

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO: 08-CVD-768

2008-10-13 11:24:49  
D.C.S.C.

ETON PROPERTIES CORP.,  
a Nevada Corporation,  
Plaintiff,

vs.

CMKM DIAMONDS, INC., a Nevada  
Corporation,  
Defendant.

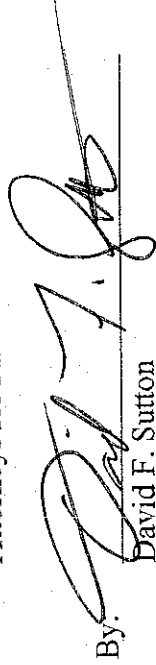
**MOTION TO DISMISS**

COMES NOW Plaintiff, Eton Properties Corp., a Nevada Corporation, by and through its undersigned attorney, and moves this Court to dismiss Defendant CMKM Diamonds, Inc.'s Counterclaim filed in the above-captioned matter on August 12, 2008, and further states the basis of Plaintiff's Motion to Dismiss Defendant's Counterclaim as follows:

1. This Court lacks jurisdiction over the subject matter of Defendant's Counterclaim and should be dismissed pursuant to North Carolina Rule of Civil Procedure 12(b)(1), and further Plaintiff states that the Counterclaim raised by Defendant is already the subject matter of a lawsuit pending in the District Court for Clark County, Nevada, having case No: A538649.
2. This Court lacks personal jurisdiction over the parties with respect to Defendant's Counterclaim and should be dismissed pursuant to North Carolina Rule of Civil Procedure 12(b)(2).
3. Defendant's Counterclaim fails to state a claim against the Plaintiff upon which relief may be granted and should be dismissed pursuant to North Carolina Rule of Civil Procedure 12(b)(6).

This the 13<sup>th</sup> day of October, 2008.

JAMES W. KIRKPATRICK, III, P.A.  
Attorneys for Plaintiff

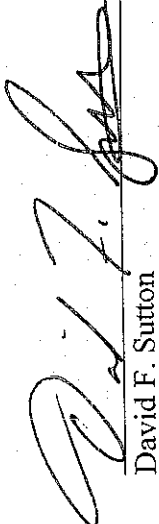
By:   
David F. Sutton  
NC Bar #34235

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the attached pleading or paper was served upon the party(s) to this action by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 13<sup>th</sup> day of October, 2008.

Jeffrey W. Norris, Esq.  
Norris & Associates, PLLC  
177 N. Main Street  
Waynesville, NC 28786

By:   
David F. Sutton