

STATE OF NORTH CAROLINA
ALAMANCE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 1701

KINGSDOWN, INCORPORATED,

Plaintiff,

v.

W. ERIC HINSHAW, REBECCA
HINSHAW, and ANNE RAY,

Defendants.

**ORDER ON MOTION TO QUASH
SUBPOENAS**

1. **THIS MATTER** is before the Court upon Plaintiff Kingsdown, Inc.'s ("Plaintiff" or "Kingsdown") Motion to Quash Subpoenas (the "Motion") in the above-captioned case.

2. Kingsdown's Motion moves the Court to quash pursuant to N.C. R. Civ. P. 45 subpoenas issued to William Pearson ("Mr. Pearson"), one of its directors. The subpoenas were issued to Mr. Pearson on behalf of Defendant Anne Ray ("Ms. Ray") and request the production of documents related to the transfer of Kingsdown stock from Mr. Pearson's late son Gregory Pearson to his family trust. Kingsdown's Motion argues that the Court should quash the subpoenas because they seek materials that are not relevant to any of Ms. Ray's claims or defenses in the case. After the close of briefing, the Court asked Ms. Ray to submit a short statement explaining with specificity how the requested documents are relevant to her counterclaims or defenses to Kingsdown's claims. The Court held a telephonic hearing on the Motion on August 18, 2016.

3. A challenge to a subpoena *duces tecum* is addressed to the sound discretion of the Court. *Vaughn v. Broadfoot*, 267 N.C. 691, 697, 149 S.E.2d 37, 42 (1966). Subpoenas that are “unreasonable and oppressive” may be properly quashed pursuant to N.C. R. Civ. P. 45, and a subpoena that seeks production of irrelevant documents is improper. *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 649 n.6, 531 S.E.2d 883, 888 n.6 (2000).

4. The subpoenas seek documents related to the transfer of Kingsdown stock from Gregory Pearson to his family trust, records related to the trust’s formation, a copy of the trust instrument itself, and a record of votes cast at a shareholder meeting around the same time as the stock transfer. Ms. Ray previously had asserted against Kingsdown a counterclaim for wrongful termination, alleging that her termination was related to purportedly improper actions taken by various Kingsdown officials as part of the stock transfer. Ms. Ray contends that the subpoena still seeks relevant materials, even though the Court dismissed with prejudice the wrongful termination claim on February 17, 2016.

5. Ms. Ray contends that the requested materials are relevant to her defenses to Kingsdown’s claims because they will demonstrate that Kingsdown paid for personal legal expenses associated with Gregory Pearson’s family trust and with Mr. Pearson’s response to the current subpoenas. Several of Kingsdown’s claims against Ms. Ray, including breach of fiduciary duty and constructive fraud, allege that she took advantage of

her position at Kingsdown for personal benefit. Ms. Ray suggests that the subpoenas seek relevant materials because, if Kingsdown paid the Pearsons' personal legal expenses, Ms. Ray would have evidence that other individuals at Kingsdown also received personal benefits. Ms. Ray further argues that Kingsdown does not have standing to bring the Motion, which is addressed only to Mr. Pearson.

6. As an initial matter, the Court determines that Kingsdown has standing to bring the Motion. Although Mr. Pearson is a non-party, he is a member of the Kingsdown Board of Directors, and the subpoenas request documents closely related to matters of Kingsdown's stock ownership. The rule that a party lacks standing to challenge a subpoena of a non-party is not absolute, *see Deyton v. Estate of Waters*, 2011 NBCC LEXIS 36, at *7-8 (N.C. Super. Ct. Sep. 23, 2011) (discussing exceptions to the rule), and the Court determines that Kingsdown does not lack standing to bring the present Motion.

7. While the subpoenas appear to seek material relevant to Ms. Ray's allegations surrounding her now-dismissed counterclaim for wrongful termination, the Court concludes that the subpoenas do not seek information relevant to the claims and defenses remaining in the case and should therefore be quashed. First, Ms. Ray has failed to show that the payment of any of the Pearsons' personal legal expenses is relevant to her claims or defenses in this action. Moreover, even if the Pearsons' personal legal

expenses were relevant, Ms. Ray has failed to show that the subpoenaed documents would bear on whether Kingsdown paid for the creation of the Pearson family trust or Mr. Pearson's legal expenses in responding to this subpoena.

8. The Court therefore concludes that the subpoenas seek irrelevant materials and are thus improper under N.C. R. Civ. P. 45(c)(3)(d).

9. **WHEREFORE**, the Court hereby **GRANTS** the Motion and quashes the subpoenas issued to Mr. Pearson on February 3, 2016 and March 11, 2016.

SO ORDERED, this the 18th day of August, 2016.

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