

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 08 CVS 2631

MATTRESS NOW, INC. (Plaintiff))
)
v.)
)
KS BANK, INC. and MARIE VICKERS)
Defendants)
)
v.)
)
KS BANK, INC. (Crossclaimant/TP-Plaintiff))
)
v.)
)
MARIE VICKERS and SCOTT A. GREEN,)
Crossdefendant and Third Party Defendant)

Motion to Remand to Johnston County Superior Court

Pursuant to BCR 3 and BCR 15 and the resolution of the claims impacting North Carolina corporate and banking law and the dismissal of the parties involved in those claims, plaintiff moves the Court for an order finding that jurisdiction in the Business Court is no longer necessary and proper and remanding the remaining Mattress Now claims against Marie Vickers to the Johnston County Superior Court.

In support of this motion, plaintiff Mattress Now shows the Court that:

1. In a mediated settlement conference on 14 July 2009, Mattress Now reached a Mediated Settlement Agreement with KS Bank, Inc. that also involved KS Bank dismissing its third party claims against Scott Green and assigning its claims against Marie Vickers to Mattress Now.

2. Because the Mediated Settlement Agreement is confidential, and pursuant to the Protective Order entered herein, plaintiff is supplying the Court with an unfiled, sealed copy as Exhibit 1.

3. Although Marie Vickers received advance notice and confirmation of the mediation (see Exhibit 2, attached email exchanges), Marie Vickers did not attend the mediation and did not call or advise that she could not be present.

4. Marie Vickers has been served with subsequent dismissals of other parties, but has not communicated with plaintiff's undersigned counsel.

5. The parties to the Mediated Settlement Agreement have complied with its terms. Accordingly, dismissals have been filed among all parties excepting only Mattress Now's claims against Marie Vickers.

6. Mattress Now intends on pursuing its claims against Marie Vickers.

7. Based on evidence discovered in depositions, Mattress Now is considering bringing in as a defendant Joe Hardee (Hardee), an individual to whom Marie Vickers supplied money.

8. Prior to the mediation, Mattress Now had scheduled Hardee's deposition on 24 June 2009. Hardee did not appear for his deposition, and has not provided documents in response to the subpoena duces tecum served on him.

9. Exhibit 3 is the deposition transcript with attachments verifying Hardee's failure to appear.

10. Plaintiff needs to pursue several matters in the immediate future, including:

- a. Motion for Sanctions against Marie Vickers for failure to attend the mediation, and to compel her to pay her share of the mediator's fee.
- b. Motion for Contempt against Hardee for his failure to comply with a subpoena.
- c. Motion to Amend to join Hardee as a defendant.

11. None of these issues require the expertise of the Business Court.

12. Mattress Now's claims remaining against Marie Vickers, and those it perhaps brings against Hardee, do not involve the corporate law and banking issues that justified removal of this case to the Business Court.

13. Mattress Now first became aware of some of the underlying facts concerning its account in October 2006. Other facts with respect to Hardee may have a latter trigger date for application of the applicable statutes of limitation.

14. However, Mattress Now must proceed immediately with its efforts to obtain Hardee's records and evaluate (and effect) his joinder as a defendant.

15. Once this matter is returned to Johnston County Superior Court, the above motions can be scheduled and heard almost immediately and can provide Mattress Now with the opportunity to handle these matters prior to October.

Wherefore, plaintiff Mattress Now respectfully requests that the Court remand the remaining claims Mattress Now has against Marie Vickers to the Johnston County Superior Court.

ARMSTRONG & ARMSTRONG, P.A.

By: /s/ L. Lamar Armstrong

L. Lamar Armstrong

Counsel for Plaintiff Mattress Now, Inc.

602 South Third Street, P.O. Box 27

Smithfield, NC 27577

Tel.: (919) 934-1575

Fax: (919) 934-1846

Lamar@ArmstrongLawyers.com

Certificate of Service

I, L. Lamar Armstrong, Jr. certify that on 10 August 2009, I served this Motion to Remand upon counsel for defendant KS Bank, Inc., Charles E. Coble, Esq. and counsel for third-party defendant Scott A. Green, David F. Mills, Esq. and defendant Marie Vickers, pro se, via electronic notification through the North Carolina Business Court electronic mail notification service.

/s/ L. Lamar Armstrong, Jr.

L. Lamar Armstrong, Jr.

ARMSTRONG & ARMSTRONG, P.A.

Counsel for Plaintiff

**CONFIDENTIAL
MEDIATED SETTLEMENT AGREEMENT**

FILED UNDER SEAL



Lamar Armstrong

From: David Brown [DBrown@pckb-law.com]
Sent: Monday, July 13, 2009 4:23 PM
To: Lamar Armstrong; Charles Coble; David Mills; Marie Vickers
Subject: RE: Mattress Now v. KS Bank -- Tomorrow's Mediation

Ok. Thanks. I will see all of you at 11:00 tomorrow morning.

David L. Brown
PINTO COATES KYRE & BROWN PLLC
P.O. Box 4848
Greensboro, NC 27404
336.282.8848 (o)
336.282.8409 (fax)
336.209.0763 (cell)
dbrown@pckb-law.com
www.pckb-law.com

From: Lamar Armstrong [mailto:Lamar@ArmstrongLawyers.com]
Sent: Monday, July 13, 2009 4:20 PM
To: David Brown; 'Charles Coble'; 'David Mills'; 'Marie Vickers'
Subject: RE: Mattress Now v. KS Bank -- Tomorrow's Mediation

David . . .

Yes, but the start time is 11:00 rather than 10:00 due to travel issues for the insurer's representative flying in from Baltimore.

Best Regards, Lamar Armstrong

Armstrong & Armstrong, P.A.
602 South Third Street, POB 27
Smithfield, N.C. 27577
919.934.1575

Lamar@ArmstrongLawyers.com

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

PRIVILEGED AND CONFIDENTIAL: This electronic message and any attachments are confidential property of the sender. The information is intended only for the use of the person to whom it was addressed. Any other interception, copying, accessing, or disclosure of this message is prohibited. The sender takes no responsibility for any unauthorized reliance on this message. If you have received this message in error, please immediately notify the sender and purge the message you received. Do not forward this message without permission.



From: David Brown [mailto:DBrown@pckb-law.com]
Sent: Monday, July 13, 2009 3:17 PM
To: Lamar Armstrong; Charles Coble; David Mills; Marie Vickers
Subject: Mattress Now v. KS Bank -- Tomorrow's Mediation

I want to confirm the mediation of the above referenced case for tomorrow (7/14) morning at 10:00 a.m. at Armstrong & Armstrong in Smithfield. I look forward to seeing all of you tomorrow. Thanks.

David L. Brown
PINTO COATES KYRE & BROWN PLLC
P.O. Box 4848
Greensboro, NC 27404
336.282.8848 (o)
336.282.8409 (fax)
336.209.0763 (cell)
dbrown@pckb-law.com
www.pckb-law.com

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
JOHNSTON COUNTY, NORTH CAROLINA
08 CVS 2631

MATTRESS NOW, INC., f/k/a)
MATTRESS NOW and AMERICAS)
MATTRESS,)
)
Plaintiff;)
)
vs.)
)
KS BANK, INC., and MARIE VICKERS))
)
Defendants;)
)
vs.)
)
SCOTT GREEN,)
)
Third Party Defendant.)

COPY

NONAPPEARANCE STATEMENT
FOR DEPOSITION OF
JOE HARDEE

At Smithfield, North Carolina
June 24, 2009
At 3:38 P.M. to 3:43 P.M.

Reported by: Linda P. Cobb

COBB COURT REPORTING
6331 NC 27E
COATS, NORTH CAROLINA 27521

919 894-7249



A P P E A R A N C E S

FOR THE PLAINTIFF
MATTRESS NOW:

L. Lamar Armstrong, Jr., Esq.
Armstrong & Armstrong
P. O. Box 27
Smithfield, NC 27577

FOR THE DEFENDANT
SCOTT GREEN:

David Mills, Esq.
Law Office
1551 Booker Dairy Road
Smithfield, NC 27577

FOR THE DEFENDANT
KS BANK:

Charles E. Coble, Esq.
Brooks Pierce McLendon,
Humphrey & Leonard
P. O. Box 1800
Raleigh, NC 27602

ALSO PRESENT:

Ms. Marie Green

INDEX

	<u>Page</u>
Examination by Mr. Armstrong.	5
Certificate of Notary Public/Reporter	9
EXHIBITS:	
Plaintiff's Exhibit No. 1 Marked. (Notice of Deposition)	4
Plaintiff's Exhibit No. 2 Marked. (Subpoena)	6

S T I P U L A T I O N S

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It is hereby stipulated and agreed between the parties to this action, through their respective counsel of record:

(1) That the statement of Susan Byrd, was taken on June 24, 2009 at the offices of Armstrong & Armstrong, 602 S. Third Street, Smithfield, North Carolina before Linda P. Cobb, Notary Public/Reporter.

(2) That this statement was taken for the purpose or for use in the above-entitled action.

(7) That the sealed original transcript of this statement shall be mailed first-class postage or hand delivered to the party taking the deposition for preservation and delivery to the court, if and when necessary.

1 MR. ARMSTRONG: This is the deposition of Joe
2 Hardee. For the record, this is Lamar Armstrong, on
3 behalf of the Plaintiff. I wanted to put on the
4 record the issues regarding the deposition of Joe
5 Hardee. And I'd ask that the court reporter swear my
6 legal assistant, who was involved with the service,
7 Susan Byrd.

8 WHEREUPON,

9 SUSAN BYRD

10 Having first been duly affirmed, was
11 examined and testified as follows:

12 MR. ARMSTRONG: It is currently 20 minutes to
13 4:00 on Wednesday, the -- June 24th. And Mr. Hardee
14 was noticed and subpoenaed to be here at 2:30 p.m.
15 this afternoon. He is not here. I want to put on the
16 record, through my legal assistant, the service of Mr.
17 Hardee and the communications we had with him.

18 I'm marking, first of all, Exhibit 1.

19 Direct Examination by Mr. Armstrong:

20 Q Ms. Byrd, do you recognize that?

21 A I do.

22 Q What is that?

23 A That is a subpoena, Notice of Deposition, of Joe
24 Hardee, a Return Receipt for Certified Mail.

25 Q Well, a mailing receipt.

1 A Mailing receipt. And also a copy of the tracking and
2 confirmation information from the U.S. Postal Service.

3 Q And as my legal assistant involved with this
4 particular case, did -- were you involved with the
5 mailing of Exhibit 1 with the first subpoena and the
6 attached Notice of Deposition by certified mail
7 addressed to Mr. Hardee as is shown on that document?

8 A Yes.

9 Q And did you print off the tracking receipt, which is
10 the last page?

11 A I did.

12 Q And does it show that he did not pick up the certified
13 mail attempt on him of the subpoena?

14 A That's correct.

15 Q When was it mailed?

16 A It was mailed June 10th.

17 Q And when does the tracking receipt show that he had
18 not picked it up?

19 A As of June 11th, he was notified that there was a
20 delivery for him to pick up at the Post Office, but he
21 had not picked it up as of yet.

22 Q Okay. And the tracking -- when did you print off this
23 tracking receipt?

24 A I printed that today.

25 Q Okay. So he still hadn't picked it up?

1 A No.

2 Q The first document is the mailing receipt showing that
3 you placed it in the United States mail by certified
4 mail on June the 10th of 2009, correct?

5 A Yes, that's correct.

6 Q Okay. Now I hand you what I've marked as Exhibit 2
7 for identification. Do you recognize that?

8 A That is a subpoena for Joe Hardee that I delivered to
9 the Johnston County Sheriff's Department last Friday,
10 Thursday or Friday.

11 Q And does it indicate that he was served by a Deputy
12 Sheriff?

13 A It does. He was served on June 22nd --

14 Q Which was Monday of this week?

15 A -- by personal service*. Yes.

16 Q Okay. Did you get a call from Mr. Hardee?

17 A I did.

18 Q On Monday?

19 A On Monday.

20 Q And what did he tell you?

21 A I had a voice mail message from Mr. Hardee Monday
22 morning. I returned his call. He advised he received
23 a subpoena and that he would be unable to attend this
24 deposition. I advised him that he was subpoenaed to
25 attend on a Wednesday, and he advised he was out of

1 town. He would not be able to attend. And I relayed
2 that I would speak with Mr. Armstrong about the
3 situation and call him back.

4 Q And did you speak with me?

5 A I did.

6 Q And after speaking with me, did you call him back?

7 A I did call him back on Tuesday.

8 Q What did you tell him?

9 A I advised him that he was not released from the
10 subpoena, that he had to appear for his deposition and
11 he also had to produce the documents that we had
12 requested. He advised that he was working in Conway,
13 Georgia, and he would not be here for his deposition.

14 Q Okay. Did he offer any other alternative times to
15 appear?

16 A No, he did not.

17 MR. ARMSTRONG: That's all that I have at this
18 time. Does anybody have any other questions?

19 All right. Thank you. I'd like you to make
20 that, Madame Court Reporter, in just to a small
21 transcript that we can file with the court.

22 COURT REPORTER: Okay.

23 MR. ARMSTRONG: That's it. Thank you. Thank
24 you, Susan.

25 WITNESS: Okay.

(THEREUPON, THE WITNESS WAS DISMISSED.)

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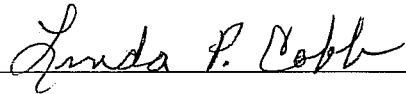
Reading and signing waived.

1 State of North Carolina
2 Harnett County

3
4 CERTIFICATE OF OATH

5
6 I, Linda P. Cobb, Notary Public/Reporter, do hereby
7 certify that Susan Byrd, was duly affirmed by me prior to
8 the taking of the foregoing statement.

9 In witness whereof, I have hereunto subscribed my name
10 this 11th day of July 2009.

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13 Linda P. Cobb

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15 My Commission expires:
16 June 30, 2011



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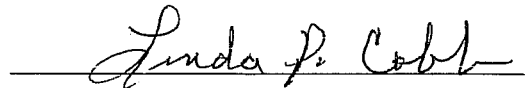
1 State of North Carolina

2 Harnett County

3
4 CERTIFICATE OF VERBATIM TRANSCRIPT

5
6 I, Linda P. Cobb, Notary Public/Reporter, do hereby
7 certify that the statement of Susan Byrd, was taken by me
8 and that the foregoing 9 pages constitute a true and
9 accurate transcript of the testimony to the best of my
10 ability and understanding.

11 I further certify that I am not of counsel for or in
12 the employment of either of the parties to this action, nor
13 am I interested in the results of this action.

14
15 

16 Linda P. Cobb
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Johnston County

In the General Court of Justice
Superior Court Division

Mattress Now, Inc., f/k/a Mattress Now and Americas Mattress
Plaintiff,

Wells Fargo Bank, Inc. and Marie Vickers
Defendants

Scott Green
Third Party Defendant

SUBPOENA
G.S. 1A-1, Rule 45

Party Requesting Subpoena:

State/Plaintiff x Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

Name and Address of Person Subpoenaed

Alternate Address

Joe Hardee
2020 Hardee Lane
Clayton, NC 27520

Telephone No.

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
- appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
- produce and permit inspection and copying of the following items, at the place, date and time indicated below.

1. All checks, 1099's W-2's and all other documents that evidence all payments of money or property of any value (wages, commissions, loans, gifts or any other payments) to Marie Green (Vickers).
2. All deposit tickets, slips and all other documents that evidence all payments of money or property of any value from Marie Green (Vickers) to you

Name and Location of Court/Place of Deposition/Place to Produce

Date to Appear/Produce

Armstrong & Armstrong, PA
602 Third Street
Smithfield, NC 27577

24 June 2009

Time to Appear/Produce

Date

6/10/09 2:30 pm

Name and Address of Applicant's Attorney

Signature

L. Lamar Armstrong, Jr.
Armstrong & Armstrong, P.A.
PO Box 27
Smithfield, NC 27577
Telephone No.

Deputy CSC Magistrate Assistant CSC Attorney/DA Clerk of Superior Court District Court Judge Superior Court Judge

(919) 934-1575

RETURN OF SERVICE

I certify that this Subpoena was received and served on the person subpoenaed as follows:

- By personal delivery.
- registered or certified mail, receipt requested and attached.
- telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
- I was unable to serve this subpoena.

Date Served

Signature of Authorized Server

Title

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.



NOTE: Rule 45, North Carolina Rules of Civil Procedure, Parts (c) and (d).

(c) Protection Of Persons Subject To Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. B-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which

an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade secrets, confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties In Responding To Subpoena

(1) Form of response. - A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on the other side of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify to your attendance as a witness so that you will be paid any amount due you.

7900 DEPT 0000 5172 2181

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here
6-10-09

Sent To Joe Hardee
 Street, Apt. No.,
 or PO Box No. 2020 Hardee Lane
 City, State, ZIP+4 Clayton, NC 27520
 PS Form 3800, August 2006 See Reverse for Instructions

NORTH CAROLINA
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 08 CVS 2631

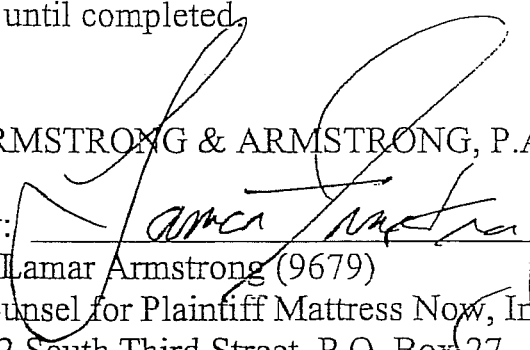
*Mattress Now, Inc., f/k/a/
Mattress Now & Americas Mattress*)
Plaintiff)
v.)
KS Bank, Inc. and Marie Vickers)
Defendants)
v.)
Scott Green)
Third-party Defendant)

Notice of Deposition of Joe Hardee

Pursuant to Rule 30 of the North Carolina Rules of Civil Procedure, plaintiff Mattress Now, Inc. (Mattress Now) gives notice that its undersigned counsel will take the deposition of Joe Hardee (Hardee) before an authorized court reporter on Wednesday, 24 June 2009 beginning at 2:30 pm in the office of *Armstrong & Armstrong*, 602 South Third Street, Smithfield, NC. A copy of the subpoena duces tecum ordering Hardee to produce documents is attached.

As permitted by Rule 30(b)(4), Mattress Now will record the testimony by audio and video (operated by L. Lamar Armstrong, Jr.) and will provide for the stenographic transcription of the testimony by an authorized court reporter. The deposition will continue from day to day until completed.

ARMSTRONG & ARMSTRONG, P.A.

By: 
L. Lamar Armstrong (9679)
Counsel for Plaintiff Mattress Now, Inc.
602 South Third Street, P.O. Box 27
Smithfield, NC 27577
Tel.: (919) 934-1575

Certificate of Service

I certify that on 16 June 2009 I served this Notice of Deposition by depositing copies in the United States mail, postage prepaid, and addressed to: counsel for the defendant, KS Bank, Charles E. Coble, *Brooks, Pierce, McLendon, Humphrey & Leonard*, P.O. Box 1800, Raleigh, NC 27602; Marie Vickers, *pro se*, P.O. Box 715, Pine Level, NC 27568; and, counsel for third party defendant Scott Green, David F. Mills, 1559-B Booker Dairy Rd., Smithfield, NC 27577.


L. Lamar Armstrong, Jr.



[Track & Confirm](#)

[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: **7008 1830 0000 5172 2181**

Service(s): **Certified Mail™**

Status: **Notice Left**

We attempted to deliver your item at 10:02 AM on June 11, 2009 in CLAYTON, NC 27520 and a notice was left. You may pick up the item at the Post Office indicated on the notice, go to www.usps.com/redelivery, or call 800-ASK-USPS to arrange for redelivery. If this item is unclaimed after 30 days then it will be returned to the sender. Information, if available, is updated periodically throughout the day. Please check again later.

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No FEAR Act EEO Data

FOIA



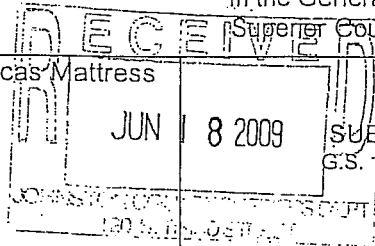
Johnston County

157

In the General Court of Justice
Superior Court Division

242470

Mattress Now, Inc., f/k/a Mattress Now and Americas Mattress
Plaintiff,



SUBPOENA
G.S. A-1, Rule 45

FILED
JUN 23 AM
JOHNSTON COUNTY
S.C.

KS Bank, Inc. and Marie Vickers
Defendants

Scott Green
Third Party Defendant

Party Requesting Subpoena:

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

State/Plaintiff x Defendant

Name and Address of Person Subpoenaed

Alternate Address

Joe Hardee
2020 Hardee Lane
Clayton, NC 27520

Telephone No.

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
- appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
- produce and permit inspection and copying of the following items, at the place, date and time indicated below.

- All checks, 1099's W-2's and all other documents that evidence all payments of money or property of any value (wages, commissions, loans, gifts or any other payments) to Marie Green (Vickers).
- All deposit tickets, slips and all other documents that evidence all payments of money or property of any value from Marie Green (Vickers) to you

Name and Location of Court/Place of Deposition/Place to Produce

Date to Appear/Produce

Armstrong & Armstrong, PA
602 Third Street
Smithfield, NC 27577

24 June 2009

Time to Appear/Produce

Name and Address of Applicant's Attorney

Date

L. Lamar Armstrong, Jr.
Armstrong & Armstrong, P.A.
PO Box 27
Smithfield, NC 27577

2:30 pm

Signature

Telephone No.

Deputy CSC
Magistrate

Assistant CSC
Attorney/DA

Clerk of Superior Court
District Court Judge

Superior Court Judge

(919) 934-1575

RETURN OF SERVICE

certify that this Subpoena was received and served on the person subpoenaed as follows:

- By personal delivery.
- registered or certified mail, receipt requested and attached.
- telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
- I was unable to serve this subpoena.

06/18/09

Date Served

06/22/09

Signature of Authorized Server

Kathy Robert Broughton Deputy 157

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in the case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.



NOTE: Rule 45, North Carolina Rules of Civil Procedure, Parts (c) and (d).

(c) Protection Of Persons Subject To Subpoena

(1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which

an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, or tangible things specified in the subpoena.

(7) Trade secrets, confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties In Responding To Subpoena

(1) Form of response. - A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on the other side of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify to your attendance as a witness so that you will be paid any amount due you.