

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 6408

STATE OF NORTH CAROLINA, ex
rel. JOSHUA H. STEIN, Attorney
General,

Plaintiff,

v.

MV REALTY PBC, LLC; MV
REALTY OF NORTH CAROLINA,
LLC; MV BROKERAGE OF NORTH
CAROLINA, LLC; AMANDA
ZACHMAN; ANTONY MITCHELL;
DAVID MANCHESTER; and
DARRYL COOK,

Defendants.

ORDER ON BCR 10.9 SUBMISSION

THIS MATTER is before the Court on Plaintiff's 11 October 2024 submission under Business Court Rule ("BCR") 10.9 regarding alleged deficiencies in Defendants' production of documents in response to a subpoena issued by Plaintiff on 1 July 2024 to one of Defendants' employees.

1. On 15 March 2024, this Court entered an Amended Case Management Order (the "CMO," ECF No. 117), which provided that fact discovery would close on 30 September 2024.

2. On 1 July 2024, Plaintiff noticed the deposition of Christina Mandolfo to take place on 24 July 2024. Plaintiff also issued a subpoena directing her to produce various documents to Plaintiff by 18 July 2024.

3. At various times relevant to this litigation, Mandolfo has worked as an employee for Defendants.

4. On 11 July 2024, Defendants agreed to accept service of the subpoena on Mandolfo's behalf.

5. On 18 July 2024, Defendants served objections to the subpoena, and four days later Defendants informed Plaintiff that they would not be producing certain documents requested by Plaintiff in the subpoena on the ground that the documents were protected by the work product privilege.

6. On 24 July 2024, Plaintiff's deposition of Mandolfo took place despite Defendants' failure to produce the withheld documents.

7. The parties conferred at various times in August and September 2024 regarding the withheld documents but were unable to resolve their dispute on this issue.

8. Pursuant to the CMO, fact discovery in this case ended on 30 September 2024.

9. Plaintiff submitted its BCR 10.9 submission on 11 October 2024.

10. Defendants, in turn, submitted a response to Plaintiff's submission on 18 October 2024, and the Court conducted a Webex conference on 6 November 2024.

11. Rule 10.4 of the BCR provides in relevant part that "[e]ach party is responsible for ensuring that it can complete discovery within the time period in the Case Management Order."

12. The Court interprets Rule 10.4 as requiring that any disputes regarding discovery be brought to the Court's attention via the BCR 10.9 process before the applicable deadline for that phase of discovery.

13. Mandolfo is a fact witness in this case, and the subpoena at issue was served on her in connection with the fact discovery phase of this case.

14. Plaintiff has been aware of Defendants' objection to producing the withheld documents since 18 July 2024. Nevertheless, Plaintiff failed to make a BCR 10.9 submission regarding this dispute until 11 October 2024—eleven days after fact discovery had closed.

15. Accordingly, the Court **CONCLUDES** that Plaintiff's BCR 10.9 submission is untimely.

SO ORDERED, this the 8th day of November 2024.

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge
for Complex Business Cases