

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

CUMBERLAND COUNTY

22 CVS 5535

CUMBERLAND COUNTY
HOSPITAL SYSTEM, INC.,
individually,

Plaintiff,

v.

MICHAEL G. WOODCOCK and
WOODCOCK CUSTOM VISION,
LLC,

Defendants.

**ORDER AND OPINION ON
PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT,
DEFENDANT WOODCOCK'S MOTION
TO WITHDRAW AND AMEND
DEEMED ADMISSIONS, AND
DEFENDANT WOODCOCK CUSTOM
VISION, LLC'S MOTION FOR
PROTECTIVE ORDER AND FOR
DECLARATORY JUDGMENT**

THIS MATTER comes before the Court on three motions: (1) Plaintiff's Motion for Partial Summary Judgment Against Michael G. Woodcock ("Motion for Partial Summary Judgment," ECF No. 30); (2) Defendant Michael G. Woodcock's Motion to Withdraw and Amend the Deemed Admissions to Plaintiff's Requests for Admissions Pursuant to N.C. R. Civ. P. 36(b) ("Motion to Withdraw and Amend," ECF No. 37); and (3) Defendant Woodcock Custom Vision, LLC's Motion for Protective Order and Motion for Declaratory Judgment ("Motion for Protective Order and Declaratory Judgment," ECF No. 40) (collectively, "Motions").

THE COURT, having considered the Motions, the briefs of the parties, the arguments of counsel, and all applicable matters of record, **CONCLUDES** that, for the reasons set forth below, the Motion to Withdraw and Amend should be **GRANTED**, the Motion for Partial Summary Judgment should be **DENIED**, and the Motion for Protective Order and Declaratory Judgment should be **DENIED**.

K&L Gates LLP, by Nathan A. Huff and Anderson M. Shackelford, for Plaintiff Cumberland County Hospital System, Inc.

Douglas S. Harris for Defendant Michael G. Woodcock.

Krispen Culbertson for Defendant Woodcock Custom Vision, LLC.

Davis, Judge.

INTRODUCTION

1. Much ink has been spilled by the parties in connection with the present Motions. But the underlying issues are straightforward: First, is Plaintiff Cumberland County Hospital System, Inc. (“Plaintiff”) entitled to partial summary judgment against Defendant Michael G. Woodcock (“Woodcock”) based on Woodcock’s failure to respond to requests for admission allegedly served upon him by Plaintiff? Second, should Defendant Woodcock Custom Vision, LLC (“WCV”) be required to respond to discovery requests in this case? The answers are no and yes, respectively.

FACTUAL AND PROCEDURAL BACKGROUND

2. The underlying events giving rise to this action—as alleged in Plaintiff’s Complaint—are summarized in the Court’s 21 March 2023 Order and Opinion on Defendants’ Joint Motion to Dismiss. (“21 March Opinion,” ECF No. 25.) In essence, Plaintiff (who, along with Woodcock, is one of the two members of WCV) asserted both individual (or direct) and derivative claims in its Complaint that primarily alleged various forms of wrongful acts by Woodcock.

3. In its 21 March Opinion, the Court dismissed, without prejudice, Plaintiff’s derivative claims but declined to dismiss its individual claims except with

respect to Plaintiff's claim for breach of fiduciary duty against Woodcock for actions taken by him as a manager of WCV. (ECF No. 25.)

4. Unlike the issues raised by the parties in Defendants' Joint Motion to Dismiss, however, the present Motions are more procedural than substantive.

5. On 4 April 2023, Plaintiff filed a Motion for Partial Summary Judgment. (ECF No. 30.) In that motion, Plaintiff requests judgment in its favor against Woodcock on the issue of liability regarding Plaintiff's individual claims for breach of operating agreement, breach of fiduciary duty, and constructive fraud. Plaintiff asserts that it is entitled to this relief based on requests for admission it previously served on Woodcock on 7 November 2022 to which Woodcock has failed to respond. Plaintiff contends that pursuant to Rule 36 of the North Carolina Rules of Civil Procedure, the factual matters contained within those requests for admission should therefore be deemed admitted and that, as a result, these admissions entitle Plaintiff to partial summary judgment on its claims against Woodcock. (Br. Supp. Mot. Partial Summ. J.)

6. In response to Plaintiff's Motion, Woodcock filed a Motion to Withdraw and Amend on 18 April 2023 in which he requested that any deemed admissions in connection with Plaintiff's requests for admission to him be withdrawn and that he be permitted to serve responses. (Mot. Withdraw and Amend.)

7. On 20 April 2023, WCV filed a Motion for Protective Order and Declaratory Judgment. (ECF No. 40.) In this Motion, WCV sought an order from the Court (1) providing that WCV is not required to respond to the discovery requests

that Plaintiff served upon it; and (2) declaring that WCV is no longer a party in this action following the Court's dismissal of Plaintiff's derivative claims in its 21 March Opinion.

8. The Court held a hearing on the Motions on 27 June 2023. The Motions are now ripe for decision.

LEGAL STANDARD

9. It is well established that “[s]ummary judgment is proper ‘if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.’” *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018) (quoting N.C. R. Civ. P. 56(c)). “[A] genuine issue is one which can be maintained by substantial evidence.” *Kessing v. Nat’l Mortg. Corp.*, 278 N.C. 523, 534 (1971). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference.” *Daughtridge v. Tanager Land, LLC*, 373 N.C. 182, 187 (2019) (citation and internal quotation marks omitted).

10. On a motion for summary judgment, “[t]he evidence must be considered ‘in a light most favorable to the non-moving party.’” *McCutchen v. McCutchen*, 360 N.C. 280, 286 (2006) (quoting *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470 (2004)). “[T]he party moving for summary judgment ultimately has the burden of establishing the lack of any triable issue of fact.” *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 313 N.C. 488, 491 (1985) (citation omitted).

11. “For affirmative summary judgment on a party’s own claim, the burden is heightened.” *Futures Grp. v. Brosnan*, 2023 NCBC LEXIS 7, at **4 (N.C. Super. Ct. Jan. 19, 2023). The movant “must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by the jury.” *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985); accord *Kidd v. Early*, 289 N.C. 343, 370 (1976). Consequently, “rarely is it proper to enter summary judgment in favor of the party having the burden of proof.” *Blackwell v. Massey*, 69 N.C. App. 240, 243 (1984).

12. Pursuant to Rule 36(a), a party served with a request for admission must respond within 30 days or “the matter is deemed admitted.” *Duke Energy Carolinas, LLC v. AG Ins. SA/NV*, 2020 NCBC LEXIS 14, at *5 (N.C. Super. Ct. Feb. 10, 2020) (quoting *Excel Staffing Servs., Inc. v. HP Reidsville, Inc.*, 172 N.C. App 281, 284 (2005)). “Any matter admitted under [the] rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” N.C. R. Civ. P. 36(b).

13. “Rule 26 allows parties to ‘obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.’” *Edison v. Acuity Healthcare Holdings, Inc.*, 2016 NCBC LEXIS 84, at **4 (N.C. Super. Ct. Nov. 2, 2016) (quoting N.C. Civ. P. 26(b)(1)). However, “[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown, a trial court may issue an order limiting discovery ‘to protect a party or person from

unreasonable annoyance, embarrassment, oppression, or undue burden or expense.’ ” *Duke Energy Carolinas, LLC v. AG Ins. SA/NV*, 2018 NCBC LEXIS 39, at *8 (N.C. Super. Ct. April 30, 2018) (quoting N.C. R. Civ. P. 26(e)). In doing so, the court “balance[s] one party’s need for information against the likelihood of an undue burden being imposed upon the other.” *Brown v. Secor*, 2017 NCBC LEXIS 65, **29 (N.C. Super. Ct. July 28, 2017) (cleaned up). “The decision to enter a protective order . . . is ‘within the discretion of the trial court[.]’ ” *Duke Energy Carolinas, LLC*, 2018 NCBC LEXIS 39, at *9 (quoting *Powers v. Parish*, 104 N.C. App. 400, 409 (1991)).

ANALYSIS

I. Motion to Withdraw and Amend

14. Plaintiff’s Motion for Partial Summary Judgment hinges on the matters contained in its requests for admission being deemed admitted by Woodcock. Therefore, the Court will first address Woodcock’s Motion to Withdraw and Amend.

15. This Court has previously stated as follows:

“Litigants in this state are required to respond to pleadings, interrogatories and requests for admission with timely, good faith answers.” *WXQR Marine Broad. Corp. v. JAI, Inc.*, 83 N.C. App. 520, 521, 350 S.E.2d 912, 913 (1986). Rule 36(b) states that “[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” N.C. R. Civ. P. 36(b). The Rule further provides that a court may permit withdrawal or amendment when (1) “the presentation of the merits of the action will be subserved thereby” and (2) “the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.” *Id.*; see also *Pritchard v. Dow Agro Scis.*, 255 F.R.D. 164, 172 (W.D. Pa. 2009) (stating Federal Rule of Civil Procedure 36(b)’s nearly identical two-part test). A trial court’s decision to permit withdrawal or amendment is discretionary and “will not be overturned absent a showing that the decision was so arbitrary that it could not have been

the result of a reasoned decision.” *Excel Staffing Serv.*, 172 N.C. App. at 285, 616 S.E.2d at 353 (citing *Eury v. N.C. Employment Sec. Comm.*, 115 N.C. App. 590, 603, 446 S.E.2d 383, 391 (1994)).

Duke Energy Carolinas, LLC v. AG Ins. SA/NV, 2020 NCBC LEXIS 14, at *5–6 (N.C. Super. Ct. Feb. 10, 2020).

16. Woodcock asserts that he was not actually served with Plaintiff’s requests for admission and that his attorney was never made aware that there were outstanding requests for admission when he made an appearance in this case.

17. In their briefs, Plaintiff and Woodcock spar over this issue at great length, and—for the sake of brevity—the Court will not recite the details of their respective contentions. Instead, it suffices to say that based on its careful review of the record, the Court is satisfied that some degree of confusion exists regarding the service of the requests for admission upon Woodcock so as to warrant relief under Rule 36. Moreover, Plaintiff has failed to convince the Court that it will suffer any degree of prejudice if Woodcock’s deemed admissions are withdrawn and he is allowed to serve responses to the requests for admission.

18. Therefore, in the exercise of its discretion, the Court elects to **GRANT** Woodcock’s Motion to Withdraw or Amend, and Woodcock shall have **up to and including 7 July 2023** in which to serve responses to Plaintiff’s requests for admission directed to him.

II. Motion for Partial Summary Judgment

19. As noted above, Plaintiff’s Motion for Partial Summary Judgment is predicated on Woodcock being deemed to have admitted all factual matters contained

within the requests for admission directed to him. Without the admissions asserted by Plaintiff, it clearly has not satisfied its burden on a motion for summary judgment.

20. Because the Court has granted Woodcock's Motion to Withdraw and Amend, Plaintiff's Motion for Partial Summary Judgment is **DENIED**.¹

III. Motion for Protective Order and Declaratory Judgment

21. Finally, the Court must address WCV's Motion for Protective Order and Declaratory Judgment. In this Motion, WCV requests that the Court declare that WCV is no longer a party in this lawsuit. It also seeks an accompanying protective order providing that WCV is not required to answer the discovery requests that Plaintiff has previously served upon it.

22. WCV's contention that it is no longer a party to this case is misplaced. The Court's 21 March Opinion dismissed Plaintiff's derivative claims but did not disturb Plaintiff's individual claims for breach of operating agreement and for declaratory judgment—the two claims that were asserted against both Woodcock *and* WCV. Accordingly, those two claims are still pending, and WCV remains a party to this lawsuit. As a party, WCV is both entitled to serve its own discovery requests and required to respond to such requests from other parties.

23. WCV's alternative argument that Plaintiff's discovery requests are invalid in that they were served before the Court's entry of a Case Management Order also lacks merit. Indeed, Rule 10.4 of the Business Court Rules expressly provides

¹ The denial of this Motion is without prejudice to Plaintiff's ability to file future motions for summary judgment in this case in accordance with the North Carolina Rules of Civil Procedure and the Business Court Rules.

that the “[R]ules do not discourage the parties from beginning discovery before entry of the Case Management Order[.]” BCR 10.4(a). In the absence of an agreement by counsel for the affected parties, or a directive in the Court’s Case Management Order withdrawing discovery requests served before the entry of the Case Management Order – neither of which exists here – proper and timely responses to discovery requests must be made by the party to whom they are directed.

24. Accordingly, WCV’s Motion for Protective Order and Declaratory Judgment is **DENIED**, and WCV shall have **up to and including 27 July 2023** in which to serve responses to all of Plaintiff’s outstanding discovery requests directed to it.

CONCLUSION

THEREFORE, IT IS ORDERED AS FOLLOWS:

1. Woodcock’s Motion to Withdraw and Amend is **GRANTED**, and Woodcock shall have **up to and including 7 July 2023** in which to serve responses to Plaintiff’s requests for admission directed to him;
2. Plaintiff’s Motion for Partial Summary Judgment is **DENIED**; and
3. WCV’s Motion for Protective Order and Declaratory Judgment is **DENIED**, and WCV shall have **up to and including 27 July 2023** in which to serve responses to all of Plaintiff’s outstanding discovery requests directed to it.²

² The parties’ filings since the Court’s 21 March Opinion have continued to use the original caption to Plaintiff’s Complaint, which is no longer accurate in light of the Court’s dismissal of Plaintiff’s derivative claims. In all future filings, the parties shall use the caption set forth on page one of this Order and Opinion.

SO ORDERED, this the 27th day of June, 2023

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge
for Complex Business Cases