

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER 10 CVS 12948

MICHAEL JONES,

Plaintiff,

vs.

PATRICK SUTHERLAND and
YANIQUE LAWRENCE,

Defendants.

PATRICK SUTHERLAND;
YANIQUE LAWRENCE; INSIGNE
CONSULTING INC.; CITIZENS
HOME LOAN INC.; INSIGNE,
INCORPORATED; and KRYOTECH
HOLDINGS, LLC,

Counterclaim Plaintiffs,

vs.

MICHAEL W. JONES and FIRST
SOUTHERN CAPITAL
DEVELOPMENT CORPORATION,

Counterclaim
Defendants.

ORDER

THIS MATTER is before the Court upon Defendants' and Counterclaim Plaintiffs' Motion to Quash, or in the alternative, to modify subpoenas issued by Plaintiff to Fifth Third Bank, Wells Fargo Bank, Charles Schwab, SunTrust, and Bank of America (collectively, the "Banks").

After hearing from the parties on September 19, 2011, and having considered the matters of record and contentions of counsel, the Court, in the exercise of its discretion, **DENIES**

Defendants' and Counterclaim Plaintiffs' Motion to Quash, or in the alternative, to modify, finding as follows:

1. On June 17, 2010, Plaintiff filed this action alleging claims of Breach of Fiduciary Duty, Constructive Fraud, Unfair and Deceptive Trade Practices, Conspiracy, Intentional Misrepresentation, Fraud, Deceit, Conversion, and Breach of Contract (collectively "Claims"). (Compl. ¶¶ 172-229.)

2. Central to the resolution of this motion is Plaintiff's 45% ownership interest in Insigne Consulting, Inc. ("Insigne Consulting"), Kryotech Holdings, LLC ("Kryotech"), and Citizens Home Loan, Inc. ("CHL") (collectively, "The Investment Companies"). Plaintiff claims, among other things, that Defendants have failed to pay him regular cash distributions in proportion to his ownership interest in the Investment Companies, and argues that these distributions should have included profits from the Investment Companies and various businesses that were either partially or wholly owned by the Investment Companies. The Complaint alleges that instead of paying distributions to Plaintiff, Defendants kept the money for their own use. (Compl.)

3. On August 24, 2011, Plaintiff issued subpoenas to the Banks requesting records pertaining to checking accounts, money market accounts, certificates of deposits, and savings accounts held by Plaintiff's Investment Companies, businesses owned by Plaintiff's Investment Companies, Defendants, and six other companies connected with Defendants including: Global E&O Insurance Services, Inc., Stewart Technology Services, LLC, Insigne Financial Services Corporation, Innovation Partners, LLC, Get Financial Advice.Com, Inc., and Jam Isle Films, LLC (collectively "Defendants' Companies"). These subpoenas request records from January 1, 2000 through December 31, 2009.

4. “Whether [a] subpoena should be quashed or modified is a matter within the sound discretion of the trial court.” *Kilgo v. Walmart Stores, Inc.*, 138 N.C. App 644, 649, 531 S.E.2d 883, 888 (2000) (citing *Vaughn v. Broadfoot*, 267 N.C. 691, 697, 149 S.E.2d 37, 42 (1966)). When exercising its discretion the court “should consider the relevancy and materiality of the items called for, the right of the subpoenaed person to withhold production on other grounds, such as privilege, and also the policy against ‘fishing expeditions.’” *State v. Newell*, N.C. App. 707, 709, 348 S.E.2d 158, 160 (1986) (citing *Vaughn v. Broadfoot*, 267 N.C. 691, 149 S.E.2d 37 (1966)).

5. This Court finds that the records being requested by Plaintiff are material to its allegations that Defendants converted funds that they owed as a fiduciary to Plaintiff. The requested records are also limited to accounts held by: Plaintiff’s Investment Companies, Defendants, or Defendants’ Companies, all of which could have been used to hold funds that were allegedly owed to Plaintiff. While the Court recognizes that the requested records cover an extensive time period (2000 until 2009), it also acknowledges that the complex relationship between the above-referenced businesses requires the parties to obtain a clear picture of the relevant financial transactions in order to identify funds that may be proper objects of Plaintiff’s claims against Defendants.

BASED UPON the foregoing Findings, the Court concludes as follows:

6. The subpoenas issued by Plaintiff are material and relevant to the claims in this case, are not designed to be a fishing expedition, are not unreasonable or oppressive, and do not otherwise create an undue burden on Defendants.

IT IS, THEREFORE, ORDERED that, in the exercise of the Court's discretion, Defendants' and Counterclaim Plaintiffs' Motion to Quash, or in the alternative, to modify is hereby **DENIED**.

This the 23rd day of September, 2011.

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