

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 10487

ERNEST CUTTER III, individually
and derivatively on behalf of A
COMMON LAW GENERAL
PARTNERSHIP d/b/a HOT DOG
SHOPPE,

Plaintiff,

v.

GREGORY VOJNOVIC; and HOT
DOG SHOPPE HOLDINGS, LLC,

Defendants.

**ORDER ON DEFENDANTS'
6 SEPTEMBER 2023
BCR 10.9 DISPUTE SUMMARY**

1. **THIS MATTER** is before the Court on Defendants' Gregory Vojnovic ("Vojnovic") and Hot Dog Shoppe Holdings, LLC ("Holdings", together with Vojnovic, the "Defendants") Business Court Rule ("BCR") 10.9 dispute summary submitted to the Court's law clerk via e-mail and copying all counsel of record on 6 September 2023 (the "Dispute Summary"). Plaintiff Ernest Cutter, III ("Plaintiff" or "Cutter") submitted his response to the Dispute Summary on 12 September 2023.

2. The Court convened a video conference (the "Conference") to consider the Dispute Summary on 18 September 2023 via Webex, at which all parties were represented by counsel. This Order memorializes the Court's oral ruling at the Conference.

3. The issue before the Court is whether Plaintiff's request to take a deposition of Defendant Hot Dog Shoppe Holdings, LLC under Rule 30(b)(6) of the North Carolina Rules of Civil Procedure (the "30(b)(6) Deposition" or the "Deposition") should be permitted. The notice for the 30(b)(6) Deposition (the "Notice") was

originally served on 17 February 2023 together with a request for production of documents (the “RFP”). The Notice set the Deposition for 27 February 2023. The parties and their counsel appeared for the Deposition on 27 February, but Plaintiff opted to engage in settlement negotiations rather than take the noticed Deposition. The discovery period thereafter expired on 3 March 2023 with neither side seeking an extension of the period.

4. After lengthy and ultimately unsuccessful settlement negotiations, Plaintiff served a substantially identical amended notice (the “Amended Notice”) and RFP on 25 August 2023, setting the Deposition for 12 September 2023. Defendants objected to the Amended Notice and promptly submitted the Dispute Summary, contending that Plaintiff’s Amended Notice was untimely and improper. Plaintiff timely submitted his opposition, asserting that the parties reached an agreement in February 2023 that if settlement negotiations failed, the parties would reconvene the 30(b)(6) Deposition outside the discovery period.

5. BCR 10.4(d) provides that: “If the parties agree to conduct discovery after the discovery deadline, but the parties do not seek an order that allows the discovery, then the Court *will not* entertain a motion to compel or a motion for sanctions in connection with that discovery.” BCR 10.4(d) (emphasis added).

6. Here, neither party moved to extend the discovery deadline, and Plaintiff elected to proceed with the Deposition by agreement. Although the parties dispute the nature of their agreement concerning the Deposition, it is uncontroverted that Plaintiff’s Amended Notice was served long after the discovery period expired on 3

March 2023. In these circumstances, BCR 10.4(d) requires that Plaintiff's request to take the 30(b)(6) Deposition be denied. Accordingly, the Court strikes Plaintiff's Amended Notice and RFP, and Holdings is relieved of any obligation to appear for the Deposition or produce documents as noticed.

SO ORDERED, this the 20th day of September, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge