STATE OF NORTH CAROLINA CLEVELAND COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 16 CVS 608
DOUGLAS BROWN, Plaintiff, v. ARTHUR D. SECOR; SECOR GROUP, LLC; JOSEPH CHRISTOPHER ROSSO; and SOUTHGROUP REAL ESTATE MARKETING, LLC, Defendants.	**ORDER ON MOTION TO COMPEL**

1. Defendants filed their motion to compel production of Plaintiff Douglas Brown's 2013 to 2015 tax returns with the Court's permission on November 2, 2017. (Mot. to Compel (Tax Returns) ["Mot."], ECF No. 95.) The motion has been fully briefed, and the Court elects to rule on the motion without a hearing. *See* BCR 7.4.

2. 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). "[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)).

3. Brown originally filed this suit on April 15, 2016 alleging that Defendants induced him to invest more than $2 million in three real estate projects in 2013. Brown alleges that his investment has since vanished. His claims include breach of contract, fraud, and securities fraud.

4. In their discovery requests, each side requested tax returns from the other. When Defendants objected to providing some of their tax returns (including the individual Defendants' returns), Brown moved to compel their production. Brown argued that 1) the returns are relevant; 2) the returns are not privileged (and any such concerns are sufficiently addressed by the Consent Protective Order); and 3) he should be able to verify the Defendants' representations about the contents of their tax returns. (*See* Br. in Supp. of Pl.'s Mot. to Compel 3, 6, 8–9, ECF No. 61; Pl.'s Reply in Supp. of Mot. to Compel 4, ECF No. 68.)

5. In its July 28, 2017 Order & Opinion, the Court agreed with Brown and ordered the Defendants to produce their tax returns for 2013 through 2015. The Court explained that "[w]hether and how" Defendants accounted for the money they received from Brown and the property sales was "plainly relevant" to Brown's claims. (*See* Order & Op. 25–29, ECF No. 88.)

6. Defendants now contend that Brown should produce his tax returns for the same time period. Defendants assert that Brown's tax returns are "relevant to his claim that he was entitled to money upon the sale of" the properties at issue. (Defs.'

Reply in Supp. Mot. 2 ["Reply"], ECF No. 100.) Further, the tax returns "will state whether [Brown] reported any . . . lost investment interest [or] principal." (Br. in Supp. Mot. 3 ["Br."] (emphasis and citation omitted), ECF No. 96.) Defendants also argue that judicial estoppel bars Brown from abandoning his prior position that individual tax returns are relevant to determining the "ownership and management structure[s]" of business entities. (Br. 3; *see also* Br. in Supp. of Pl.'s Mot. to Compel Discovery 8, ECF No. 61.)

7. Brown objects on the grounds that his tax returns "are personal, confidential, not generally subject to disclosure, irrelevant, and not likely to lead to admissible evidence." (Mot. Ex. 2, ECF No. 95.2.) According to Brown, the Court properly concluded that Defendants' tax returns are relevant because there exists "a genuine factual dispute as to the amount of income or profit received by" the Defendants from the property sales. (Pl.'s Response to Defs.' Mot. ["Response"] 1–2, ECF No. 98.) Brown contends his tax returns are not relevant, however, because it is undisputed that he "received no income and paid none of the expenses" for the sales on the properties. (Response 1–2.) He further notes that he has provided affidavits representing that the tax returns include no relevant information. (Response 3–4.)

8. The Court agrees with Defendants. The primary question for purposes of this motion is whether Plaintiff's returns are relevant. "Brown contends that he invested $2.2 million to be used in Southgroup's land acquisitions, expecting to receive a return of his principal plus half the profits" at the time of sale. (Order & Op. 25; Am. Compl. ¶ 11, ECF No. 41.) Brown's returns are relevant, at a minimum,

to when he believed his investment was lost and, based on his tax returns at that point, what he believed the terms of the parties' bargain to be. (*See* Br. 3; Reply 1–2.) Additionally, Brown alleges he invested, in part, based on the promise of ownership in Southgroup. (*See* Am. Compl. ¶¶ 74–80.) As Brown has argued, tax returns are a reasonable place to seek information regarding ownership in a business. (*See* Br. in Supp. of Pl.'s Mot. to Compel Discovery 8–9; *see also* Br. 3.)

9. There are no countervailing factors that warrant denying this discovery. As Defendants reiterate (and Brown argued in his own motion to compel), the Consent Protective Order in this case ameliorates any concerns over the production of personal or confidential information. (Br. 2; Order & Op. 26–27; *see also* Consent Protective Order 7, ECF No. 68.) Brown's arguments do not show that his tax returns are irrelevant. (*See* Response 1–4.) And, though Brown has not argued undue burden, the Court does not perceive any here in light of the Consent Protective Order, the minimal burden of producing the tax returns, and the issues in this case.

10. Fundamental fairness also favors Defendants. The parties could have (and perhaps should have) reached some compromise regarding the discovery of tax records. They did not. Instead, in successfully moving to compel the production of Defendants' tax returns, Brown stressed that he should not be "required to merely take Defendants at their word" regarding the contents of those returns. (Pl.'s Reply Br. in Supp. of Mot. to Compel 4, ECF No. 68.)

11. Although Defendants invoke the doctrine of judicial estoppel based on Brown's argument, the Court need not go that far. It is sufficient to conclude that

discovery should be performed on a level playing field. Here, that means Brown's tax returns are discoverable, and Defendants should be allowed to verify their contents in the same way Brown demanded to verify Defendants'.

12. For these reasons, and in its discretion, the Court **GRANTS** Defendants' motion. Brown shall produce copies of all responsive tax returns from 2013 to 2015 within his possession, custody, or control, within two weeks of this Order. The Court also determines, in its discretion, that the parties shall bear their own costs.

This the 8th day of December, 2017.

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