

FILED

2009-CP-10-7516

IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

JULIE J. ARMSTRONG
CLERK OF COURT

Civil Action No.: 2009-CP-10-7516

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JULIE J. ARMSTRONG
CLERK OF COURT

SKYWAVES I CORPORATION,
Plaintiff,

v.

BRANCH BANKING AND TRUST
COMPANY, Successor in merger to
BRANCH BANKING AND TRUST
COMPANY OF SC, a/k/a/ BB&T, and
JAMES EDAHL.

Defendants.

ORDER GRANTING IN PART
DEFENDANT BB&T'S MOTION FOR
SUMMARY JUDGMENT; GRANTING
DEFENDANT EDAHL'S MOTION
MOTION FOR SUMMARY JUDGMENT
DENYING PLAINTIFF'S MOTION TO
RECONSIDER; DENYING PLAINTIFF'S
MOTION TO AMEND THE COMPLAINT
DENYING PLAINTIFF'S MOTION TO
STRIKE; and DENYING PLAINTIFF'S
MOTION FOR COMMISSION OF
ISSUANCE OF A SUBPOENA TO
DEPOSE JOHN ALLISON

These matters came before the Court for hearing on April 27, 2015 upon various parties' pending motions. All parties were represented by counsel. The Court has fully considered all memoranda submitted in support of and in opposition to the outstanding motions, evidence presented, and arguments of counsel. For the reasons discussed below, the Court GRANTS IN PART Defendant BB&T's Motion for Summary Judgment; GRANTS Defendant Edahl's Motion for Summary Judgment; DENIES Plaintiff's Motion to Reconsider the Order Striking the Jury Trial Demand; DENIES Plaintiff's Motion to Amend the Complaint; DENIES Plaintiff's Motion to Strike; and DENIES Plaintiff's Motion for Commission of Issuance of a Subpoena to Depose John Allison.

I. PROCEDURAL HISTORY AND BACKGROUND

Plaintiff Skywaves I Corporation ("Skywaves" or "Plaintiff") alleges that Defendant Branch Banking and Trust Company, successor in merger to Branch Banking and Trust Company of SC ("BB&T") failed to honor its obligations to capitalize its needs and improve

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declared Skywaves in default of its obligations under the controlling agreements. Plaintiff asserts tort theories as well including claims that Defendants misrepresented that the parties' written agreements had been modified, as well as claims that Defendants acted in bad faith in the method and manner in which Defendants acted before and after declaring a default. Plaintiff also asserts tort theories, including claims that the Defendants made misrepresentations concerning the modification of the written agreements and that Defendants acted in bad faith before and after claiming that Plaintiff was in default. Defendant James Edahl ("Edahl") was an employee of BB&T and the relationship manager working with Skywaves.


A. Procedural History

Plaintiff's First Amended Complaint alleges, *inter alia*, that the justification BB&T provided for declaring Skywaves in default was "pretextual, if not outright false . . . BB&T's refusal to continue funding was not due to the reasons asserted in the default letter, but was because BB&T was unhappy with and sought to renegotiate the parties' modified factoring agreement."

Plaintiff asserted eight claims against BB&T for breach of contract; breach of contract accompanied by a fraudulent act; promissory estoppel; breach of the covenant of good faith and fair dealing; negligent misrepresentation; fraudulent misrepresentation; negligence; and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"); and asserted four claims against Edahl for negligent misrepresentation; fraudulent misrepresentation; negligence; and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA").

B. Factual Background

Skywaves was a start-up company that developed a structural product to house electrical equipment ("shelters") at the base of cell towers for use in the wireless telecommunications



industry. In 2006, it achieved over \$6 million in revenues, with projections of substantial growth.

1. **Factoring Invoices Under the Factoring Agreement**

On March 22, 2005 Skywaves entered into written agreements with BB&T, including a Factoring and Security Agreement ("Factoring Agreement"). Under the Factoring Agreement, BB&T agreed to purchase certain accounts receivable (invoices) of Skywaves. Skywaves agreed to sell and assign the invoices to BB&T and further agreed that all of Skywaves' rights with respect to the accounts vested in BB&T. The Factoring Agreement was amended to increase the line of credit to \$3.5 million dollars and reduce the fees and interest rate.

2. **BB&T Authorizes Advances Based on Purchase Orders**

In May, 2006, BB&T agreed to modify or alter the Factoring Agreement by agreeing to advance funds based on certain purchase orders, in addition to invoices. This agreement was a departure from the existing Factoring Agreement, so much that BB&T concedes that loaning money on purchase orders was not factoring. BB&T authorized advances based on purchase orders up to \$2.0 million, within the larger \$3.5 million limit. If and when the purchase order converted to an invoice, the amount that had been advanced on the purchase order was deducted and BB&T would provide Skywaves the remaining balance available to be factored on the invoice. If no purchase order was involved and only the invoice was factored, then Skywaves received the full advance available.

In March, 2007, BB&T represented that it was committed to meeting Skywaves' capital needs. It represented that it had devised a vehicle that was unique to Skywaves and was suitable to finance Skywaves' growth. It also assured Skywaves that the bank would work with it to meet its needs. Indeed, as part of its commitment, BB&T renewed the Factoring Agreement, so that

the parties' relationship continued into 2007.

3. BB&T Authorizes Advances Based on Site Plans

In the summer of 2007, Skywaves experienced delays in orders from one of its largest customers, General Dynamics, which caused cash flow problems for Skywaves. Because Skywaves had been in the process of a capital expansion to increase production capacity, it experienced a cash "crunch."

As a result, Skywaves asked BB&T to consider advancing funds on site plans for General Dynamics. The site plans identified locations where General Dynamics anticipated placing cell towers under a master contract. Edahl agreed to the request and later confirmed that BB&T had agreed to the loan modification. Consistent with that agreement, BB&T advanced \$1.2 million dollars on account of site plans in 2007. Under the parties' agreement, the maximum amount that BB&T would advance on site plans was \$2 million.

4. BB&T Terminates the Agreement

In January 17, 2008, BB&T visited Skywaves' warehouse, where Skywaves gave a presentation to Edahl and a new BB&T employee in the relationship, Mike Burke. During that visit, Burke learned that BB&T had advanced \$1.2 million based on site plans. Burke did not know of BB&T's promise to advance money on site plans. When confronted, Edahl falsely and denied knowledge of BB&T's agreement to fund site plans. Defendant Edahl's dishonesty led BB&T to accuse Skywaves of fraud and undertake a fraud investigation; according to internal memos, Edahl also declared Skywaves in default of the Factoring Agreement because of the site plan financing.

On January 23, 2008, BB&T claims that Skywaves failed a routine quarterly audit. Plaintiff contends that the audit was a result of Skywaves' disclosure that BB&T had been

funding advances in accordance with the modified Factoring Agreement, of which Edahl denied any knowledge. Edahl has since recanted his lie and admitted that he not only knew of the modification, but also lied in his deposition to save his job. Tellingly, days before BB&T even requested the audit, Edahl expressed his belief that Skywaves was in default of the Factoring Agreement. In that regard, Edahl acted as BB&T's apparent agent with authority to bind BB&T.

On January 25, 2008, BB&T notified Skywaves that it was terminating the Factoring Agreement because of alleged defaults:

1. . . . in violation of Paragraph 8 of the Agreement, [Skywaves] has received payment of Accounts (as defined in the Agreement) and has failed to immediately turn those payments over to BB&T as required by the Agreement;
2. . . . Skywaves may not be paying its debts as they mature in the ordinary course of business (with approximately 37% of its payables over 60 days);
3. . . . BB&T has a good faith belief that the prospects of payment to it or performance of the Obligations (as defined in the Agreement) is impaired.

Although BB&T allegedly believed Skywaves improperly submitted site plans as purchase orders, it did not include that as a reasons for declaring Skywaves in default.

On January 25, 2008, BB&T ceased advancing funds to Skywaves. Skywaves asserts that Defendants made threats, including threats of criminal prosecution, for what BB&T claimed to be Skywaves' fraud. Skywaves urges that this conduct at and after the time of termination breached the duty of good faith and fair dealing and violates equity and good conscience. The parties could not reach an agreement to work out their dispute, and Skywaves filed for bankruptcy in April, 2008.

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II.

ANALYSIS

A. DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

1. Legal Standard

"Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. This Court is not "required to single out some one morsel of evidence" to create a genuine issue of material fact. *See Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993).

2. Governing Law

The Factoring Agreement provides that "[a]ll acts, transactions, rights and liabilities under this Agreement" are to be governed by "the internal laws of the State of North Carolina." Such choice of law clauses are generally honored in South Carolina, unless application of the selected state's law would violate South Carolina public policy. *Team IA, Inc. v. Lucas*, 395 S.C. 237, 249, 717 S.E.2d 103, 108-09 (Ct. App. 2011). For purposes of the instant motion, the Court concludes that North Carolina law governs Skywaves' contractual claims.¹ As for the tort claims, under traditional choice of law principles, the substantive law governing such claims would be the law of the state where the injury occurred. *See Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 143, 494 S.E.2d 449, 454 (Ct. App. 1997); *accord Harco Nat. Ins. Co. v. Grant Thornton LLP*, 206 N.C. App. 687, 692, 698 S.E.2d 719, 722-23 (N.C. Ct. App. 2010).

¹ South Carolina does not recognize a separate claim for breach of the implied covenant of good faith and fair dealing apart from a breach of contract claim; consequently, the Court concludes that applying North Carolina law would violate South Carolina public policy. *See RoTec Servs., Inc., v. Encompass Servs., Inc.*, 359 S.C. 467, 472-73, 597 S.E.2d 881, 883-84 (Ct. App. 2004).

3. **Substantive Claims**

a. **Skywaves Presented Sufficient Evidence to Survive Summary Judgment on Its Contract Claims**

In its breach of contract claim, Skywaves alleges, *inter alia*, that BB&T breached the modified Factoring Agreement by failing to perform its obligations and terminating that agreement without cause (or for a pretextual reason). The elements of breach of contract are: (1) the existence of a valid contract and (2) breach of the terms of the contract. *Long v. Long*, 160 N.C. App. 664, 668 (2003).

In its January 25, 2008 letter, BB&T outlined purported reasons for declaring Skywaves in default, including the failure to remit payments immediately to BB&T and to pay debts when due. Skywaves contends that the applicable provisions of the parties' agreement pertaining to these two specific issues were amended or waived by BB&T. This Court agrees that there is an issue of fact on this question. While the Factoring Agreement contains express language that no provision can be orally modified or waived absent a writing signed by BB&T, the parties can waive such a restriction by oral agreement. *See Son-Shine Grading, Inc. v. ADC Const. Co.*, 68 N.C. App. 417 315 S.E.2d 346 (1984).

Moreover, BB&T admits that, as part of the March 22, 2005 Factoring Agreement, it agreed to provide certain financing based on site plans. There is evidence that BB&T failed to fulfill its promises to Skywaves under the parties' agreement. The Court finds that Skywaves has presented at least a scintilla of evidence sufficient to survive summary judgment on its breach of contract claim.

b. **Skywaves Is Entitled to Go to a trial on Its Claim of Breach of Contract Accompanied by a Fraudulent Act**

Skywaves also asserts a claim for breach of contract accompanied by a fraudulent act. Among other things, Skywaves alleges that BB&T "pretextual[ly]" breached the Factoring Agreement. North Carolina law appears to recognize a cause of action for breach of contract

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accompanied by a fraudulent act. *See Oestreicher v. Stores*, 290 N.C. 118, 136, 225 S.E.2d 797, 808-809 (1976) (ruling on plaintiff's request for punitive damages pertaining to its breach of contract claim). BB&T has not shown that it is entitled to summary judgment on this cause of action.

c. **North Carolina Does Not Recognize Claims of Promissory Estoppel**

North Carolina does not recognize affirmative promissory estoppel claims. Therefore, Skywaves' claim for promissory estoppel fails. *See Penguin Restoration, Inc. v. Nationwide Mut. Ins. Co.*, 2013 WL 4419355, at *2 (M.D.N.C. Aug. 15, 2013).

d. **South Carolina Does Not Recognize a Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing**

Skywaves asserts a claim against BB&T for breach of the implied covenant of good faith and fair dealing. *Inter alia*, Skywaves alleges that terminated the parties' agreement for "pretextual" reasons because it became unhappy with the arrangement. However, a breach of the implied covenant of good faith and fair dealing does not create an *independent* or *separate* cause of action in South Carolina and is instead subsumed by a claim for breach of contract. *RoTec Servs., Inc., v. Encompass Servs., Inc.*, 359 S.C. 467, 472-73, 597 S.E.2d 881, 883-84 (Ct. App. 2004). Therefore, BB&T is entitled to summary judgment, as a matter of law, although Skywaves may assert these allegations as part of its contractual claims.

e. **BB&T and Edahl are Entitled to Summary Judgment on Skywaves' Claims for Negligence and Negligent Misrepresentation**

i. **The Economic Loss Doctrine**

Skywaves' claims for negligent misrepresentation and negligence are barred by the economic loss doctrine, under which Skywaves may not pursue a tort claim for economic loss arising under contract. *See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) Skywaves seeks to recover for the

alleged loss of a bargained-for financing arrangement in a commercial transaction, a loss adequately protected by contract law. See *Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F. Supp. 1027, 1049 (D.S.C. 1993), *aff'd mem.*, 46 F.3d 1125 (4th Cir. 1995).

The rationale supporting the application of the economic loss rule also applies to any tort claims asserted against Edahl. See *Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009) (“The purpose of the economic loss rule is to define the line between recovery in tort and recovery in contract”). I reject Skywaves’ contention that the economic loss rule does not apply to Defendant Edahl. Edahl’s counsel has presented case law from other jurisdictions illustrating the applicability of the rule to individuals acting as agents of the contracting party. See *Ben-Yishay v. Mastercraft Dev., LLC*, 553 F. Supp. 2d 1360, 1370-71 (S.D. Fla. 2008) (relying upon economic loss rule to dismiss misrepresentation claims against corporate officer who negotiated agreement, noting that alleged misrepresentations were “inseparable from the essence of the parties’ agreement”).

ii. Elements of the Tort Claims

Additionally, Skywaves’ cannot establish the elements of negligent misrepresentation and negligence. To establish a claim for negligent misrepresentation, Skywaves must show that: (1) BB&T made a false representation; (2) BB&T had a pecuniary interest in making the statement; (3) BB&T owed a duty of care to see that it communicated truthful information; (4) BB&T breached that duty by failing to exercise due care; (5) Skywaves justifiably relied on the representation; and (6) Skywaves suffered a pecuniary loss as the proximate result of its reliance. See *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003) (citation omitted). To establish a claim for negligence, Skywaves must prove: (1) a duty of care; (2) a breach of that duty of care; and (3) damage proximately resulting from the breach. See *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013).

Skywaves’ claim for negligence, which it presents as a claim for breach of “fiduciary duty,” fails for want of any duty. See *Turpin v. Lowther*, 404 S.C. 581, 589, 745 S.E.2d 397, 401

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(Ct. App. 2013) (“The existence of a fiduciary duty is a question of law for the court”). “Duty is generally defined as the obligation to conform to a particular standard of conduct toward another.” *Murray v. Bank of America, N.A.*, 354 S.C. 337, 343, 580 S.E.2d 194, 197 (Ct. App. 2003). Skywaves has not identified any standard of conduct required of BB&T or otherwise breached by BB&T.

Second, with regard to its negligent misrepresentation claim, Skywaves has not presented evidence of false statements of existing fact. See *Koontz v. Thomas*, 333 S.C. at 713, 511 S.E.2d at 413 (“The representation cannot ordinarily be based on unfulfilled promises or statements as to future events”). Based upon the record before the Court, Skywaves has not and cannot establish that any such statements were made with “the intent to deceive and with no intent to comply with the stated promise.” *Parker v. Shecut*, 340 S.C. 460, 482, 531 S.E.2d 546, 558 (Ct. App. 2000), *rev'd on other grds.*, 349 S.C. 226, 562 S.E. 2d 620 (2002). Skywaves forcefully asserts that Defendants misrepresented present facts, particularly facts regarding the modification of the Factoring Agreement. I reject Plaintiff's assertions. Under the theory Skywaves advances, Edhal lied later in order to save his job. There is no evidence that Edahl's statements about the loan modifications to the Skywaves officers were false at the time he made them. He lied later when confronted about knowing anything about the modifications.

Furthermore, Skywaves cannot establish justifiable reliance. The Supreme Court has, in effect, already found Skywaves' management to be of the degree of sophistication sufficient to negate any purported “right to rely.” See *Kerr*, 408 S.C. at 334 n.8, 759 S.E.2d at 727 n.8. They at least had the degree of competence to “utilize[] precaution and protection to safeguard [their] interests.” *Id.* at 334, 759 S.E.2d at 727 (*citing Thomas v. Am. Workmen*, 197 S.C. 178, 182–83, 14 S.E.2d 886, 887–88 (1941)). Skywaves claims that the BB&T relationship manager had developed a relationship upon which they were entitled to rely. I reject this argument.

f. **Skywaves' Claims for Promissory Estoppel, Negligence and Negligent Misrepresentation are Statutorily Barred Under § 37-10-107**

To the extent Skywaves' promissory estoppel, negligence and negligent misrepresentation claims are based on alleged oral promises outside the Factoring Agreement, they are statutorily barred. A South Carolina statute bars enforcement of oral lending agreements and claims based on alleged oral misrepresentations and other non-written conduct concerning such loan agreements. See S.C. Code Ann. § 37-10-107. While Skywaves has argued that the instant Factoring Agreement arrangement is not a loan, I reject that argument. Skywaves contends the statute is not applicable because North Carolina law applies to its claims. I reject that argument and conclude that South Carolina law applies and bars such claims under S.C. Code Ann § 37-10-107.

B. **PLAINTIFF'S MOTION TO RECONSIDER ORDER STRIKING JURY TRIAL DEMAND**

Having read Plaintiff's Motion to Reconsider and needing no further oral argument, I deny the Motion on the grounds stated in my original Order dated February 9, 2015. I further deny Plaintiff's Motion to Reconsider and its alternative request to empanel an advisory jury.

C. **PLAINTIFF'S MOTION TO AMEND COMPLAINT**

Leave to amend a pleading should be denied where there is (1) undue delay, (2) bad faith or dilatory motive by the movant, (3) undue prejudice to the opposing party, or (4) futility of the amended or supplemental pleading. *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997).

1. **Skywaves' Motion To Amend Is Barred By The Law Of The Case**

Though presented as Motion to Amend, Skywaves actually seeks to reinstate its cause of action for fraud and violation of the statutory Unfair Trade Practices Act.² The Court denies the Motion to Amend because the prior dismissal of those claims is the law of the case.

² Skywaves states that its proposed amendments do not expand the factual scope of its claim beyond its prior complaints. Skywaves argues that it only seeks to "clarify" that its unfair trade practices act claim should have been under North Carolina Unfair Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*, instead of the South Carolina statute.

Skywaves originally asserted these causes of action in its First Amended Complaint. On November 8, 2011, this Court granted Defendants' Motions to Dismiss these causes of action, *with prejudice*. Skywaves moved to reconsider the November 8, 2011 Order and filed a timely Notice of Appeal. On June 15, 2012, this Court entered a second Order re-instating some of the claims it had dismissed. However, that Order did not reinstate the fraud or UTPA claim.³ Skywaves then moved to dismiss its appeal as moot, sending the Court of Appeals a copy of the Order of June 15, 2012, which it now contends contains a clerical error. The Court of Appeals dismissed the appeal and remitted the case to this Court. The Court concludes that Skywaves may not now seek to reassert the same claims that the Court dismissed with prejudice.

2. The Amendments Are Barred Because of Undue Delay

Though courts have wide latitude in allowing amendments, "this power should not be used indiscriminately, or to prejudice or surprise another party." *Brown v. James*, 389 S.C. 41, 59, 697 S.E.2d 604, 614 (Ct. App. 2010). Skywaves concedes that its proposed amendments relate back to facts and claims as they have been asserted in this case since 2009. Skywaves has offered no justification for the delay in seeking to amend and, as a result, the Court denies its motion.

3. The Amendments Are Futile

Skywaves' proposed amendments are also barred because they would be futile. See *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 604-605, 486 S.E.2d 269, 275 (Ct. App. 1997). Skywaves' fraudulent misrepresentation claim fails for the same reasons its negligent misrepresentation claim fails, as set forth above.

³ Skywaves asserts that the Court's failure to reinstate the fraud claim in its Order of June 15, 2012, was a "clerical mistake." That Order is clear that: "Skywaves is allowed to proceed with its claims for breach of contract accompanied by fraudulent act, negligence, and negligent misrepresentation as stated in its Amended Complaint."

Skywaves' proposed amendment related to the *North Carolina* Unfair Trade Practices Act is also futile because the North Carolina statute would have no applicability to Edahl, who, at all times, lived and worked in South Carolina. With regard to the proposed claims for equitable estoppel, the proposed amendment does not, and cannot, state facts sufficient to constitute a cause of action. In addition, equitable estoppel may not be invoked as an offensive cause of action. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992). Moreover, the proposed prejudgment interest claim is futile because this case does not present an obligation that is capable of being reduced to certainty. *See Smith-Hunter Constr. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421.

D. PLAINTIFF'S MOTION TO STRIKE

Motions to strike an answer or defense as sham are disfavored and should be granted only where the evidence demonstrates that the pleading is manifestly false and made in bad faith. *See Ins. Co. of N. Am. v. Hyatt*, 290 S.C. 159, 163, 348 S.E.2d 532, 535 (Ct. App. 1986) (citation omitted). This Court finds no evidence that Defendant's Amended Answer is manifestly false or made in bad faith. The legal authority Plaintiff cites are premised on the concept of bad faith or an intent to deceive. The Court concludes that BB&T and Edahl did not take inconsistent positions, nor has either of them engaged in any intentional effort to mislead the Court. There is no evidence that BB&T, Edahl or their counsel acted inappropriately so as to require the relief requested. Accordingly, the Court denies Plaintiff's Second Motion to Strike.

E. PLAINTIFF'S MOTION FOR COMMISSION/BB&T's MOTION FOR PROTECTIVE ORDER

Plaintiff has moved for the issuance of a commission for a subpoena for the deposition of John Allison, BB&T's former CEO and President; BB&T has moved for a protective order opposing that deposition. South Carolina Rule of Civil Procedure 26(b)(1) limits discovery to matters that are "relevant to the subject matter involved in the pending action." *See Ex parte*

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Smith, 407 S.C. 422, 423, 756 S.E.2d 386, 386 n.1 (2014). To be discoverable, information need not be admissible at trial, but must appear to be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.* If parties seek to go outside of the bounds of Rule 26(b)(1), Rule 26(c) allows a party to seek a protective order and allows a court to “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense.” *See Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009).

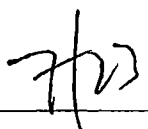
The Court concludes that the testimony that Plaintiff seeks from Mr. Allison is not reasonably calculated to lead to the discovery of admissible evidence and would subject BB&T to undue burden and expense. Plaintiff’s Motion for Commission is denied, and BB&T’s Motion for a Protective Order is granted.

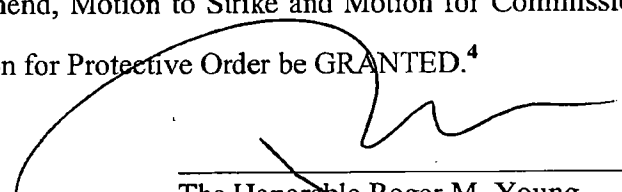
III.

CONCLUSION

For the reasons set forth herein, it is hereby ORDERED that: (a) Defendant Edahl’s Motion for Summary Judgment is GRANTED; (b) Defendant BB&T’s Motion for Summary Judgment is DENIED as to Plaintiff’s claims for breach of contract and breach of contract accompanied by a fraudulent act but GRANTED as to Plaintiff’s other claims; (c) Plaintiff’s Motion to Reconsider, Motion to Amend, Motion to Strike and Motion for Commission all be DENIED; and (d) that BB&T’s Motion for Protective Order be GRANTED.⁴

IT IS SO ORDERED.


_____, 2015
Charleston, South Carolina



The Honorable Roger M. Young

⁴ BB&T moved to strike portions of Affidavits of Ronald Konersmann and James Kerr. Because the Court does not rely upon those Affidavits, it denies that Motion to Strike the Affidavits as moot.