of all parties, to satisfy Individual Defendants' wishes to be in familiar surroundings when questioned under oath. While Individual Defendants were clearly within their rights to retain counsel located in a county other than the county in which this matter is pending, they do not have the right to dictate that discovery proceedings should occur in their counsel's county of residence.

14. At the same time, the Court concludes in its discretion that a neutral site for the four fact depositions at issue would be appropriate in this case. As a result, and pursuant to the Court's inherent authority under Rules 26 and 30, the Court directs the parties to confer about an alternative location within the city limits of Statesville, Iredell County that might be mutually agreeable for the four depositions.

15. If the parties, through their respective counsel, are unable to agree on a neutral site, the depositions shall be taken in Room 106 at the Iredell County Courthouse as scheduled.

SO ORDERED, this the 24th day of May, 2017.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases