

Campbell Sales Grp., Inc. v. Niroflex by Juifeng Furniture, LLC, 2020 NCBC Order 3.

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 865

CAMPBELL SALES GROUP,
INC. d/b/a LEATHER ITALIA,
USA,

Plaintiff,

v.

NIROFLEX BY JUIFENG
FURNITURE, LLC; HIGH POINT
MARKETING GROUP, INC.;
GENFINE FURNITURE
INDUSTRY, LTD. a/k/a
HUIZHOU JIUFENG SCIENCE
TECHNOLOGY INDUSTRIAL
CO. LTD.; MICHAEL
ELKHATIB; and JOHN THOMAS
MOODY a/k/a QING CHUN MU,

Defendants.

**ORDER ON DEFENDANT MOODY'S
MOTION FOR RELIEF FROM
PHYSICAL APPEARANCE AT
MEDIATION AND PLAINTIFF'S
MOTION FOR DEPOSITION OF
DEFENDANTS MOODY AND
GENFINE**

THIS MATTER comes before the Court on Defendant John Thomas Moody a/k/a Qing Chun Mu's ("Moody") Motion for Relief from Physical Appearance at Mediation ("Motion for Relief," ECF No. 88) and Plaintiff's Motion for Depositions of Defendants Genfine Furniture Industry, Ltd. a/k/a Huizhou Jiufeng Science Technology Industrial Co. Ltd. ("Genfine") and Moody ("Motion for Depositions," ECF No. 91) (collectively, the "Motions").

A. Background

This lawsuit arises out of an oral agreement ("Oral Agreement") between Plaintiff and Genfine under which Genfine manufactured furniture for Plaintiff.

Genfine is a Chinese corporation with its principal place of business in China. Moody is the majority owner and General Manager of Genfine, and a resident of China. In its Verified Amended Complaint, Plaintiff asserts claims against all Defendants, including Moody, for trade secret misappropriation, unfair and deceptive trade practices under North Carolina's Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*, civil conspiracy, temporary restraining order and preliminary and permanent injunctions, breach of confidence, and unjust enrichment. Additionally, Plaintiff asserts claims for breach of contract against Genfine and Moody and for conversion against Genfine. Plaintiff alleges Moody personally made the Oral Agreement with Plaintiff and was involved in all aspects of the relationship between Plaintiff and Genfine underlying its claims.

On July 24, 2019, Genfine and Moody filed answers to the Verified Amended Complaint (ECF Nos. 59 and 61). In addition, Genfine and Moody have filed numerous motions seeking relief from the Court, and Moody has filed an affidavit with the Court (ECF No. 18.2). This Court has personal jurisdiction over Moody and Genfine. *See Stunzi v. Medlin Motors, Inc.*, 214 N.C. App. 332, 336, 714 S.E.2d 770, 774 (2011) (“[A] court may properly obtain personal jurisdiction over a party who consents or makes a general appearance, for example, by filing an answer or appearing at a hearing without objecting to personal jurisdiction.”).

Beginning on October 1, 2019, Plaintiff's counsel sought dates from Defendants to take the deposition of Moody and the corporate deposition of Genfine. Defendants did not provide any proposed dates. In the meantime, the parties agreed to

participate in mediation on February 18, 2020 in Raleigh, North Carolina. On December 18, 2019, Defendants' counsel informed Plaintiff's counsel for the first time that Moody and Genfine would not appear for deposition in the United States, and that Moody would seek to be excused from attending the mediation in person. Although the parties discussed making Moody available for deposition by telephone or video conference, on January 14, 2020, Defendants' counsel claimed that is illegal for Moody to be deposed while he is present in China and that being deposed in China could subject him to arrest.¹

On December 19, 2019, Moody filed the Motion for Relief and a brief in support contemporaneously. (ECF No. 88; Br. in Supp. of Mot. for Relief, ECF No. 89.) Plaintiff filed a response brief in opposition to the Motion for Relief on December 30, 2019 (ECF No. 90), and the same day filed the Motion for Depositions, along with a brief in support (ECF No. 91; Br. in Supp. of Mot. for Deps., ECF No. 92). The next day, Moody filed a reply brief in support of his Motion for Relief (ECF No. 94), as well as a response brief in opposition to the Motion for Depositions (ECF No. 93). On January 15, 2020, Plaintiff filed an Amended and Supplemental Brief in Support of

¹ From some brief internet research conducted by the Court, it appears that Defendants may be correct in asserting that it is illegal, absent permission from the Chinese government, for a foreign attorney or consular official to take a deposition of a Chinese citizen while in China. See Dan Harris, *Taking Depositions in China. It Can Be Done. Just Kidding.*, CHINA LAW BLOG (Jan. 19, 2009), https://www.chinalawblog.com/2009/01/taking_depositions_in_china_it.html. According to this commentator, conducting an unauthorized deposition in China could result in harsh criminal penalties. Additionally, it appears that the Chinese government has only allowed one deposition of a Chinese citizen by a foreign attorney to take place in China in approximately 25 years.

the Motion for Depositions (ECF No. 95) and the Affidavit of Gavin B. Parsons (ECF No. 96).

In its discretion, the Court dispenses with oral argument on the Motions, and the Motions are ripe for decision.

B. The Motions

In the Motion for Relief, Moody asks to be excused from attending the mediation in this action in person and instead to be allowed to participate via telephone or video conference. Alternatively, Moody seeks an order requiring Plaintiff to pay the full costs of his attendance. Moody asserts that he should be excused from physically appearing for the mediation because he is a citizen and resident of China, has never been served with a copy of the Complaint, and alleges that he is not a key defendant in this action. (ECF No. 89, at pp. 1, 3.) On the other hand, Plaintiff argues that Moody should be required to physically attend the mediation because he “has made prior trips to the United States for business, including High Point, North Carolina for the 2019 Furniture Market,” is “a central figure in [all the] factual allegations in the Complaint and Amended Complaint” and is “the ‘majority owner and principal’ of Defendant Genfine.” (ECF No. 90, at p. 2.)

In the Motion for Depositions, Plaintiff seeks an order requiring Genfine and Moody to appear for depositions in North Carolina while Moody is in the United States for the mediation. Moody argues that he should not be required to sit for a deposition because North Carolina Rule of Civil Procedure 30(b)(1) does not compel him, as a “nonresident of the State,” to attend a deposition in the United States and

contends that he cannot be deposed by telephone or video conference because Chinese law makes it illegal for him to be deposed while in China and he could be subject to criminal prosecution if he does so.

C. Analysis

1. The Motion for Relief

Parties to a superior court civil action must attend the mediated settlement conference unless excused by the Court. N.C. Gen. Stat. § 7A-38.1(f). Rule 4(A)(2) of the Rules for Statewide Mediated Settlement Conferences makes clear that attendance means physical presence at the mediation: “Any party or person required to attend a mediated settlement conference shall physically attend . . .” unless excused “[b]y agreement of all parties and persons required to attend and the mediator, or” by order of the Court. *See also Perry v. GRP Fin. Servs. Corp.*, 196 N.C. App. 41, 48, 674 S.E.2d 780, 784 (2009). The Court concludes that Moody should not be excused from attending the mediation in person. Accordingly, the Motion for Relief should be DENIED, and Moody should be required to attend the scheduled mediation in person.

2. The Motion for Depositions

Plaintiff’s Motion for Depositions seeks to compel Moody and Genfine to appear for depositions in North Carolina on or about the date of the mediation, February 18, 2020. “It is well established that orders regarding discovery matters are within the discretion of the trial court” *Evans v. United Servs. Auto. Ass’n*, 142 N.C. App. 18, 27, 541 S.E.2d 782, 788 (2001).

Preliminarily, Defendants' objection to Moody and Genfine being deposed in North Carolina, grounded in the fact that they were not served with the Complaint and that Moody is not a central figure in the claims raised by Plaintiff, bears little discussion. As noted above, Moody and Genfine have voluntarily subjected themselves to this Court's jurisdiction through their numerous general appearances in this action to date. The contention that Moody is an insignificant witness is frivolous as it appears Moody may be the single most important witness in this case.

Defendants' other ground for objection to Moody and Genfine being deposed in North Carolina is that requiring Moody to travel to the United States from China will be burdensome and expensive. While this is no doubt true in some sense, the Court concludes that it is insufficient grounds for relieving Moody of the obligation to appear in person in North Carolina for deposition under the facts present in this case. First, Defendants now take the position that Moody cannot be deposed by telephone or video conference in China. This means that unless compelled to appear for deposition in North Carolina, there is little if any possibility that Plaintiff will be able to take his deposition.

In addition, Plaintiff requested dates for the depositions on October 1, 2019, and Defendants failed to respond to the request until December 18, 2019 when it notified Plaintiff's counsel that Moody would not appear for deposition in North Carolina. This delay, along with the additional notice that Moody believes he cannot be deposed while he is in China, leaves Plaintiff with no viable options for getting Moody's testimony for use in this case.

Finally, North Carolina trial courts have ordered foreign nationals to travel great distances and incur the associated expenses to be deposed under appropriate circumstances. *See K2 Asia Ventures v. Trota*, 209 N.C. App. 716, 720, 708 S.E.2d 106, 109 (2011). In *K2 Asia Ventures*, defendants appealed an order issued by the Forsyth County Superior Court compelling four defendants to travel from the Philippines to California for depositions. *Id.* at 717, 708 S.E.2d at 108. While the parties agreed that the order was interlocutory, defendants argued that it was immediately appealable because it affected a “substantial right” of the defendants. *Id.* at 718, 708 S.E.2d at 108. Defendants argued that the order affected their right, arising from Rule 30(b)(1), “to be deposed only in the counties in which they reside.” *Id.* at 718, 708 S.E.2d at 108. They further argued that “their Rule 30(b)(1) ‘right’ is a substantial one” because defendants were “*foreign national* nonresident defendant[s] who will more than likely suffer travel demands exponentially more burdensome than domestic nonresident defendants.” *Id.* at 719, 708 S.E.2d at 109 (emphasis in original) (quotation marks omitted). The Court of Appeals disagreed, holding that “we are unpersuaded by Appellants’ argument that violation of their Rule 30(b)(1) ‘right’ is immediately appealable based on the potentially burdensome travel costs that Appellants may incur by complying with the Order.” *Id.* at 720, 708 S.E.2d at 109.

Nevertheless, under the circumstances present in this case, the Court concludes that it would be equitable for Plaintiff and Moody and Genfine to share equally in the expense of requiring Moody to appear in North Carolina for depositions.

Accordingly, as set forth below, Plaintiff shall be responsible for reimbursing Moody and Genfine for one-half of the travel-related expenses incurred by Moody.

3. *Conclusion*

THE COURT, having considered the Motions, the briefs filed in support of and in opposition to the Motions, the applicable law, and other appropriate matters of record, CONCLUDES, in its discretion, that the Motion for Relief should be DENIED, and the Motion for Depositions should be GRANTED.

D. Conclusion

THEREFORE, IT IS ORDERED that:

1. The Motion for Relief is DENIED, and Moody shall physically attend the mediation that is currently scheduled for February 18, 2020 in North Carolina.
2. The Motion for Depositions is GRANTED. While Moody is in the United States to attend the mediation, Genfine and Moody shall both submit to depositions. The parties will work cooperatively to schedule an appropriate date and time for the depositions in conjunction with Moody's presence in North Carolina for the mediation.
3. Plaintiff and Moody shall each pay one-half of the reasonable travel costs, including airfare, hotel accommodations, and meals, associated with Moody's attendance at the mediation and deposition. Moody shall submit to Plaintiff within thirty (30) days after the mediation, receipts and any other itemized statement showing the costs incurred.

SO ORDERED, this the 27th day of January, 2020.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge for
Complex Business Cases