

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 21788

AYM TECHNOLOGIES, LLC,
Plaintiff,

v.

GENE RODGERS; SCOPIA
CAPITAL MANAGEMENT LP;
SCOPIA HCM PARTNERS, LLC;
and COMMUNITY BASED CARE,
LLP,
Defendants.

**ORDER ON DISCOVERY AND
SCHEDULING ORDER**

1. **THIS MATTER** is before the Court on (i) Defendants Scopia Capital Management LP, (“Scopia”) and Scopia HCM Partners, LLC (“Scopia HCM”) (hereinafter collectively, “Scopia Defendants”) motion to dismiss for lack of personal jurisdiction (the “12(b)(2) Motion”) and for inadequate service of process (the “12(b)(5) Motion”); (ii) the Scopia Defendants and Community Based Care, LLP’s motion to dismiss pursuant to Rule 12(b)(6); and Defendant Gene Rodgers’s (“Rodgers”) motion to dismiss pursuant to Rule 12(b)(6) (collectively, the “Motions”). The Motions came on for hearing on May 17, 2017.

2. The evidentiary record before the Court on the 12(b)(2) Motion consists of the affidavits of (i) Plaintiff’s Manager and CEO, Lewis Evan Quinn, Jr. (“Quinn”), (ii) Scopia’s Partner and Chief Operating Officer, Aaron Morse, (iii) Community Based Care, LLC’s Board Chair and Scopia’s former partner, David Wittels, and (iv) Defendant Gene Rodgers, a current employee of Defendant Community Based Care,

LLC. Plaintiff submitted Quinn's affidavit, and the Scopia Defendants submitted the affidavits of Morse, Wittel, and Rodgers.

3. In its April 26, 2017 response to the 12(b)(2) Motion, Plaintiff argued that "discovery on personal jurisdiction would aid the Court" but neither took any such discovery nor sought relief from the Court to take such discovery. At the hearing on the Motion on May 17, 2017, Plaintiff's counsel again argued that jurisdictional discovery would assist the Court and specifically requested that the Court permit a short period for jurisdictional discovery prior to issuing any ruling on the 12(b)(2) Motion.

4. Where, as here, the parties submit competing affidavits in connection with a defendant's motion to dismiss for lack of personal jurisdiction, "the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." N.C. R. Civ. P. 43(e). "The decision to grant jurisdictional discovery and the scope of any discovery are matters within the Court's discretion." *Denver Global Prods. v. Hendrix*, 2017 N.C. Super. LEXIS 11, at *2 (N.C. Super. Ct. Feb. 9, 2017).

5. Based on its review of the evidence and the briefing and arguments of counsel, and despite the Court's concern that Plaintiff has not initiated any discovery, jurisdictional or otherwise, since filing this case on December 5, 2016, the Court concludes that, in the circumstances present here, the 12(b)(2) motion should be heard on a more complete factual record and, at least in part, on deposition testimony. *See, e.g., K2 Asia Ventures v. Trota*, 209 N.C. App. 716, 723, 708 S.E.2d

106, 111 (2011) (holding that the trial court may order jurisdictional discovery, including depositions, to resolve a motion under Rule 12(b)(2)); *see also Embark, LLC v. 1105 Media, Inc.*, 231 N.C. App. 538, 551, 753 S.E.2d 166, 176 (2014) (affirming trial court's decision to hear 12(b)(2) motion on deposition testimony where trial court determined it was unable to resolve the motion based on the affidavits and pleadings).

6. **WHEREFORE**, the Court hereby **ORDERS** the following:

- a. Except as otherwise provided herein, all discovery is stayed pending the Court's resolution of the Motions.
- b. The parties shall have through and including July 7, 2017 to conduct discovery limited to the issue of the Court's personal jurisdiction over the Scopia Defendants.
- c. Plaintiff and the Scopia Defendants may each serve written discovery requests, limited to the issue of this Court's personal jurisdiction over the Scopia Defendants, no later than May 24, 2017. The parties shall meet and confer to resolve any objections to any written discovery served pursuant to this Order and advise the Court no later than June 2, 2017 in the event that any objections have not been resolved and require Court determination.
- d. Plaintiff and the Scopia Defendants may each conduct up to two depositions each, each deposition limited solely to the issue of this Court's personal jurisdiction over the Scopia Defendants.

- e. The discovery permitted under this Order is limited solely to the issue of this Court's jurisdiction over the Scopia Defendants and is not to be used to engage in general discovery.
- f. Plaintiff and the Scopia Defendants shall each file supplemental briefs of no more than 3,750 words, with supplemental materials, including deposition testimony, additional affidavits, or both, no later than July 21, 2017.
- g. Plaintiff and the Scopia Defendants shall each file responses to the opposing side's supplemental brief of no more than 2,000 words no later than August 2, 2017.
- h. The Court will decide at a later date whether it will convene a further hearing on the 12(b)(2) Motion.
- i. The Court defers entry of the Case Management Order until a later date.
- j. Any motion to modify any deadline in this Order must be made promptly, reflect consultation and, if possible, agreement with opposing counsel, and filed no later than June 2, 2017.

SO ORDERED, this the 19th day of May, 2017.

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