

STATE OF NORTH CAROLINA
HAYWOOD COUNTY
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 DEC -3 PM 4:50
08-CVD-00768
HAYWOOD COUNTY C.S.C.

ETON PROPERTIES CORP., A Nevada Corporation, Plaintiff, vs. CMKM DIAMONDS, INC., A Nevada Corporation, Defendant.	BY _____	DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO DISMISS
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**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant CMKM Diamonds, Inc, (CMKM) Respondent herein, and requests this Honorable Court to DENY Plaintiff's Motion To Dismiss.

I.

INTRODUCTION

A. Movant asks the court to dismiss Defendant's Counterclaim and alleges the court does not have jurisdiction over the subject matter and does not have personal jurisdiction over the parties. Movant further states the Counterclaim raised by Defendant is the subject matter of a pending lawsuit and the counterclaim does not state a claim against Plaintiff.

II.

ARGUMENTS AND AUTHORITIES

A. Plaintiff alleges in its motion that the Court lacks jurisdiction over the subject matter of Defendant's Counterclaim. Defendant is required by North Carolina Rule of Civil Procedure to file any and all Counterclaims when filing its answer. Thus, by rules long recognized by the North Carolina courts, the Defendant had a duty to file such Counterclaims. The subject matter of the original suit and the Counterclaims involve real estate situated in Haywood County, North Carolina.

B. Defendant does not dispute that suit is presently pending in Nevada against Plaintiff. Plaintiff has acquired property in many states with illegal funds. To protect the

innocent public, lis pendens laws in all states allow the filing of notice when such illegal activity brings the true legal title to property into question. The law provides for filing of lis pendens even though the litigation which might affect the property is ongoing out of state. Common sense suggests that not all property disputes arise among people solely within state boundaries. It is nonsensical to suggest that one cannot file a lis pendens if the claims to the property originate from litigation outside the state.

C. Defendant recognizes the line of authority which mandates abatement of actions when the same proceedings are being held in another jurisdiction. The facts of this case are distinguishable from the general rule. First, the real estate purchased in Haywood County, North Carolina has been parceled out and at least one parcel has been sold off for over \$500,000. The new CEO of Eton Properties Corp. resides in Waynesville, North Carolina. All closings and transactions of funds occurred in Haywood County, North Carolina. Now that Defendant has been sued for Slander of Title, a viable cause of action is alleged which can only be brought in Haywood County, North Carolina.

WHEREFORE, the Respondent prays that:

1. The Motion To Dismiss be denied in all things;
2. The costs of this action be taxed against the Movant;
3. That Movant be granted such other and further relief as the Court may deem just and proper.

Respectfully submitted this the 3rd day of December, 2008.

Jeffrey W. Norris
Attorney for Defendant/Counter Plaintiff/Respondent
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has this date been served upon the parties by depositing a copy of the same in the United States Mail, sufficient postage prepaid, addressed to counsel as follows:

James W. Kirkpatrick, III, P.A.
37 Branner Avenue
Waynesville, North Carolina 28786
This the 2nd day of October, 2001.
Attorney for Plaintiff/Movant