

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 7150

WINING TAYLORS, LLC,
Plaintiff,

v.

CE PRECISION, INC. and YUAN
WANG,
Defendants.

**ORDER REGARDING
EX PARTE COMMUNICATIONS**

1. It is elementary that no party or counsel in litigation should engage in ex parte communications with the Court. Indeed, few commandments are more fundamental to the impartiality and integrity of the judiciary and our system of justice. For that reason, the Rules of this Court state that written communications “to Court personnel regarding a pending matter must include or copy at least one counsel of record for each party.” Business Court Rule (“BCR”) 6.4(b). Defendants have repeatedly violated this rule in recent weeks, necessitating this Order.

2. On March 7, 2019, Defendants’ counsel e-mailed the Court to report that her “client is thinking of settling the case with the Plaintiff” while Plaintiff’s motion for summary judgment remains pending. The e-mail requested that “the judge hold the judgment while the settlement is going on.” Plaintiff’s counsel was not copied on the e-mail and had not been consulted before the e-mail was sent. Upon receiving the e-mail, the Court responded, copying all counsel, and requested a response from Plaintiff. The Court also reminded the parties that any further communications with the Court must copy opposing counsel, as required by BCR 6.4.

3. On March 15, 2019, Defendants' counsel moved for an order permitting her withdrawal from the case, with Defendants' consent. (*See* ECF No. 48.) The Court will resolve that motion in a separate Order.

4. Four days later, the Court received an e-mail from individual defendant Yuan Wang ("Wang"). The e-mail did not copy his own counsel or opposing counsel, and it appears to have been an effort to convey substantive, case-related information to the Court without Plaintiff's knowledge. Specifically, Wang asked the law clerk assigned to this case to "[p]lease let Judge know the following facts" and then made a number of unsupported allegations, including that "[t]he lawyer from Plaintiffs [sic] threatened me." In response, the Court promptly notified all parties of the *ex parte* communication, also copying Wang. The Court also stated that it did not request or invite a response from any party or counsel and noted its intent to issue this Order to address the repeated *ex parte* communications. Ignoring the Court's request for no further communications, Wang sent three additional e-mails (each of which included opposing counsel).

5. These *ex parte* communications are alarming for several reasons. First, Defendants have been admonished several times not to engage in *ex parte* communications. The Case Management Order, issued September 22, 2017, directly refers not only to Rule 6.4 but also to Rule 3.5 of the North Carolina Rules of Professional Conduct concerning *ex parte* communications. (ECF No. 9 at 3.) In addition, in February 2018 (at a time when Wang was self-represented), the Court

received an e-mail from Wang that did not copy opposing counsel, and the Court directed him to do so on all future communications with the Court or Court staff.

6. Second, the ex parte e-mails from Wang and his counsel make requests of the Court on disputed, case-related issues. These were not administrative or logistical matters. They were, instead, requests to have the Court take action detrimental to Plaintiff without any notice to or input from Plaintiff's counsel. That is unacceptable.

7. Third, the ex parte communications are part of a pattern of rule violations and other irregularities. The Court has noted Wang's failure to comply with at least one Court Order during discovery. (*See* ECF No. 22 ¶ 6.) Furthermore, in an earlier Order and Opinion, the Court addressed Wang's violations of certain Rules governing the filing and service of briefs. While declining to impose any sanction at that time, the Court put Wang on notice that "[r]epeated violations, even if minor, may invite more significant penalties in the future." *Wining Taylors, LLC v. CE Precision, Inc.*, 2018 NCBC LEXIS 97, at *6 (N.C. Super. Ct. Sept. 17, 2018) (ECF No. 34). Defendants' continued violations suggest a cavalier disregard of the Rules and of this Court's instructions.

8. Up to this point, the Court has addressed these infractions through repeated informal reminders, and where necessary, formal Court Orders. (*See, e.g.*, ECF Nos. 18, 22.) But it is clear that Defendants do not understand their obligations to obey the Business Court Rules or the Court's directives. To the contrary, Defendants' acts tend to exhibit disdain for the judicial process while hampering the Court's ability to

preside over this litigation. Absent further Court intervention, it seems likely that Defendants will continue to conduct themselves in the same or a similar manner.

9. Accordingly, on its own motion, the Court **ORDERS** as follows:
 - a. Defendants shall review the Business Court Rules, which are available at www.nccourts.gov/courts/business-court.
 - b. Defendants shall refrain from engaging in ex parte communications with the Court through any means, including by e-mail and telephone.
 - c. Further ex parte communications by Wang as a self-represented defendant or any counsel retained by Defendants in the future shall be treated as violations of BCR 6.4 and of this Order, subject to all appropriate sanctions permitted by statute, rule, or this Court's inherent authority. This includes the potential for striking pleadings, awarding attorney fees, or issuing a finding of contempt.

SO ORDERED, this the 21st day of March, 2019.

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