

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 10534

CLAUDIA AL-HASSAN,

Plaintiff,

v.

SAM YOUSSEF SALLOUM; and
PEBBLE CREEK PARC, L.L.C.,

Defendants.

**ORDER ON SALLOUM VENTURES,
LLC'S MOTION TO QUASH**

1. This Order addresses a motion to quash filed by nonparty Salloum Ventures, LLC on 4 May 2021. (ECF No. 75.) The time for briefing is complete, and the Court elects to rule on this motion without a hearing. *See* BCR 7.4.

2. The plaintiff, Claudia Al-Hassan, is a minority member of Pebble Creek Parc, L.L.C. She has sued the company's manager, Sam Salloum, on various grounds, some of which did not survive early motions practice. What remains are individual claims for defamation, breach of contract, and judicial dissolution. *See generally Al-Hassan v. Salloum*, 2020 NCBC LEXIS 22 (N.C. Super. Ct. Feb. 20, 2020) (partially granting Salloum's motion to dismiss).

3. Al-Hassan has done almost nothing to prosecute these claims. Though twice ordered to file a case management report and a proposed discovery schedule, she did not. (*See* ECF Nos. 48, 61.) Nor did she or her former counsel appear at the case management conference (but Salloum's counsel did). Having received no input from Al-Hassan, the Court entered a case management order that gave the parties until 21 September 2020 to conduct all discovery and that set deadlines to designate a

mediator, complete mediation, and file post-discovery dispositive motions. (ECF No. 62.) When these deadlines passed without a word, the Court called for a status report from each side. (ECF No. 63.) Al-Hassan did not file a report. Salloum, however, advised that the parties had not conducted any discovery and had not selected a mediator or completed mediation. (ECF No. 64.)

4. This wholesale failure to participate in the litigation earned a warning that further inactivity might lead to dismissal of Al-Hassan's claims. (*See* ECF No. 63.) At that point, Al-Hassan broke her silence and disclosed that her relationship with her counsel had soured. She asked for time to retain new representation so that she could pursue her claims at trial. The Court agreed and allowed her counsel to withdraw. (ECF No. 68.) Al-Hassan's current counsel made an appearance in December 2020. (ECF No. 70.)

5. All that remains now is trial. In advance of the March 2021 pretrial scheduling conference, the Court sent all counsel a proposed pretrial schedule and requested feedback by e-mail. Neither side responded. At the conference, for the first time, Al-Hassan's counsel asked for more time to conduct discovery before beginning the pretrial process. After counsel conferred, Salloum opposed that informal request. The Court agreed with Salloum, entered a scheduling order, and set trial for September 2021. (*See* ECF No. 74.) At no point has Al-Hassan formally moved to reopen discovery.

6. In April 2021, Al-Hassan subpoenaed Peter Bell CPA, a nonparty to this litigation. The subpoena requests "any and all tax returns, schedules, and

information submitted for taxes for and [sic] Salloum Ventures, LLC beginning January 2007 to present day.” (ECF No. 75.1.) Salloum Ventures has moved to quash the subpoena on the grounds that it is well outside the discovery period and that it seeks irrelevant information. (ECF No. 76.) Al-Hassan responds that Salloum Ventures lacks standing to challenge the subpoena, that the requested discovery is relevant, and that the subpoena is not covered by the discovery deadline in the case management order. (ECF No. 77.)

7. Whether Salloum Ventures has standing to challenge the subpoena is doubtful. *See, e.g., Window World of Baton Rouge, LLC v. Window World, Inc.*, 2018 NCBC LEXIS 59, at *6–7 (N.C. Super. Ct. June 19, 2018) (addressing standing to challenge subpoena issued to someone else). But the Court need not decide that question. Even if Salloum Ventures does not have standing, this Court has the inherent authority to police its case management order and “to quash an untimely subpoena.” *Dziadek v. Charter Oak Fire Ins. Co.*, 2016 U.S. Dist. LEXIS 54031, at *4 (D.S.D. Apr. 22, 2016); *see also Galloway v. Islands Mech. Contractor, Inc.*, 2013 U.S. Dist. LEXIS 5232, at *12 (D.V.I. Jan. 14, 2013) (“Even if a party does not have standing . . . , a court still has the authority to quash the subpoena on grounds of untimeliness.”); *Jefferson v. Biogen IDEC Inc.*, 2012 U.S. Dist. LEXIS 48139, at *5–6 (E.D.N.C. Apr. 5, 2012) (quashing untimely subpoena on court’s own motion); *Peterbilt of Great Bend, LLC v. Doonan*, 2006 U.S. Dist. LEXIS 80038, at *5 (D. Kan. Nov. 1, 2006) (quashing subpoena issued “outside the discovery period established by

the court”); *Revander v. Denman*, 2004 U.S. Dist. LEXIS 628, at *4 (S.D.N.Y. Jan. 21, 2004) (same).

8. The subpoena is undeniably untimely. The case management order gave the parties until 21 September 2020 “to conduct *all discovery*, including that of expert witnesses.” (ECF No. 62 at 3 (emphasis added).) This includes party and third-party discovery alike. Subpoenas to third parties under Rule 45 of the North Carolina Rules of Civil Procedure are no exception. *See, e.g., Dziadek*, 2016 U.S. Dist. LEXIS 54031, at *4 (“The majority of courts agree that Rule 45 subpoenas constitute discovery and are therefore governed by the discovery deadlines set forth in a scheduling order.” (collecting cases)).

9. Al-Hassan blames her former counsel for failing to conduct discovery and contends that she should not be penalized for their actions. But the acts of the attorney are usually imputed to the client. “Allowing an attorney’s negligence to be a basis for providing relief from orders would encourage such negligence and present a temptation for litigants to use the negligence as an excuse to avoid court-imposed rules and deadlines.” *Briley v. Farabow*, 348 N.C. 537, 546–47 (1998) (no relief for missed deadlines resulting from attorney’s unexcused error); *see also Henderson v. Wachovia Bank of N.C., N.A.*, 145 N.C. App. 621, 624–26 (2001).

10. In any event, Al-Hassan has had new counsel since December 2020. Since that time, she has never moved to reopen discovery. And she waited over four months to issue the disputed subpoena, just as the pretrial process was getting under way.

These additional delays, which cannot be blamed on her former attorneys, nullify any excuse she might have had for the untimeliness.

11. In short, discovery closed nearly nine months ago, and “there is no reason why the subpoena could not have been brought during the discovery period.” *Revander*, 2004 U.S. Dist. LEXIS 628, at *4. The Court therefore concludes that the subpoena to Peter Bell CPA is untimely on its face.

12. For these reasons, the Court **GRANTS** the motion to quash.

SO ORDERED, this the 2nd day of July, 2021.

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