

STATE OF NORTH CAROLINA

DURHAM COUNTY

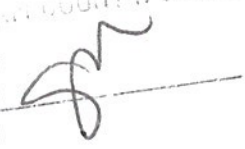
SEAN HAUGH and J. RUSSELL
CAPPS,

Plaintiffs,

v.

COUNTY OF DURHAM; ELLEN W.
RECKHOW, Chairman of the Durham
County Board of Commissioners, in her
official capacity, MICHAEL D. PAGE,
Vice-Chairman of the Durham County
Board of Commissioners, in his official
capacity; and LEWIS A. CHEEK,
PHILIP R. COUSIN JR., and BECKY
M. HERON, in their official capacities
as members of the Durham County
Board of Commissioners; MICHAEL M.
RUFFIN, Durham County Manager in
his official capacity; and NITRONEX
CORPORATION,

Defendants.

FILED
2008 JAN 18 PM 12:33
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COURT OF C.S.C. 07 CVS 6365
BY 

MOTION TO DISMISS UNDER
N.C.R. Civ. P. 12(b)(6)

Defendant Nitronex Corporation (“Nitronex”) hereby moves the Court to dismiss all claims against it pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted. In support of this Motion, Nitronex respectfully show the Court the following:

1. Plaintiffs Sean Haugh and J. Russell Capps (“Plaintiffs”) have filed a Complaint challenging the constitutionality of an agreement (the “Agreement”) between Nitronex and Defendant Durham County (the “County”).

2. Plaintiffs’ Complaint asks this Court to declare the Agreement unlawful and enjoin the County from providing any grants to Nitronex.

3. Plaintiffs' Complaint also asks this Court to order Nitronex to refund any grants heretofore received under the Agreement. However, Nitronex has not received any grants or other remuneration under the Agreement and is thus unable to provide Plaintiffs with any of the relief that they seek.

4. For these reasons, Plaintiffs have failed to state a claim against Nitronex upon which relief can be granted and the Complaint must be dismissed pursuant to North Carolina Rule of Civil Procedure 12(b)(6).

Respectfully submitted this the 18th day of January, 2008

WYRICK ROBBINS YATES & PONTON LLP

By: 

Lee M. Whitman
N.C. Bar No. 20193
Sarah M. Johnson
N.C. Bar No. 32752
Post Office Drawer 17803
Raleigh, NC 27619
Telephone: (919) 781-4000
Facsimile: (919) 781-4865
lwhitman@wyrick.com
sjohnson@wyrick.com

COUNSEL FOR DEFENDANT NITRONEX
CORPORATION

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing Motion to Dismiss Under N.C.R. Civ. P. 12(b)(6) was served upon the following by United States, prepaid first-class mail:

Jeanette K. Doran
North Carolina Institute for Constitutional Law
225 Hillsborough Street
Suite 245
Raleigh, NC 27603

Chuck Kitchen
Durham County Attorney
200 E. Main Street
2nd Floor, Old Courthouse
Durham, NC 27701

This the 8 day of January 2008.

By:



Lee M. Whitman