

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CVS003931-400

JAMES F. JOHNSON, individually and
derivatively on behalf of JAMES F.
JOHNSON & SONS, INC.; JOHNSON
& SON FUNERAL HOME, INC.; and
JAMES JOHNSON & SONS
FUNERAL HOME, LLC,

Plaintiff,

v.

THOMAS HILDEBRANDT and
BARBARA L. JOHNSON,

Defendants,

and

JAMES F. JOHNSON & SONS, INC.;
JOHNSON & SON FUNERAL HOME,
INC.; and JAMES JOHNSON & SONS
FUNERAL HOME, LLC,

Defendants and
Nominal Defendants.

**ORDER STRIKING NOTICE OF
VOLUNTARY DISMISSAL AND
GRANTING DISMISSAL WITHOUT
PREJUDICE**

1. **THIS MATTER** is before the Court on Plaintiff's oral motion for leave to voluntarily dismiss this action without prejudice, made in open court during the hearing before the Court on 10 June 2025.

2. Plaintiff commenced this putative derivative action on 20 March 2024, alleging that defendants Thomas Hildebrandt and Barabara L. Johnson had engaged in conduct amounting to corporate mismanagement and waste. Plaintiff, individually and on behalf of the nominal defendants, purports to assert claims for breach of

fiduciary duty, constructive fraud, and unjust enrichment. In his verified complaint, Plaintiff requests an accounting and imposition of a constructive trust, or alternatively, judicial dissolution of the Johnson Companies.¹ (Ver. Compl., ECF No. 3).

3. On 3 July 2024, Plaintiff, through his son and despite being represented by counsel, caused a pro se “Notice of Voluntary Dismissal and Release of Council [sic]” to be filed on his behalf, (Voluntary Dismissal, ECF No. 12), though Plaintiff has at various times indicated that he did not intend to dismiss the action or authorize dismissal of the action.

4. While Plaintiff’s purported dismissal was notarized by a Mr. Raymond E. Williams, Plaintiff’s son, Garcia Johnson, indicated during the 10 June 2025 hearing that the notarization was undertaken without Plaintiff being present (either physically or by video) and without the notary having observed Plaintiff’s physical act of signing the document, among other things. *See* N.C. Gen. Stat. § 10B-1, *et seq.* (regulating notaries). The Court will refer this matter to the office of the North Carolina Secretary of State for such other and further investigation, if any, that it deems appropriate.

5. More than eight months later, on 28 March 2025, Plaintiff’s counsel filed a motion to reopen this action, contending that the voluntary dismissal filed on 3 July 2024 was unauthorized and ineffective. (Mot. to Reopen Action, ECF No. 14).

¹ The Johnson Companies, nominal defendants in this case, include James F. Johnson & Sons, Inc., Johnson & Son Funeral Home, Inc., and James Johnson & Sons Funeral Home, LLC.

6. Between the filing of Plaintiff's verified complaint and the purported voluntary dismissal, neither Plaintiff (individually or derivatively) nor his counsel undertook any substantive or material action to prosecute the case before the Court. Further, from the filing of Plaintiff's notice of voluntary dismissal on 3 July 2024, to the filing of the motion to reopen on 28 March 2025, no documents of any kind were filed in the case, and the case was administratively closed.

7. Accordingly, the Court entered an Order on 3 June 2025 requiring Plaintiff to appear before the Court on 10 June 2025 to show cause why, among other things, this action should not be dismissed for failure to prosecute. (Order to Show Cause, ECF No. 22).

8. During the 10 June 2025 hearing, Plaintiff and his counsel orally moved to dismiss the case without prejudice in light of an expected resolution of the matter and the potential for dismissal by the Court for failure to prosecute. The Court granted Plaintiff's motion during the hearing without prejudice and with leave to re-file within one year if the parties are unable to reach a resolution.

9. Under Rule 41(a)(1) of the North Carolina Rules of Civil Procedure, when an action is voluntarily dismissed without prejudice, "a new action based on the same claim may be commenced within one year after such dismissal[.]" N.C. R. Civ. P. 41(a)(1). While the subsequent voluntary dismissal by a plaintiff after re-filing operates as an adjudication on the merits, a dismissal by *the Court* may be made "upon such terms and conditions as justice requires" and is without prejudice unless otherwise ordered by the Court. N.C. R. Civ. P. 41(a)(1)-(2).

10. Moreover, the discontinuation of a putative derivative action brought on behalf of a corporation or a limited liability company in North Carolina is subject to the Court's approval. N.C. Gen. Stat. § 55-7-45; N.C. Gen. Stat. § 57D-8-04.

11. When deciding whether to approve the dismissal of a derivative action, the Court weighs "(1) any legitimate corporate [or LLC] claims as brought forward in the derivative shareholder suit against (2) the corporation's [or LLC's] best interests[.]" *Alford v. Shaw*, 327 N.C. 526, 540 (1990); *White v. Hyde*, 2017 NCBC LEXIS 202, at *2 (N.C. Super. Ct. May 23, 2017) (applying *Shaw's* derivative balancing framework to LLCs). The Court considers factors including the litigation costs, and benefits that the company would derive continuing the suit, and any "ethical, commercial, promotional, public relations, and fiscal factors" that may be involved. *Shaw*, 327 N.C. at 540.

12. Under state law, this Court has inherent authority to strike an impermissible filing, particularly where there is a reasonable basis for the Court to determine that the original filing was not authorized by the party on whose behalf it was filed and where the document is otherwise ineffective. *State v. Bellar*, 16 N.C. App. 339, 343 (1972) ("[A] court has inherent power to keep its files free from scandalous matter, or to strike such matter from the record." (citation omitted)); see *Beard v. N.C. State Bar*, 320 N.C. 126, 129 (1987) ("Through its inherent power the court has authority to do all things that are reasonably necessary for the proper administration of justice."); *Window World of Baton Rouge v. Window World*, 2022 NCBC LEXIS 58, at *4 (N.C. Super. Ct. June 13, 2022) (Trial courts retain the

inherent authority ‘to do all things that are reasonably necessary for the proper administration of justice.’” (quoting *Red Valve, Inc. v. Titan Valve, Inc.*, 2019 NCBC LEXIS 57, at *39 (N.C. Super. Ct. Sept. 3, 2019))).

13. A party represented by counsel has no right to simultaneously appear or file materials *pro se* with the Court. See *State v. Farook*, 381 N.C. 170, 184–85 (2022) (“[I]t is proper . . . for a trial court to disregard motions filed *pro se* by represented defendants.”); *State v. Thomas*, 331 N.C. 671, 677 (1992) (“A defendant has only two choices – to appear *in propria persona* or, in the alternative, by counsel. There is no right to appear both *in propria persona* and by counsel.” (citations omitted)); *State v. Grooms*, 353 N.C. 50, 61 (2000) (“Having elected for representation by appointed defense counsel, defendant cannot also file motions on his own behalf or attempt to represent himself.”).

14. While Plaintiff purported to voluntarily dismiss this action on 3 July 2024, in its discretion and pursuant to its inherent authority, the Court determines that it is appropriate to strike the notice of voluntary dismissal from the record since Plaintiff (both individually and in a putative derivative capacity) was represented by counsel, where Plaintiff did not obtain the Court’s leave to file the dismissal, and where there are reasonable grounds to question the authenticity of the filing—each of which is a sufficient basis by itself to warrant striking the filing.

15. With the notice of voluntary dismissal struck from the record and therefore ineffective, the Court in turn addresses Plaintiff’s oral motion to dismiss properly made via counsel in open court.

16. Having considered all relevant matters of record and the parties' representations that a resolution outside of court is reasonably expected, the Court determines that Plaintiff's 10 June 2025 oral motion to dismiss is in the best interests of Plaintiff and the Johnson Companies and outweighs any benefits likely to be achieved by further pursuing the claims at issue in this action, particularly given the anticipated costs and usage of court and party resources in the event of further litigation, the substantial delay in actively litigating the case to this point, the high likelihood that the Court would dismiss the action for failure to prosecute if not otherwise dismissed as requested, and other appropriate factors.

17. With Plaintiff, Plaintiff's counsel, Plaintiff's son (Garcia Johnson), and defendant Hildebrandt present at the hearing and aware of the matters to be resolved, the Court in its discretion is satisfied that all persons and entities who might reasonably have a material interest in this matter have been provided with reasonable and sufficient notice. No party objected to Plaintiff's oral motion.

ORDER

18. Accordingly, the Court, in its discretion, hereby **ORDERS** as follows:

- a. The 3 July 2024 notice of voluntary dismissal (Voluntary Dismissal, ECF No. 12) is **STRUCK** from the record;
- b. Plaintiff's 10 June 2025 oral motion to dismiss is **GRANTED**;
- c. All claims asserted in this action are **DISMISSED WITHOUT PREJUDICE**;

d. The parties to this action shall bear their own costs and fees in this matter; and

e. Plaintiff may re-file this action within one (1) year from entry of this Order if Plaintiff's claims are not otherwise timely resolved after dismissal of this action.

SO ORDERED, this 24th day of June 2025.

/s/ Matthew T. Houston

Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases