

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CONSOLIDATED CASES

BOGNC, LLC,  
Plaintiff,

10 CVS 19072

v.

CORNELIUS NC SELF-STORAGE LLC,  
DOUGLAS M. PRUITT and  
wife, KRISTA A. PRUITT and  
ROBERT E. WATSON and wife,  
LOIS J. WATSON,  
Defendants and Third-Party Plaintiffs,

**ORDER**

v.

HARRY STATHOPOULOS, F. EUGENE  
ALLISON, CSSNC, LLC, WILLIAM R.  
WALTON, and TRAY RORIE,  
Third-Party Defendants,

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ROBERT E. WATSON and  
DOUGLAS M. PRUITT,  
Individually, and derivatively on behalf of  
Cornelius NC Self-Storage, LLC, LOIS J.  
WATSON, and KRISTA A. PRUITT,  
Plaintiffs,

10 CVS 12371

v.

WILLIAM R. WALTON, TRAY RORIE  
and CORNELIUS NC SELF-STORAGE,  
LLC,  
Defendants,

v.

PRUITT CONSTRUCTION, INC.  
Third-Party Defendant.

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CORNELIUS NC SELF-STORAGE, LLC,  
Plaintiff,

11 CVS 21122

v.

TOWING INSURANCE SPECIALISTS,  
LLC, and OLD STATESVILLE ROAD  
STORAGE, LLC,

Defendants.

**THIS MATTER** is before the Court on Robert and Lois Watson and Douglas and Krista Pruitt’s (“Movants”) Motion for Sanctions (the “Motion”) pursuant to Rules 11, 26, and 37 of the North Carolina Rules of Civil Procedure filed in the above-captioned cases. On May 13, 2013, the Court held a hearing on the Motion. Having considered the Motion, the briefs and exhibits supporting and opposing the Motion, and the arguments and contentions of counsel made during the hearing, the Court makes the following findings and conclusions:

#### I. Relevant Factual Background

1. On September 20, 2010, Plaintiff BOGNC, LLC (“BOGNC”) brought a Complaint in 10 CVS 19072 seeking to collect a deficiency remaining on a debt owed by Cornelius NC Self-Storage, LLC (“Cornelius”) and personally guaranteed by Movants. In response, Movants filed various counterclaims and third-party claims against Harry Stathopoulos (“Stathopoulos”), F. Eugene Allison (“Allison”), CSSNC, LLC, William R. Walton (“Walton”), Deborah A. White (“White”), and Tray Rorie (“Rorie”) (collectively, “Third-Party Defendants”) related to the purchase of and subsequent foreclosure on the note securing the loan.
2. During the course of litigation, the parties encountered numerous discovery issues. These issues became the subjects of several motions to compel and to quash.
3. Specifically, Movants filed a motion to compel discovery from BOGNC and Allison after the subpoenaed parties moved for a protective order claiming that the requested information was protected by attorney-client privilege. Movants also filed a motion to compel discovery from

Carolina Premier Bank (“CPB”) and the Lang Law Firm, P.C. (“LLF”), after CPB failed to respond and LLF responded late raising a claim of attorney-client privilege.

4. Also on the basis of attorney-client privilege, BOGNC, Allison, CSSNC LLC, and Stathopoulos filed a motion to quash the subpoena for the production of documents from the law firm Kirk Palmer & Thigpen, P.A. (“KPT”), where Allison formerly worked as an attorney. Allison, CSSNC LLC, and Stathopoulos also sought a motion for protective order in part to protect privileged documents from the discovery served on KPT; Ward and Smith, P.A.; Kristen H. Lang; LLF; CPB; and Bank of Granite. Allison and CSSNC filed a similar motion to quash the subpoena served on New Dominion Bank.

5. The disputes largely centered around the fact that Allison and Stathopoulos served as principals in the various entities involved in the transactions giving rise to the suit, but, at various times, Allison also allegedly represented Walton as his attorney.

6. In an Order dated December 23, 2011, this Court addressed the discovery motions. And, the Court concluded that “[a]s principals and members of NewCo, BOGNC, and CSSNC, respectively, documents evidencing communications between Allison and third-parties, Stathopoulos and third-parties, and documents between Allison and Stathopoulos regarding transactions relevant to this action . . . are not protected by the attorney-client privilege.”

*BOGNC, LLC v. Cornelius NC Self-Storage LLC*, No. 10 CVS 19072 ¶ 11 (N.C. Super. Ct. Dec. 23, 2011) (order granting Movants’ motions to compel and denying the remaining motions to quash and for protective order).

7. Therefore, the Court ordered the parties subject to the contested subpoenas to:

- (1) produce all requested documents that are not subject to an applicable privilege within thirty (30) days from the entry of this Order;
- (2) produce a privilege log for all documents that have been withheld subject to a claim of privilege within thirty (30) days from the entry of this Order;
- (3) meet with movants within ten (10) days

from the date the privilege log is produced to discuss any disagreements over the designation of a responsive document as privileged; and (4) if after conferring over the designation of a responsive document as privileged the parties are unable to agree on its classification, the parties will submit all disputed documents for which a claim of privilege has been made to the Court for a *in camera* review.

*Id.* at ¶ 34.

8. Despite this Order, it appears undisputed that the relevant parties to this Motion failed to comply with the deadlines set by the Court. Indeed, on March 16, 2012, Movants filed a motion for contempt and sanctions against Stathopoulos and other parties for their alleged failure to comply with the Court's Order. Movants later withdrew this motion after Allison and Stathopoulos produced a full privilege log on March 21, 2012, nearly two months after the Court's deadline.

9. However, Allison and Stathopoulos did not submit any documents to the Court for an *in camera* review until August 28, 2012. Even then, the production was deficient. Allison and Stathopoulos only sent four (4) compact discs to the Court for review with no accompanying privilege log.

10. The Court did not receive a privilege log until November 14, 2012. Further, this privilege log did not actually come from Allison and Stathopoulos, but was attached to Movants' supplemental brief in support of a motion to compel. According to Movants, this was the privilege log that Allison and Stathopoulos sent to them on March 21, 2012.

11. Upon review, the Court found several deficiencies with the privilege log. A portion of the log did not list any bates numbers and the documents associated with that portion were not produced to the Court. In addition, another portion of the log omitted entries for certain documents. Of the documents that the Court could review, the Court held that these documents were not privileged, and ordered that they be turned over to Movants. Given the Court's ruling on these documents, Allison and Stathopoulos elected to turn over the remaining documents

associated with the deficiencies in the privilege log, rather than have the Court conduct any additional review.

12. Due to these actions and other alleged misconduct during discovery, Movants filed this Motion requesting sanctions against Walton, Allison, Stathopoulos, BOGNC, and CSSNC LLC pursuant to Rule 11 for the motions filed related to the discovery disputes, Rule 26 for the objections raised in response to Movants' discovery requests, and Rule 37 for violations of the Court's December 23<sup>rd</sup> Order.

## II. Legal Standard

13. Rule 11 requires at least one attorney of record to sign every motion, signifying that the motion "is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." N.C. R. Civ. P. 11(a). And, "if a . . . motion . . . is signed in violation of this rule, the court . . . shall impose upon the person who signed it, a represented party, or both, an appropriate sanction . . . ." *Id.*

14. Rule 26 contains a similar provision, requiring at least one attorney of record to sign every response or objection to discovery to denote that the response or objection is "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." N.C. R. Civ. P. 26(g). As under Rule 11, if the signature is made in violation of Rule 26, then the court may impose an appropriate sanction on the represented party. *Id.*

15. Under Rule 37, "if a party . . . fails to obey an order to provide or permit discovery, . . . a judge of the court in which the action is pending may make such orders in regard to the failure as are just . . . ." N.C. R. Civ. P. 37(b)(2). "In lieu of any [such order] or in addition thereto, the

court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure . . . ." *Id.*

### III. Analysis

16. The arguments and facts presented by counsel on this Motion cause the Court significant concern, and give the Court reason to believe that the actions of BOGNC and Third-Party Defendants during discovery may have been disingenuous. Nonetheless, the Court does not find that BOGNC and Third-Party Defendants filed their previous motions and objections to Movants' discovery requests for an improper purpose, particularly in light of Allison's questionable role as both attorney and principal. Therefore, the Court concludes that sanctions under Rules 11 and 26 would not be appropriate.

17. However, the same cannot be said of Movants' request under Rule 37. In its Order dated December 23, 2011, the Court put in place specific deadlines and instructions for discovery going forward. As Movants assert, Allison and Stathopoulos did not comply with these mandates. Indeed, Allison and Stathopoulos do not appear to dispute these assertions, but rather argue that the violations were justified given Movants' failure to alert the Court to Allison and Stathopoulos' noncompliance or clearly object to the privilege log.

18. Movants' failure to promptly bring violations to the Court's attention does not justify the blatant disregard of this Court's Order. First, nearly two months passed from the deadline for discovery before Allison and Stathopoulos produced a full privilege log to Movants. Then, once the documents were finally produced to the Court for an *in camera* review, the production was riddled with deficiencies. As such, the Court concludes that Allison and Stathopoulos disobeyed an order of this Court directing discovery, and that their actions warrant sanctions under Rule 37(b)(2).

19. Movants acknowledged at the hearing that the true targets of the Motion were Allison and Stathopoulos for their misconduct during discovery. And, indeed, the arguments and facts put forward in support of the Motion all relate to Allison and Stathopoulos' actions. Furthermore, the Court's December 23<sup>rd</sup> Order did not direct the discovery to Walton, as none of the motions ruled on in that Order sought to compel or quash discovery on his part. Therefore, the Court concludes that the imposition of sanctions pursuant to Rule 37(b)(2) shall be enforced solely against Allison and Stathopoulos, jointly and severally.

20. These sanctions are limited to the reasonable expenses incurred after the filing of the December 23<sup>rd</sup> Order and caused by Allison and Stathopoulos' failure to obey. After reviewing the unredacted copy of Movants' billing statement provided to the Court *in camera* and the redacted copy filed as Exhibit 3 to Movants' Motion, the Court finds that Allison and Stathopoulos' failure to obey the December 23<sup>rd</sup> Order caused Movants to incur expenses in the amount of \$9,614.00. The Court concludes as a matter of law that this amount constitutes the reasonable expenses owed to Movants because of Allison and Stathopoulos' misconduct.

21. Accordingly, the Court **GRANTS** Movants' Motion pursuant to Rule 37(b)(2). The Court hereby **ORDERS** Allison and Stathopoulos to pay Movants' reasonable expenses, including attorney's fees, in the amount of \$9,614.00 within thirty (30) days of the entry of this Order. This amount shall be owed jointly and severally.

**SO ORDERED**, this the 20th day of May 2013.

/s/ Calvin E. Murphy  
Calvin E. Murphy  
Special Superior Court Judge