

STATE OF NORTH CAROLINA  
COUNTY OF HALIFAX

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

JAMES GARRETT

Plaintiff,

v.

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

PLAINTIFF'S RESPONSE TO  
DEFENDANTS' MOTION TO  
QUASH PURSUANT TO Rule 45  
AND MOTION FOR  
RULE 26(c) PROTECTIVE ORDER

NOW COMES Plaintiff, by undersigned counsel, and hereby responds to Defendants' Motion to Quash Plaintiff's subpoena to Cathy Scott pursuant to North Carolina Rule of Civil Procedure 45 and Motion for Protective Order staying discovery until the Court rules upon Defendants' Motions to Dismiss.

**STATEMENT OF THE FACTS**

Detailed facts are provided in Plaintiff's Memoranda of Law in Opposition to Defendants' Motions to Dismiss and Motion for Sanctions. Plaintiff filed this action in Halifax County on June 19, 2008. Thereafter the matter was transferred to Business Court and, on August 4, 2008, all parties stipulated to the assignment of Judge R. Jolly, Jr. to the case. Plaintiff instituted this action on June 19, 2008. Defendants Northeastern North Carolina Regional Economic Development Commission ("Commission") and North Carolina's Northeastern Partnership ("Partnership") filed a Motion to Dismiss and a Motion for a More Definite Statement on August 29, 2008, based largely on the grounds that the lawsuit as filed was vague and ambiguous. Defendants Randle Parton and Moonlight Bandits filed a Motion to Dismiss on August 29, 2008. Defendant Richard Watson filed a Motion to Dismiss on September 11, 2008. On September 26, 2008, Plaintiff filed a Notice of Dismissal dismissing claims against Ernest Pearson and an Amended Complaint with Exhibits. Defendant Watson filed a Motion to Dismiss the Amended Complaint on October 6, 2008. Defendants Parton and Moonlight Bandits filed a Motion to Dismiss Amended Complaint on October 10, 2008. Defendants Commission and Partnership filed a Motion to Dismiss the Amended Complaint on October 10, 2008, as well. Argument was heard on Defendants' various motions to dismiss, motion for a more definite statement and motion for sanctions on October 14, 2008, at which time the Court took the motions under advisement.

On November 19, 2008, Plaintiff's counsel advised Defendants' counsel of their intent to proceed with discovery while awaiting the Court's decision on Defendants' pending motions. Counsel for each Defendant advised Plaintiff's counsel of Defendants' objections to proceeding with discovery. On December 4, 2008, Plaintiff's counsel served Cathy Scott, a non-party, with a subpoena for her appearance at a deposition on December 17, 2008. On December 9, 2008,

Defendants Parton and Moonlight Bandits filed a Motion to Quash and Motion for Protective Order.

As alleged in the Amended Complaint, Cathy Scott was an employee of Defendants Commission and Partnership and subordinate of Defendant Watson at relevant times. After leaving her employment with the Commission and Partnership, she continued working for Watson and Moonlight Bandits at the Randy Parton Theater. She played an integral role in the development of the Randy Parton Theater. Plaintiff seeks to take her deposition in order to gain evidence concerning the development, construction, operation and financing of the Randy Parton Theater and concerning the role of Defendants Commission and Partnership.

### **LEGAL AUTHORITY**

Citing Rule 45 of the North Carolina Rules of Civil Procedure, Defendants request that the Court quash the subpoena directed at Cathy Scott, and citing Rule 26(c), Defendants request a protective order staying discovery until the Court rules on the pending motions to dismiss. Defendants rely on a legal treatise and a Ninth Circuit case in support of the Motions. Defendants' Memorandum of Law cites no North Carolina case which requires, compels, or even suggests that a stay of discovery is appropriate merely because a motion to dismiss is pending. Undersigned counsel's research has revealed no such authority. To the contrary, attorneys routinely initiate discovery contemporaneously with or shortly after the filing of a case. Defendants have pointed to nothing about this case which warrants quashing the subpoena of Cathy Scott much less staying discovery in general.

As the Court of Appeals explained: "The trial judge does not have unlimited authority to issue a protective order. 'The statute [N.C. Civ. Pro. R. 26(c)] provides that such order may be issued only 'for good cause shown' and that it may be issued only 'to protect a party or person



from unreasonable annoyance, embarrassment, oppression or undue burden or expense.” Williams v. State Farm Mut. Auto. Ins. Co., 67 N.C. App. 271, 273 (1984) (quoting Transportation, Inc. v. Strick Corp., 291 N.C. 618, 626-27 (1977)). Defendants have not made the requisite showing to warrant a protective order. Notwithstanding the bald assertion that discovery will be oppressive and constitute an undue burden, expense and annoyance, Defendants articulate no reason why discovery should not move forward. Neither the Motion for Protective Order nor the accompanying Memorandum of Law specifies how discovery would be oppressive. Plaintiff submits that permitting counsel to proceed with discovery, including the deposition of Cathy Scott, will present no undue burden, expense or annoyance to any Defendant.

Defendants’ counsel maintain that discovery in this case will involve the participation of numerous attorneys and “will require time-consuming analysis of complex business and political associations and transactions.” (Def. Memorandum of Law, p. 3) That assertion not only does not warrant the relief sought by the motion, but in fact supports the need to proceed with discovery. Delaying discovery will only prolong the analysis which will be required if the Court denies the motions to dismiss. Plaintiff has not begun full scale discovery. Instead, Plaintiff’s counsel has elected to proceed preliminarily with limited discovery while awaiting the Court’s decision on the motions to dismiss so that the progress of the case may move forward as expeditiously as possible.

Denying Defendants motion to quash and motion for protective order will permit this matter to progress in a timeframe which will best serve the parties and the public interest. This is a case which, as Defendants acknowledged, will require time-consuming analysis. Delaying that process only delays what will be inevitable should the Court deny Defendants’ motions to

dismiss in whole or in part. Public interest in this case and the need for a final judicial determination of the Defendants' liability, including an ultimate decision on the relief sought, further support the need to proceed with the litigation process.

For these reasons, Plaintiff respectfully requests that the Court deny the Motion to Quash Pursuant to Rule 45 and Motion for Rule 26(c) Protective Order.

This the 9<sup>th</sup> day of December, 2008.

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Jeanette K. Doran (State Bar No. 29127)

*Attorneys for the Plaintiff*

# CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing RESPONSE TO MOTION TO QUASH by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following persons at the following address which is the last address known to me:

Scott A. Scurfield McAngus, Goudelock & Courie, LLC P.O. Box 30516 Raleigh, NC 27622	John L. Sarratt Harris, Winfield, Sarratt & Hodges, LLP 1620 Hillsborough St., Ste. 200 Raleigh, NC 27605
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This the 10<sup>th</sup> day of December, 2008.

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