

STATE OF NORTH CAROLINA
ROCKINGHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 502

ANDREW LUCAS, SHANNON
LUCAS, and SDB PARTNERS OF
EDEN, LLC,

Plaintiffs,

v.

HAROLD HOPPER, LINDA
HOPPER, TYLER HOPPER, and LH
SERVICE, INC.,

Defendants.

**ORDER ON DEFENDANTS'
OBJECTIONS AND MOTIONS TO
QUASH**

1. **THIS MATTER** is before the Court on Defendants' Objection and Motion to Quash Subpoenas issued to both Truist Bank and First National Bank ("Bank Motion"), (ECF No. 62), and Defendants' Objection and Motion to Quash Subpoena issued to Raymond Reehm ("Reehm Motion"), (ECF No. 64), (collectively the "Objections and Motions").¹

¹ The Court observes that Defendants did not comply with BCR 10.9 before proceeding to motion practice. Under BCR 10.9, discovery disputes should proceed as follows:

(b) *Pre-filing requirements.*

- (1) Summary of dispute. *Before filing a motion* related to discovery, a party must engage in a thorough, good-faith attempt to resolve or narrow the dispute. If the dispute remains unresolved, *then the party seeking relief must e-mail a summary of the dispute to the judicial assistant and law clerk for the presiding Business Court judge and to opposing counsel.*

* * * *

- (c) *Briefs on discovery motions.* If, after the Court conducts a telephone conference under BCR 10.9(b)(3), the parties still cannot resolve the dispute or if the Court declines to rule on the dispute, *then a party may file a discovery motion.*

2. The relevant procedural background is as follows: Plaintiffs filed their Complaint on 15 March 2024. (Compl., ECF No. 3.) The Court entered a Case Management Order (“CMO”) on 23 May 2024, establishing 31 January 2025 as the discovery deadline. (CMO, ECF No. 29.) On 29 August 2024, Plaintiffs filed a Consent Motion to Modify Case Management Order requesting an extension of the deadlines for expert disclosures. (Consent Mot., ECF No. 37.) The Court granted the consent motion by Order dated 29 August 2024, (ECF No. 39). On 4 February 2025, Defendants filed another Consent Motion to Modify the Case Management Order, this time to allow three depositions to be taken after the discovery deadline. (Consent Mot., ECF No. 58.) The Court granted the second consent motion by Order dated 4 February 2025, (ECF No. 60).

3. Pursuant to Business Court Rule 10.4(a),

Each party is responsible for ensuring that it can complete discovery within the time period in the Case Management Order. In particular, interrogatories, requests for production, and requests for admission should be served early enough that answers and responses will be due before the discovery deadline ends.

BCR 10.4(a).

BCR 10.9(b)–(c) (emphasis added).

The Court received no email correspondence from Defendants alerting it to a discovery dispute prior to Defendants’ Motions. Future noncompliance will result in summary denial of a discovery motion. In this single instance, given counsel’s representations that a meet and confer occurred and that they have nevertheless been unable to reach resolution, the Court will consider the Motions in the absence of BCR 10.9 compliance. Pursuant to Business Court Rule 7.4, the Court determines that a hearing would not be beneficial and therefore decides the Motions without a hearing.

4. Defendants filed the Bank Motion on 10 February 2025, objecting to subpoenas that Plaintiffs served on two nonparty financial institutions. The subpoenas were served on 29 January 2025 and purported to require the production of certain documents by 19 February 2025. (Bank Motion, Ex. A.) Even though they were served two days before the discovery deadline, Defendants moved to quash the subpoenas because they do not afford the respondents a reasonable period of time to respond prior to the close of discovery. Consequently, Defendants argue, the subpoenas violate BCR 10.4(a). (Defs.' Br. in Supp. of Objection and Motion to Quash Subpoenas, ECF No. 63.)

5. Similarly, Defendants filed the Reehm Motion on 17 February 2025, objecting to a subpoena that Plaintiffs served on witness Raymond Reehm on 31 January 2025. The subpoena purports to require the production of certain documents by 28 February 2025. (Reehm Motion, Exhibit A.) Defendants move to quash the Reehm subpoena because, once again, the date of production is well after the close of the discovery period in contravention of Rule 10.4(a). (Reehm Motion at 2.)

6. Plaintiffs respond that the Bank subpoenas were filed late in the discovery period because Defendants served responses to Plaintiffs' document requests on 21 January 2025 and refused to produce their tax returns. (Pls.' Resp. to the Objection and Mot. to Quash Subpoena Filed by Defs.' at ECF Nos. 62-64 ["Pls.' Resp.,"] at 2, ECF No. 65.) Plaintiffs further contend that the financial information they seek is relevant and should be produced in discovery because they have asserted a demand for punitive damages. (Pls.' Resp. at 4.)

7. As for the Reehm subpoena, Plaintiffs argue that it was served late in the discovery period because Plaintiffs did not discover until L. H. Service's Rule 30(b)(6) deposition taken on 27 and 28 January 2025 that there were questions about payments L.H. Service made to Reehm. (Pls.' Resp. at 7.)

8. The Court has previously addressed this situation. In *Kelly v. Nolan*, the plaintiffs served two subpoenas on the date discovery closed and one subpoena three days after the close of discovery. All three set a response deadline well after discovery closed. 2023 NCBC LEXIS 77, at *2 (N.C. Super. Ct. June 6, 2023). The Court determined that the subpoenas were untimely under BCR 10.4(a) and quashed the subpoenas. *Id.* at *3. In reaching its decision, this Court cited an earlier decision in which subpoenas were served too late:

LoRusso objects to several subpoenas that Plaintiffs served on third parties. LuRusso contends that they were served after discovery closed; Plaintiffs contend that they were served on the last day of discovery. Either way, the subpoenas are untimely. By rule, parties must serve discovery "early enough that answers and responses will be due before the discovery deadline ends." BCR 10.4(a). Plaintiff did not do so. Even if Plaintiffs had served the subpoenas on the last day of discovery, the third parties would not have had time to comply before the end of the discovery period. "[T]he Court has inherent authority to police its own case management order and to quash untimely subpoena." *Al-Hassan v. Salloum*, 2021 NCBC LEXIS 62, at *4, 2021 NCBC Order 16 (N.C. Super. Ct. July 2, 2021) (citation and quotation marks omitted). Accordingly, the Court quashes Plaintiffs' untimely subpoenas.

Kelly, 2023 NCBC LEXIS 77, at *2–3 (quoting *Wright v. LoRusso*, No. 20 CVS 10612 ¶ 14 (N.C. Super. Ct. Feb. 13, 2023)).

9. As in *Wright* and *Kelly*, the subpoenas here were not served in compliance with BCR 10.4(a). Moreover, Plaintiffs did not move for an extension of

the discovery period. Even had they done so, the arguments Plaintiffs offer in opposition to the Motions come too late and do not reflect the *extraordinary* cause that BCR 10.4 mandates as necessary to reopen discovery after it closes. There are dangers implicit in waiting until late in the discovery period to conduct key depositions and to deciding not to pursue a motion to compel promptly if one believes a discovery response is inadequate. Unfortunately, Plaintiffs have fallen prey to those dangers.

10. Therefore, the Court, in its discretion, **ORDERS** that the subpoenas directed to Truist, First National Bank, and Mr. Reehm are **QUASHED** as untimely. Counsel for Plaintiffs are **DIRECTED** to serve a copy of this Order upon Truist, First National Bank, and Raymond Reehm immediately and to inform them that they are not required to comply with these subpoenas.

SO ORDERED, this the 20th day of February, 2025.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases