

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08CVS922

MILTON JAMES GARRETT, IN
BEHALF OF HIMSELF AND THE CITY
OF ROANOKE RAPIDS AND ITS
TAXPAYERS,

Plaintiffs,

vs.

RANDLE "RANDY" H. PARTON,
RICHARD "RICK" G. WATSON;
ERNEST C. PEARSON; MOONLIGHT
BANDIT PRODUCTIONS, LLC;
MOONLIGHT BANDIT PROPERTIES,
LLC; FRIENDS OF MOONLIGHT
BANDITS, LLC, MOONLIGHT BANDIT
CONCESSIONS, LLC; MOONLIGHT
BANDIT MERCHANDISING, LLC;
NORTHEASTERN NORTH CAROLINA
REGIONAL ECONOMIC
DEVELOPMENT COMMISSION; AND
NORTH CAROLINA'S NORTHEAST
PARTNERSHIP,

Defendants.

**DEFENDANTS NORTHEASTERN
NORTH CAROLINA REGIONAL
ECONOMIC DEVELOPMENT
COMMISSION and NORTH
CAROLINA'S NORTHEAST
PARTNERSHIP'S MOTION TO
DISMISS OR FOR MORE DEFINITE
STATEMENT**

Defendants Northeastern North Carolina Regional Economic Development Commission ("Commission") and North Carolina's Northeast Partnership ("Partnership"), by the undersigned counsel, move the Court for an Order dismissing the Complaint pursuant to Rules 9 and 12 of the North Carolina Rules of Civil Procedure, or ordering that the Complaint be amended, on the following bases:

1. This Court lacks jurisdiction over the subject matter of this dispute because the Plaintiff lacks standing, and therefore the Complaint should be dismissed pursuant to Rule 12(b)(1).

2. The Complaint should be dismissed pursuant to Rule 12(b)(6) for failing to state a claim upon which relief can be granted as to the Commission and the Partnership because the Complaint fails to state any actionable conduct by the Commission or the Partnership.

3. In the alternative, Count 6 of the Complaint should be dismissed because it fails to plead "fraud" with particularity as required by Rule 9(b) of the North Carolina Rules of Civil Procedure.

4. In the alternative, Plaintiff should be ordered pursuant to Rule 12(e) to amend the Complaint to set forth a more definite statement of the actionable conduct of the Commission or the Partnership because, in its present form, it is so vague and ambiguous that the Commission or the Partnership cannot frame a meaningful response.

WHEREFORE, the Commission and the Partnership respectfully pray that the Court dismiss the Complaint or order that it be amended, together with an award of costs and attorney fees as allowed by law.

This the 29th day of August, 2008.



SCOTT A. SCURFIELD

Bar No: 29722

Attorney for North Carolina's Northeast
Partnership and Northeastern North Carolina
Regional Economic Development
Commission;

OF COUNSEL:
MCANGUS, GOUDELOCK & COURIB, P.L.L.C.
Post Office Box 30516
Raleigh, North Carolina 27622
(919) 719-8200

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon all counsel of record by depositing a copy of the same in an official depository of the U.S. Mail in a postage-paid envelope addressed as follows:

J. Nicholas Ellis, Esquire
Poyner & Spruill, LLP
Post Office Box 353
Rocky Mount, North Carolina 27802-0353
Attorney for Randle "Randy" H. Parton and the "Moonlight Entities"

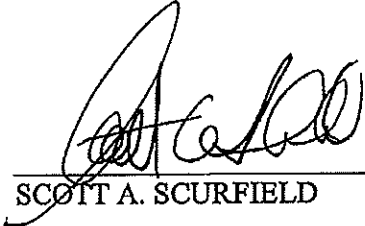
John L. Sarratt, Esquire
Harris, Winfield, Sarratt, & Hodges, LLP
1620 Hillsborough Street, Suite 200
Raleigh, North Carolina 27605
Attorney for Richard "Rick" G. Watson

Mark A. Finkelstein, Esquire
Smith Moore, LLP
Post Office Box 27525
Raleigh, North Carolina 27611
Attorney for Earnest C. Pearson

Jeanette K. Doran, Esquire
North Carolina Institute for Constitutional Law
333 E. Six Forks Road, Suite 180
Raleigh, North Carolina 27609
Attorney for Plaintiff

Gary J. Rickner, Esquire
Ward and Smith, P.A.
Post Office Box 2091
Raleigh, North Carolina 27602-2091
Co-Defense Attorney for Northeastern North Carolina Regional Economic
Development Commission and North Carolina's Northeast Partnership

This the 29th day of August, 2008.



SCOTT A. SCURFIELD

STATE OF NORTH CAROLINA

COUNTY OF HALIFAX

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

08CVS922

MILTON JAMES GARRETT, IN
BEHALF OF HIMSELF AND THE CITY
OF ROANOKE RAPIDS AND ITS
TAXPAYERS,

Plaintiffs,

vs.

RANDLE "RANDY" H. PARTON,
RICHARD "RICK" G. WATSON;
ERNEST C. PEARSON; MOONLIGHT
BANDIT PRODUCTIONS, LLC;
MOONLIGHT BANDIT PROPERTIES,
LLC; FRIENDS OF MOONLIGHT
BANDITS, LLC, MOONLIGHT BANDIT
CONCESSIONS, LLC; MOONLIGHT
BANDIT MERCHANDISING, LLC;
NORTHEASTERN NORTH CAROLINA
REGIONAL ECONOMIC
DEVELOPMENT COMMISSION; AND
NORTH CAROLINA'S NORTHEAST
PARTNERSHIP,

Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS
NORTHEASTERN NORTH
CAROLINA REGIONAL ECONOMIC
DEVELOPMENT COMMISSION AND
NORTH CAROLINA'S NORTHEAST
PARTNERSHIP'S MOTION TO
DISMISS OR FOR MORE DEFINITE
STATEMENT**

INTRODUCTION

Defendants Northeastern North Carolina Regional Economic Development Commission ("Commission") and North Carolina's Northeast Partnership ("Partnership"), by and through their attorneys McAngus Goudelock & Courie, respectfully submit the following in support of their Motion to Dismiss pursuant to Rules 12(b)(1), 12(b)(6), and 9(b) of the North Carolina Rules of Civil Procedure and their (alternative) Motion for More Definite Statement pursuant to Rule 12(e).

The Commission and Partnership's co-defendants have filed similar Motions and supporting Memoranda. The issue of the Plaintiff's standing (or lack thereof) is common to Plaintiff's claims against each of the Defendants, including the Commission and the Partnership. The other Defendants' supporting Memoranda address the standing issue, and the Commission and Partnership incorporate those same arguments for the purposes of this proceeding. The undersigned will not repeat those arguments, instead focusing on the issues specific to the Commission and the Partnership.

ALLEGATIONS OF THE COMPLAINT

There are ten (10) separate Defendants named in the Complaint, specifically:

- Randle "Randy" H. Parton, allegedly the brother of entertainment figure Dolly Parton and at certain relevant times the "headlining" entertainer and manager of the Randy Parton Theater;
- Richard "Rick" G. Watson, allegedly the former President of the Commission and the Partnership and the "promoter" of the Randy Parton Theater project;
- Ernest C. Pearson, allegedly the attorney for (at various times) the Commission, the Partnership, and the "Moonlight Entities" named below;
- The five (5) "Moonlight Entities" named in the caption, each associated with a particular operational aspect of the Randy Parton Theater; and
- The Commission and the Partnership.

There are eight (8) "Counts" in the Complaint, each purporting to set forth a separate claim for relief against different defendants or groups of defendants, specifically:

Count	Nominal Theory of Recovery	Relief Sought Against:
1	“Civil Conspiracy”	All Defendants
2	“Breach of Fiduciary Duty”	Watson and Pearson (apparently)
3	“Common Law Fraud”	Parton, Watson and Pearson (apparently)
4	“Tortious Acting in Concert”	All Defendants (apparently)
5	“Unfair and Deceptive Trade Practices”	All Defendants (apparently)
6	“Fraudulent Misrepresentation”	All Defendants (apparently)
7	“Negligent Misrepresentation”	Watson and Pearson (apparently)
8	“N.C. Declaratory Judgment Act”	All Defendants (apparently)

The Complaint refers to the Commission and the Partnership collectively as the “Commission” (Complaint ¶10), therefore the same will be done in this Memorandum. The Complaint identifies the Commission as “the regional entity designated by statute to collectively and economically market and promote the Northeastern area of the State....” It goes on to aver that “[t]he Commission acted in a fiduciary capacity with respect to Plaintiff and Roanoke Rapids in that it had in its possession funds intended, in part, to benefit Roanoke Rapids and furnished to the Commission for the purpose of being used in the best economic interest of the citizens of Roanoke Rapids.” Thus, for standing purposes, the Commission is in the same position as the City.

The Complaint is twenty-nine (29) pages and eighty-three (83) paragraphs (plus subparagraphs) in length. Nevertheless, it does not allege any specific conduct by the Commission, instead alleging, as near as can be determined, *collective* conduct of the Defendants (or sub-sets of the Defendants), including the following examples (with emphasis added):

- In Paragraph 15, Plaintiff alleges that “**the Defendants** concentrated [their efforts to obtain funding for the Parton Theater Project] on the City of Roanoke Rapids... [and] ...inundated the officials of Roanoke Rapids with the ‘endorsements’ obtained from state officials...” Plaintiff does not indicate which Defendants acted in the manner alleged.
- In Paragraph 16, Plaintiff refers to “**Defendant’s** scheming” (singular) without specifying which Defendant(s) did the scheming. It does not explain how the Commission, as an entity defendant, could have “schemed” about anything, separate and apart from any alleged “scheming” by its president Defendant Watson.
- In Paragraph 17, Plaintiff alleges that “**Defendants**” produced a “Request for Proposals” relating to the Parton Theater, but does not specify which Defendants did so and does not differentiate among any of the Defendants as to any actions related to the “Request for Proposals.”
- Paragraph 18 refers to a “ploy used by **Defendants**” relating to the use of the Dolly Parton persona, but again does not differentiate among any of the Defendants as to the use of such a “ploy.”
- Paragraph 19 alleges that “**the Defendants**” used public monies to conceal information, but fails to differentiate among any of the Defendants as to any such actions.
- Paragraph 23 alleges *inter alia* that “**Defendants** knew or should have known that Parton had no management experience” but does not specify which Defendants are to be charged with such knowledge.
- Paragraph 25 (and others) alleges that “**Defendants** knew or through the exercise of reasonable care should have known” certain facts, but does not identify which of the Defendants are being charged with that knowledge, or how an entity like the Commission could be charged with any particular knowledge.
- Paragraph 41 alleges breaches of fiduciary duties by “**Defendants**” but does not

specify which Defendants were subject to such duties or breaches of them.

- Paragraph 41 goes on to allege that the wrongful acts described were for the “personal benefit” of the **Defendants** (implying that the individual defendants Parton, Watson and Pearson are those being accused), but concludes with an allegation that “**Defendants** are joint tortfeasors...”, again failing to differentiate between or among any defendants or group(s) of defendants.
- Paragraph 42 refers to “conduct of the **Defendant**” (singular) as entitling the Plaintiff to punitive damages without specifying which Defendant.
- Paragraph 44 refers to the necessity of a recovery from “**Defendants**” and to “**Defendants’** actions” without specifying which Defendants.
- Paragraph 46 alleges that “**Defendants** agreed to do an unlawful act or to do a lawful act in an unlawful way...” but does not specify which Defendant(s).
- Paragraph 47 (and others) refers to “acts and agreements of **Defendants**” and “**Defendants’** scheme” but does not specify which Defendant(s) allegedly acted, agreed, or schemed.
- Paragraph 66 alleges that “**Defendants** committed a tortuous act in concert” and that certain actions “inured to the benefit of **Defendants** personally.” Not all the Defendants are persons, and no explanation is given as to which Defendants acted “in concert” or which Defendants *personally* benefited.
- Paragraph 68 (among others) alleges that “**Defendants** committed an unfair or deceptive act or practice” but does not specify which Defendants, and does not explain how an entity like an LLC or a governmental commission (as opposed to an individual) can commit an unfair or deceptive act.

The foregoing is not an exhaustive list of the instances within the Complaint where the Plaintiff fails to differentiate between or among the Defendants or specific sub-sets of Defendants as to alleged actions or failures to act.

LEGAL AUTHORITY

I. THE COMPLAINT FAILS TO SPECIFY ANY ACTIONABLE CONDUCT BY THE COMMISSION AND THEREFORE SHOULD EITHER BE DISMISSED OR ORDERED TO BE AMENDED.

The Commission is entitled to be informed of the allegations against it so that it can defend itself. "The purpose of the complaint is to give the defendant notice of the wrong to which plaintiff complains." Hull v. Floyd S. Pike Electrical Contractor, Inc., 64 N.C. App. 379; 307 S.E.2d 404; 1983 N.C. App. LEXIS 3281 (1983). Rule 8 requires the Plaintiff to include in his Complaint "A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief..." N.C. Gen. Stat. § 1A-1, Rule 8.

The Commission concedes that "notice pleading" principles apply. "A pleading complies with [Rule 8] if it gives sufficient notice of the events or transactions which produced the claim to enable the adverse party to understand the nature of it and the basis for it, to file a responsive pleading, and, by using the rules provided for obtaining pretrial discovery, to get any additional information he may need to prepare for trial." N.C. Gen. Stat. § 1A-1, Rule 8. However, Plaintiff's Complaint, in its present form, does not comply with the letter or the spirit of Rule 8. "[M]ere assertion of a grievance will not suffice, but the pleader must plead with sufficient particularity to identify the legal issues and to allow the other party to frame a responsive pleading." Smith v. City of Charlotte, 79 N.C. App. 517, 339 S.E.2d 844 (1986).

The various named Defendants are of significantly different types; there are three individual persons (one of whom is an attorney), five Limited Liability Companies ("LLC's"), a commission created by the State of North Carolina, and a privately-held partnership that includes that government-created commission as a partner. Plaintiff should not be permitted to make broad-brush allegations against these widely-disparate defendants *collectively* because doing so makes it impossible for the Commission (or any other single defendant) to prepare any meaningful response. At best, the Complaint is vague. At worst, it is intentionally misleading because it appears to equate, without justification, the conduct of the Commission with that of the other individual and entity defendants. In its present form, it is almost impossible to discern

exactly what actionable conduct the Commission is alleged to have engaged in. The Complaint should be dismissed on this basis because it does not notify the Commission of the conduct complained of.

II. COUNT 6 OF THE COMPLAINT APPEARS TO ALLEGE "FRAUDULENT MISREPRESENTATION" BY THE COMMISSION BUT FAILS TO DO SO WITH PARTICULARITY, AND THEREFORE SHOULD EITHER BE DISMISSED OR ORDERED TO BE AMENDED.

Paragraph 73 of the Complaint (contained within Count 6) alleges that "Defendants [emphasis added] made or caused to be made false representations or concealed or caused to be concealed materials facts, and the same were reasonably calculated to deceive and were made with the intent to deceive...." However, much like the "blanket" allegations regarding "the Defendants" addressed above, it does not specify how the Commission or the Partnership could have so acted, as an entity.

The Complaint does not comply with Rule 9(b). Rule 9(b) provides that "...the circumstances constituting fraud ... shall be stated with particularity...." N.C. Gen. Stat. § 1A-1, Rule 9. "The purpose of this rule is to protect a defendant from unjustified injury to his reputation by requiring more particularity than is normally required by notice pleading, because fraud embraces such a wide variety of potential conduct that the defendant needs particularity of allegation in order to meet the charges." Terry v. Terry, 302 N.C. 77, 273 S.E.2d 674 (1981). "The well-recognized elements of fraud are 1) a false representation or concealment of a material fact, 2) reasonably calculated to deceive, 3) made with intent to deceive, 4) which does in fact deceive, and 5) which results in damage to the injured party. A complaint charging fraud must allege these elements with particularity." Hunter v. Spaulding, 97 N.C. App. 372, 388 S.E.2d 630 (1990).

There are ten (10) separate defendants in this lawsuit (see above), and they are of different types. By logical extension, Rule 9(b) requires that any defendant being accused of fraud or fraudulent misrepresentation have those allegations plead with particularity *as to that defendant*. Plaintiff has not done so in this lawsuit, instead pleading "fraud" and "fraudulent misrepresentation" against "Defendants" collectively without specifying what each defendant did

that was fraudulent. The Complaint (at least Count 6) thus fails to comply with Rule 9(b) and should be dismissed on that basis.

CONCLUSION

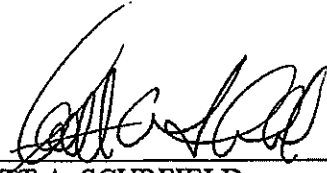
Incorporating the arguments of the Commission's co-defendants, Plaintiff has not alleged elements that are essential to establish his standing to bring suit against any of the Defendants (including the Commission and the Partnership), and his Complaint should therefore be dismissed pursuant to North Carolina Rule of Civil Procedure 12(b)(1) as to all Defendants.

Even if Plaintiff does have standing to bring this action, he has not stated a claim against the Commission and the Partnership because the Complaint does not allege any facts constituting actionable conduct of the Commission or the Partnership separate and apart from the allegations against their former President (Defendant Watson) or their legal counsel (Defendant Pearson). Therefore, the Complaint should be dismissed pursuant to North Carolina Rule of Civil Procedure 12(b)(6).

In the alternative, Count 6 alleging "Fraudulent Misrepresentation" by the Commission fails to plead the elements of fraud with specificity and therefore that Count should be dismissed.

Finally, and again in the alternative, should the Court find that Plaintiff has standing to bring this suit and that the Complaint alludes to theoretically-actionable conduct by the Commission or the Partnership, then the Court should Order the Plaintiff to amend the Complaint to set forth a more definite state of that conduct so that the Commission and the Partnership can frame a meaningful response, pursuant to North Carolina Rule of Civil Procedure 12(e).

This the 29th day of August, 2008.



SCOTT A. SCURFIELD

Bar No: 29722

Attorney for North Carolina's Northeast
Partnership and Northeastern North Carolina
Regional Economic Development
Commission

OF COUNSEL:
MCANGUS, GOUDELOCK & COURIE, P.L.L.C.
Post Office Box 30516
Raleigh, North Carolina 27622
(919) 719-8200

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon all counsel of record by depositing a copy of the same in an official depository of the U.S. Mail in a postage-paid envelope addressed as follows:

J. Nicholas Ellis, Esquire
Poyner & Spruill, LLP
Post Office Box 353
Rocky Mount, North Carolina 27802-0353
Attorney for Randle "Randy" H. Parton and the "Moonlight Entities"


John L. Sarratt, Esquire
Harris, Winfield, Sarratt, & Hodges, LLP
1620 Hillsborough Street, Suite 200
Raleigh, North Carolina 27605
Attorney for Richard "Rick" G. Watson

Mark A. Finkelstein, Esquire
Smith Moore, LLP
Post Office Box 27525
Raleigh, North Carolina 27611
Attorney for Earnest C. Pearson

Jeanette K. Doran, Esquire
North Carolina Institute for Constitutional Law
333 E. Six Forks Road, Suite 180
Raleigh, North Carolina 27609
Attorney for Plaintiff Milton James Garrett

Gary J. Rickner, Esquire
Ward and Smith, P.A.
Post Office Box 2091
Raleigh, North Carolina 27602-2091
Co-Defense Attorney for Northeastern North Carolina Regional Economic
Development Commission and North Carolina's Northeast Partnership

This the 29th day of August, 2008.



SCOTT A. SCURFIELD