

STATE OF NORTH CAROLINA
RANDOLPH COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 1239

STACY RODDY GRIFFIN, as
Executrix of the ESTATE OF
CHRISTOPHER LEE GRIFFIN,

Plaintiff,

v.

ADVISORS FINANCIAL CENTER,
L.L.P. and CORNELIUS GRIFFIN,
III,

Defendants.

**ORDER ON DEFENDANTS’
5 AUGUST 2024 BCR 10.9
DISPUTE SUMMARY AND FOURTH
AMENDED CASE MANAGEMENT
ORDER**

1. **THIS MATTER** is before the Court on Defendants Advisors Financial Center, LLP (“Advisors”) and Cornelius Griffin, III’s (“Neal”; together with Advisors, the “Defendants”) Business Court Rule (“BCR”) 10.9 dispute summary submitted to the Court’s law clerks via e-mail and copying all counsel of record on 5 August 2024 (the “Dispute Summary”). Plaintiff Stacy Roddy Griffin, as Executrix of the Estate of Christopher Lee Griffin (“Plaintiff”), submitted her response to the Dispute Summary on 12 August 2024.

2. The Court held a WebEx video conference (the “Conference”) to consider the Dispute Summary on 13 August 2024 at which all parties were represented by counsel. This Order memorializes the Court’s oral rulings at the Conference.

3. On 22 July 2024, Defendants advised Plaintiff by email that they wish to depose Plaintiff’s experts at a mutually convenient time before Defendants’ expert disclosure deadline, currently 25 August 2024. Plaintiff responded that she objected

to the depositions of her experts occurring before Defendants disclose their experts and Plaintiff receives their expert reports.

4. On 25 July 2024, Plaintiff timely served her expert disclosures identifying two experts, Weston Kirk and Brent McDade of Willamette Management Associates, Inc. (“Willamette”). Unable to reach agreement on scheduling, on 30 July 2024, Defendants noticed Plaintiff’s experts for deposition on 21 August 2024.

5. On 5 August 2024, Defendants submitted the Dispute Summary seeking an order compelling Plaintiff to produce her experts for deposition “on 21 August 2024 or otherwise prior to Defendants’ expert disclosure deadline.” Defendants contend that there is no legal authority requiring Defendants to defer the deposition of Plaintiff’s experts until after Defendants designate their experts and produce expert reports and that Plaintiff’s refusal to tender her experts for deposition prior to Defendants’ disclosure deadline is unjustified.

6. Plaintiff contends that she should not be compelled to produce her experts before Defendants’ disclosure deadline because Defendants have failed to “certify [that] they [have] produced all documents provided to their expert for consideration[]” and thus “experts might not be working off the same set of fact and documents[.]” Plaintiff contends that if that is the case, Plaintiff’s expert may have to be re-deposed, which would be inefficient, and, further, that Defendants’ approach is “litigation by ambush.”

7. It appears undisputed that one of Plaintiff’s experts is currently on short-term disability leave recuperating from major surgery and that Willamette is “unsure

of his return.” As a result, the parties have exchanged dates in September for Plaintiff’s experts’ depositions but still dispute whether the depositions must occur before Defendants disclose their experts and produce expert reports.

8. The Case Management Order in this matter (the “CMO”), (ECF No. 14), provides that “the parties shall have through and including 15 April 2024 to conduct all discovery, including that of expert witnesses, if any.” (CMO, ¶ 11.) That date was subsequently extended through and including 25 September 2024. (*See* ECF No. 45.) Significantly, neither the CMO nor its three amendments require that discovery be sequenced or otherwise require expert discovery to occur after fact discovery is complete. Similarly, neither the North Carolina Rules of Civil Procedure nor the Business Court Rules require that expert discovery be deferred until fact discovery is complete. Nor does the CMO or either set of applicable Rules require that expert depositions occur after all parties have disclosed their experts and produced expert reports. Indeed, it is common practice for a party opposing the party with the burden of proof to take the opening expert’s deposition prior to disclosing its own experts so that the opposing expert may consider the opening expert’s opinions in preparing his or her opinions and report. Plaintiff’s suggestion that Defendants’ approach smacks of “[l]itigation by ambush” is therefore unpersuasive.

9. So, too, is Plaintiff’s worry that her expert might be deposed twice, resulting in unnecessary inefficiency. The CMO makes clear that “a designated expert witness is subject to a single deposition at which all adverse parties may appear.” (CMO, ¶ 17.) It appears to the Court that Defendants have made a strategic decision to take

the deposition of Plaintiff's experts at this time fully aware that they may not be able to re-depose those experts later. Moreover, absent agreement of the parties, it is for the Court to decide whether any expert's deposition is re-opened and on what terms. In short, Plaintiff's concerns for inefficiency have no current basis in fact, and, in any event, Plaintiff will have an opportunity to be heard should Defendants seek to re-open an expert's deposition in the future.

10. In sum, the Court concludes that Defendants are entitled to depose Plaintiff's experts before Defendants must disclose their experts and produce their reports. Further, given the health challenges currently faced by one of Plaintiff's experts, the Court is amenable to a modest extension of Defendants' disclosure deadlines and the deadline for the close of expert discovery.

11. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** as follows:

- a. The depositions of Plaintiff's experts currently noticed for 21 August 2024 are hereby cancelled.
- b. The parties shall have through and including 25 September 2024 to complete all discovery other than expert discovery.
- c. Plaintiff shall make her expert witnesses available for deposition on a mutually convenient date no later than 25 September 2024.¹

¹ Should Plaintiff elect to withdraw one of her experts, Plaintiff shall only be required to make the remaining expert available for deposition pursuant to this Order.

- d. Defendants shall make expert disclosures and provide their expert reports no later than seven days after the deposition of Plaintiff's experts is concluded.²
- e. The parties shall have through and including 25 October 2024 to complete all expert discovery.
- f. The deadline for post-discovery dispositive motions shall remain unchanged, and thus the parties shall file all post-discovery dispositive motions on or before 25 November 2024.
- g. Except as provided in this Order, the Case Management Order entered on 13 September 2023, (ECF No. 14), and as subsequently amended on 13 February 2024, (ECF No. 37), 20 February 2024, (ECF No. 40), and 8 May 2024, (ECF No. 45), shall not be affected by the entry of this Order.

SO ORDERED, this the 13th day of August, 2024.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge

² As a result, should Defendants depose Plaintiff's expert(s) on the last day permitted under this Order (i.e., 25 September 2024), Defendants' disclosures and expert reports will be due no later than 2 October 2024.