

Plasman v. Decca Furniture (USA), Inc., 2016 NCBC Order 13.

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

CATAWBA COUNTY

12 CVS 2832

CHRISTIAN G. PLASMAN, in his individual capacity and derivatively for the benefit of, on behalf of and right of nominal party BOLIER & COMPANY, LLC,

Plaintiff,

v.

DECCA FURNITURE (USA), INC., DECCA CONTRACT FURNITURE, LLC, RICHARD HERBST, WAI THENG TIN, TSANG C. HUNG, DECCA FURNITURE, LTD., DECCA HOSPITALITY FURNISHINGS, LLC, DONGGUAN DECCA FURNITURE CO. LTD., DARREN HUDGINS, DECCA HOME, LLC, and ELAN BY DECCA, LLC,

Defendants,

and BOLIER & COMPANY, LLC,

Nominal Defendant,

v.

CHRISTIAN J. PLASMAN a/k/a BARRETT PLASMAN,

Third-Party Defendant.

ORDER ON DEFENDANTS' MOTION FOR CONTEMPT AND SANCTIONS AND PLAINTIFF'S MOTION TO COMPEL AND MOTION TO SHOW CAUSE

1. **THIS MATTER** is before the Court upon (i) Defendants Decca Furniture (USA), Inc., Decca Contract Furniture, LLC, Decca Hospitality Furnishings, LLC, Decca Home, LLC, Elan by Decca, LLC, Richard Herbst, Darren Hudgins, Wai Theng Tin, and nominal defendant Bolier & Company, LLC's ("Bolier") (collectively, "Defendants") Motion for Contempt of Court and Motion for Sanctions for Violating This Court's February 4, 2015 Order ("Defendants' Motion"), and (ii) Plaintiff Christian G. Plasman's ("Plaintiff") Motion to Compel

and Motion to Show Cause (“Plaintiff’s Motion”) (together with Defendants’ Motion, the “Motions”) in the above-captioned case.

2. The Court noticed the Motions for a hearing to occur at the Mecklenburg County Courthouse on July 15, 2016, but the Court later converted the hearing to a telephonic hearing after determining that the Motions each seek relief based on competing views of a single issue—whether the Court’s discovery stay, which the Court imposed in its February 4, 2015 order, is still in effect. The Court ruled on the Motions during the telephonic hearing, and memorializes its oral ruling herein.

3. As an initial matter, the Court encourages counsel in the future to avail themselves of the Business Court’s Rules allowing for expedited resolution of disputes, including discovery disputes. Business Court Rules 15.12 and 18.7 specifically provide counsel with an avenue to obtain a ruling on discovery disputes without incurring the cost of filing and briefing lengthy motions. Indeed, the necessity for the present Motions could have been avoided by a request for a status conference, which the Court is prepared to entertain at any time whether pursuant to a specific Business Court Rule or otherwise.

4. Nevertheless, the Court has considered the Motions and the briefs on the merits. The Court stayed discovery on February 4, 2015 “pending resolution of the Pending Motions or further order of the Court.” (Order and Notice of Hearing, Feb. 4, 2015, 3.) The Court intended that discovery would be stayed in this action until the motions to dismiss were resolved and the parties knew which, if any, claims would proceed to the next phase of litigation. The Court suggested as much at the oral argument held on March 26, 2015, when the undersigned stated, “My strong inclination would be to maintain a stay in this case until I resolve all this stuff and not have the parties engaging in discovery potentially on claims that may not stay in the case.”

(Def.'s Mot. Contempt and Sanctions for Violating Feb. 4, 2015 Order, Ex. 8.) The Court's intention has not changed, and it has not yet ruled on the pending motions to dismiss to determine which claims, if any, will proceed to the next stage of the litigation.

5. Plaintiff misunderstands the Court's subsequent orders. The May 26, 2015 Order and Opinion ("May 26 Order") did not lift the stay of discovery, and that order did not specifically mention the discovery stay. Indeed, the May 26, 2015 dismissed the claims in Plaintiff's First Amended Complaint without prejudice and directed Plaintiff to file a revised complaint, with the result that, at that point in time, there was no action then existing in which discovery could properly be taken. Nonetheless, the May 26 Order did arguably resolve the then pending motions, including Defendants' then pending motions to dismiss, although it clearly did not determine which claims, if any, would go forward into later phases of the litigation.

6. Likewise, the Court's August 25, 2015 Order and Opinion ("August 25 Order") determined whether the case should proceed in the trial division of the Superior Court during the pendency of the Plasmans' appeal of the May 26 Order. That Order did not mention or lift the discovery stay and only referenced discovery in the context of discussing whether the case could potentially proceed to that and other later phases of the litigation in light of the Plasmans' appeal.

7. Having considered these facts, the Court concludes first that Defendants' refusal to produce documents and respond to interrogatories in response to Plaintiffs' discovery requests was substantially justified in light of the discovery stay, which was then and remains now in effect, and Plaintiffs' Motion should therefore be denied.

8. The Court next concludes that, although neither party sought any clarification prior to filing the Motions, the silence in the Court's May 26 Order and, to a lesser extent, in the August 25 Order, concerning the continuation of the discovery stay in light of the arguable resolution of

the pending motions referenced in the February 4, 2015 Order provided Plaintiffs substantial justification in seeking to require Defendants to answer their discovery requests. As a result, the Court concludes that Defendants' Motion should be denied.

9. It is apparent to the Court that Chris Plasman has sought to use his status as a member or manager of Bolier to request the same documents and interrogatory answers through the claimed exercise of his statutory or contract rights as he has sought in Plaintiff's discovery requests in this litigation. (Defs.' Mot. Contempt and Sanctions for Violating Feb. 4, 2015 Order, Ex. 3.) The Court will not allow Chris Plasman to use his claimed rights as a member and manager of Bolier as a way to avoid the discovery stay, and Chris Plasman is ordered to cease and desist any such further conduct.

10. Similarly, the Court will not allow the Plasman's counsel to avoid his responsibilities under the North Carolina ethics rules to make direct contact with Defendants, or to direct the Plasman to engage in direct contact with Defendants, concerning matters at issue in this litigation without Defendants' counsel's consent. (Defs.' Mot. Contempt and Sanctions for Violating Feb. 4, 2015 Order 8.) The Plasman's counsel is ordered to cease and desist any such further conduct.

11. Notwithstanding the above, Chris Plasman is a member and manager of Bolier, and nothing in Judge Voorhees' preliminary injunction order, which is now an enforceable order of this Court, precludes Chris Plasman's right to receive information about Bolier as required under applicable law, N.C. Gen. Stat. § 57D-1-01, *et al.*, and the terms of the preliminary injunction order. It is not clear to the Court what the parties agree Chris Plasman has a right to receive and where the lines of disagreement between the parties are drawn, particularly in light of the Court's clarification that the discovery stay remains in effect. Accordingly, the Court orders counsel to

confer in good faith to decide what, if any, of the information sought by Plaintiff in Plaintiff's Motion Chris Plasman is entitled to receive as a member and manager of the LLC under applicable law and the terms of the preliminary injunction order.

12. **WHEREFORE**, the Court hereby **ORDERS** as follows:
 - a. Plaintiff's Motion is **DENIED**;
 - b. Defendants' Motion is **DENIED**;
 - c. The parties shall engage in good faith discussions regarding what information sought in Plaintiff's Motion Chris Plasman is entitled to receive as a member and manager of Bolier under applicable law and the terms of the preliminary injunction order.
 - d. The parties shall have through and including August 19, 2016 to report to the Court whether a disagreement remains. If the parties are unable to reach a full agreement, each party shall submit to the Court no later than August 19, 2016 a statement not to exceed 750 words setting forth the specific items of information which remain in dispute and reflecting the party's position on the outstanding dispute.
 - e. To the extent any dispute between the parties remains, the Court will hear argument from the parties concerning the disagreement at the previously noticed hearing in this action currently scheduled for 10:00 a.m. on August 23, 2016 in Courtroom 6370 in the Mecklenburg County Courthouse.

SO ORDERED, this the 15th day of July, 2016.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases