

STATE OF NORTH CAROLINA  
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 2554

USCONNECT, LLC,  
Plaintiff,

v.

SPROUT RETAIL, INC.,  
Defendant.

**ORDER ON  
MOTIONS TO COMPEL**

1. Plaintiff USConnect, LLC and Defendant Sprout Retail, Inc. (“Sprout”) have each moved for an order compelling the other to produce information or documents in discovery. On June 9, 2017, the Court held a status teleconference with counsel to discuss these motions. The teleconference ultimately did not resolve the disputes, and on June 16, 2017, the Court entered an Order deferring a ruling on both motions pending full briefing. The motions are now fully briefed, and the Court elects to resolve them without a hearing. *See* BCR 7.4.

I.  
BACKGROUND

2. This case involves USConnect’s dispute with Sprout over a contract and technology related to a cashless payment system for food services, vending machines, and unattended kiosks. USConnect claims that Sprout has breached the parties’ service agreement and is misappropriating USConnect’s trade secrets.

3. USConnect filed its complaint on January 5, 2017. Eight days later, it filed a motion for preliminary injunction, seeking to enforce an alleged non-compete provision in the parties’ service agreement and also to prevent Sprout from making

use of any confidential trade secrets. (*See* Pl.’s Mot. for Prelim. Inj. 2, ECF No. 5.) USConnect did not serve discovery requests at that time but instead moved for expedited discovery and to postpone the preliminary-injunction briefing pending the discovery. On February 7, 2017, the Court denied the motion for expedited discovery but noted that the North Carolina Rules of Civil Procedure permitted USConnect to serve its discovery requests at any time.

4. USConnect served its discovery requests the same day. (*See* Pl.’s Mot. to Compel, Ex. A, ECF No. 61.) As relevant here, requests for production numbers 1, 2, and 5 seek documents relating to USConnect’s claim that Sprout breached the service agreement by competing in the market for networked food service terminals. Among other things, the requests seek documents reflecting communications between Sprout “and any business or entity that competes with USConnect, including any business or entity that offers vending machine services.” (Pl.’s Mot. to Compel, Ex. A Req. for Produc. of Doc. 5.)

5. In response, Sprout agreed to produce relevant, non-privileged documents “after entry of an appropriate confidentiality order.” (Pl.’s Mot. to Compel, Ex. B Req. for Produc. of Doc. 5.) The parties failed to reach an agreement on an appropriate protective order, leading to a series of pre-motion disputes under Business Court Rule 10.9.

6. The Court heard argument regarding these disputes on April 12, 2017 in conjunction with the Case Management Conference and a hearing on Sprout’s motion to dismiss (which had been filed February 7, 2017). During the hearing, counsel

reached agreement on a schedule for moving forward with discovery, which was memorialized in the Court's April 13, 2017 scheduling order. Specifically, the parties agreed to submit to the Court for resolution their points of disagreement regarding a protective order and a protocol for the discovery of electronically stored information. The parties further agreed to supplement their discovery requests (which had been withheld pending the entering of a protective order) no later than three weeks after the Court's entry of a protective order.

7. On April 18, 2017, the Court entered a protective order. On April 21, 2017, the Court denied Sprout's motion to dismiss but granted its alternative request for a more definite statement. To enable the parties to adhere to their agreed schedule for discovery, the Court directed USConnect to amend its complaint within seven days. USConnect timely filed its First Amended Complaint on April 28, 2017.

8. Sprout served its document production on May 12, 2017. (*See* Pl.'s Mem. of L. in Supp. of Mot. to Compel 3.) Following that production, on May 23, 2017, USConnect took the deposition of Sprout's Rule 30(b)(6) designee, James English. (*See* Pl.'s Mem. of L. in Supp. of Mot. to Compel 3.)

9. The English deposition prompted USConnect to file its Motion to Compel Production of Documents ("USConnect's Motion") on June 7, 2017. According to USConnect, English testified to the existence of communications with USConnect's competitors that were not included in Sprout's production. (*See* Pl.'s Mem. of L. in Supp. of Mot. to Compel 3, 5; *see also* Burke Aff., ECF No. 62.) USConnect's Motion requests an order compelling the production of "documents, correspondence and

agreements” between Sprout and entities that compete with USConnect. (Pl.’s Mem. in Supp. of Mot. to Compel 1.)

10. The very next day, Sprout filed its Motion of Defendant to Compel Discovery (“Sprout’s Motion”). Sprout’s Motion requests an order compelling the production of three categories of information: (1) recordings of USConnect’s conference calls; (2) responsive answers to certain interrogatories; and (3) responses to supplemental requests for information regarding USConnect’s compliance with a preliminary injunction entered in a related action in federal district court in New Jersey. (*See* Def.’s Mot. to Compel Discovery 1, ECF No. 64.)

11. In an effort to mediate and potentially resolve these disputes, the Court held a status teleconference with counsel on June 9, 2017. Counsel appeared to reach an agreement as to some issues, and the Court directed counsel to confer and submit a proposed consent order. They were unable to do so, and the Court instead issued an order on June 16, 2017 to memorialize its understanding of the parties’ positions.

12. With respect to USConnect’s Motion, the Court understood that Sprout “agreed to produce documents responsive to USConnect’s requests for production numbers 1, 2, and 5 on or before June 23, 2017. Specifically, Sprout has agreed to produce documents related to Sprout’s communications with companies identified by James English during his deposition on May 23, 2017.” (June 16 Order ¶ 2, ECF No. 68.)

13. With respect to Sprout’s Motion, the Court understood “that USConnect intends to produce certain conference call recordings and also to supplement certain

interrogatory responses.” (June 16 Order ¶ 3.) The Court recognized, however, that USConnect continued to oppose “the motion to compel on the ground that the time for responding has not yet passed” and that “USConnect also opposes the production of matters related to a co-pending federal action in the District of New Jersey.” (June 16 Order ¶ 3.)

14. The Court also expressly deferred any ruling on either motion to compel, reiterating the parties retained the “ability to oppose the motions in writing at the appropriate time.” (June 16 Order ¶ 4.) The Court further stated, however, that it “may consider the parties’ good-faith compliance with their positions expressed during the teleconference” as part of any eventual ruling on the motions. (June 16 Order ¶ 4.)

15. Sprout filed a one-page response to USConnect’s Motion on June 27, 2017. USConnect subsequently moved for leave to file a reply, which the Court granted, and the reply was filed August 4, 2017. USConnect’s Motion is now fully briefed.

16. On June 29, 2017, prior to any opposition from USConnect and without seeking leave of Court, Sprout filed a “reply” in support of its motion to compel. USConnect filed its opposition on July 5, 2017, along with a motion to strike Sprout’s “reply.” Sprout’s Motion is now fully briefed.

## II. ANALYSIS

17. “[O]rders regarding discovery matters are within the discretion of the trial court and will not be upset on appeal absent a showing of abuse of that discretion.” *Wachovia Bank v. Clean River Corp.*, 178 N.C. App. 528, 531, 631 S.E.2d

879, 882 (2006) (quoting *Nationwide Mut. Fire Ins. Co. v. Bourlon*, 172 N.C. App. 595, 601, 617 S.E.2d 40, 45 (2005)). In general, “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” N.C. R. Civ. P. 26(b)(1). “The test of relevancy under Rule 26 is not, of course, the stringent test required at trial. The rule is designed to allow discovery of any information ‘reasonably calculated to lead to the discovery of admissible evidence.’” *Willis v. Duke Power Co.*, 291 N.C. 19, 32, 229 S.E.2d 191, 200 (1976) (quoting N.C. R. Civ. P. 26(b)); accord *Wachovia Capital Partners, LLC v. Frank Harvey Inv. Family L.P.*, 2007 NCBC LEXIS 7, at \*48 (N.C. Super. Ct. Mar. 5, 2007).

A. USConnect’s Motion to Compel

18. The issue underlying USConnect’s Motion is straightforward. During the deposition of James English, USConnect’s counsel asked English whether Sprout has communicated with several companies that USConnect contends are its competitors—communications potentially relevant to its claim for breach of a contractual non-compete provision. English testified that Sprout has done so, yet these communications were not included in Sprout’s production. USConnect moved to compel their production, and during the June 9 status conference, Sprout’s counsel agreed to produce the communications. (See June 16 Order ¶ 2.) The question is whether Sprout has fulfilled its agreement.

19. In a one-page response brief, Sprout contends that it has. According to Sprout, USConnect “agreed to accept as full compliance” the production of “presentations or ‘pitches’ made to several companies identified” by English, and

Sprout produced “the documented presentations” on June 23, 2017. (Def.’s Resp. to Mot. to Compel 1, ECF No. 71.)

20. In its reply, USConnect represents that Sprout’s supplemental production consisted solely of “18 pages of PowerPoint presentations given to a single potential customer.” (Pl.’s Reply in Supp. Mot. to Compel 1–2.) USConnect further states that “Sprout has not produced any . . . communications” other than the 18 pages of presentations. (Pl.’s Reply in Supp. Mot. to Compel 1.)

21. After reviewing the record, the Court agrees with USConnect. Sprout’s narrow focus on *presentations* is off base. In the deposition excerpts attached to USConnect’s Motion, English testified that he had engaged in communications, including e-mails, with as many as seven companies regarding a possible business relationship. (*See, e.g.*, Burke Aff., Ex. 1 43, 53, 134, 141.) Some but not all of those communications concerned presentations or pitches. As memorialized in the Court’s June 16 Order, USConnect has sought, and Sprout agreed to produce, the documents reflecting communications with these companies, not merely the presentations. (*See* June 16 Order ¶ 2.) Certainly, USConnect did not agree to accept presentations made to one of its seven identified competitors as a full and complete response to its requested discovery.

22. Sprout has not provided any other basis for withholding production of these communications. Sprout has not disputed the relevance or breadth of the request, and has not suggested that the requested documents do not exist.

23. Accordingly, the Court grants USConnect's Motion. Sprout shall produce documents responsive to USConnect's requests for production 1, 2, and 5, including all documents related to Sprout's communications with the companies identified during the deposition of James English on May 23, 2017. Sprout shall make this production no later than August 23, 2017.

B. Sprout's Motion to Compel

24. Sprout's Motion raises three separate issues. First, Sprout seeks the production of recordings of conference calls made by USConnect. Second, Sprout seeks answers to interrogatories that would further distinguish USConnect's alleged trade secrets and also detail USConnect's communications with affiliates and other developers. Third, Sprout seeks answers to supplemental discovery regarding USConnect's compliance with a preliminary injunction issued by the federal District Court for the District of New Jersey.

25. USConnect makes three arguments in response. It contends, first, that the motion was unnecessary as to interrogatories 2 and 6 because USConnect agreed to supplement its answers to those interrogatories prior to the motion. Second, it contends that the motion was premature as to the conference calls and interrogatories 10, 11, and 12 because USConnect's time to respond had not passed. Third, it contends that discovery related to compliance with the New Jersey preliminary injunction is not relevant.

26. The Court agrees with USConnect on each point. USConnect has provided evidence to show that it agreed to supplement its answers to interrogatories 2 and 6

on June 7, 2017—the day before Sprout filed its Motion. (Resp. in Opp’n to Sprout’s Mot. Ex. 7, ECF No. 79.7.) On this point, Sprout’s Motion was unnecessary because it had already obtained USConnect’s agreement to provide the “information or material without court action.” N.C. R. Civ. P. 37(a)(2).

27. The Court further agrees that Sprout’s Motion was premature as to most of the requested relief. USConnect’s response includes un rebutted evidence that Sprout’s second set of discovery requests (including interrogatories 10, 11, and 12) was not properly served until May 15, 2017. (See Resp. in Opp’n to Sprout’s Mot. Ex. 6.) Sprout filed its Motion on June 8, before USConnect’s responses were due. See N.C. R. Civ. P. 33(a), 34(b).

28. It bears noting that USConnect has since served its responses, including making available the requested conference calls. (Resp. in Opp’n to Sprout’s Mot. Ex. 8.) USConnect requested that Sprout “[p]lease contact us to arrange an acceptable date” to review the files, but there is no evidence Sprout has done so. (Resp. in Opp’n to Sprout’s Mot. Ex. 8.)

29. Finally, the Court concludes that Sprout’s supplemental discovery requests, as framed, are not relevant. The interrogatory and request for production essentially request information related to steps taken by USConnect “to comply with the injunction issued by the U.S. District Court for the District of New Jersey.” (Def.’s Mot. to Compel, Ex. 4.) It is not within this Court’s purview to police the orders of another court. To the extent Sprout seeks information regarding USConnect’s

business practices or the operation of USConnect's payment systems, it should tailor its discovery requests to those topics.

## II. CONCLUSION

30. The Court **GRANTS** USConnect's Motion.

a. Sprout shall produce documents responsive to USConnect's requests for production 1, 2, and 5, including all documents related to Sprout's communications with the companies identified during the deposition of James English on May 23, 2017. Sprout shall produce these documents no later than August 23, 2017.

b. As the moving party, USConnect has requested an award of expenses, including attorney's fees. The Court **ORDERS** USConnect to file its petition for payment of its reasonable expenses, including attorney's fees, with supporting affidavits and any other supporting materials, no later than August 16, 2017. Sprout may file a response, with supporting materials, if any, no later than August 30, 2017. The Court will hear the request and any objections at a later date. *See* N.C. R. Civ. P. 37(a)(4) (providing that the Court "shall, after opportunity for hearing," award reasonable expenses to "the moving party").

31. The Court **DENIES** Sprout's Motion.

a. The Court further **DENIES** USConnect's motion to strike Sprout's "reply" as moot.

b. As the opposing party, USConnect has requested an award of expenses, including attorney's fees. The Court **ORDERS** USConnect to file its petition for

payment of its reasonable expenses, including attorney’s fees, with supporting affidavits and any other supporting materials, no later than August 16, 2017. Sprout may file a response, with supporting materials, if any, no later than August 30, 2017. The Court will hear the request and any objections at a later date. *See* N.C. R. Civ. P. 37(a)(4) (providing that the Court “shall, after opportunity for hearing,” award reasonable expenses to “the party . . . who opposed the motion”).

This the 9th day of August, 2017.

/s/ Adam M. Conrad  
Adam M. Conrad  
Special Superior Court Judge  
for Complex Business Cases