

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:21-CV-00251-BO

**Beringer Commerce, Inc., d/b/a Blue
Acorn iCi,**

Plaintiff,

v.

**Fin Cap Inc., d/b/a “Blueacorn.CO”,
Blue Acorn PPP, LLC, and Blue Oak
Forest, LLC.,**

Defendants.

Scheduling Order

After considering pleadings and the Rule 26(f) Report submitted by the parties (D.E. 56), the Court enters the following scheduling order:

1. Scope of Discovery

The scope of discovery in this matter is limited to the issues identified in Paragraph 3(a) of the Rule 26(f) Report.

2. Initial Disclosures

If the parties have not already done so, they will make the initial disclosures required by Rule 26(a)(1) by Monday, September 13, 2021.

3. Discovery Plan

a. All fact discovery shall be initiated in time to be completed by Friday, February 18, 2022.

b. Each party may serve on any other party up to 30 interrogatories, including all discrete subparts.

c. Any objection to Interrogatories or Requests for Production shall be stated with particularity. Boilerplate objections (e.g. objections without a particularized basis, such as “overbroad, irrelevant, burdensome, not reasonably calculated to identify admissible evidence”) may be treated as a failure to answer pursuant to Rule 37(a)(4).

d. Each party may serve on any other party up to 30 Requests for Admission pursuant to Rule 36.

e. Each party may take up to 25 fact depositions. Depositions may be conducted remotely and oaths may be administered remotely. Absent a court order or stipulation by the parties, the length of each deposition shall be limited to seven hours on one day. Time taken for breaks and recesses shall not count towards the hour limit.

4. Expert Reports

a. The parties shall make the disclosures required by Rule 26(a)(2) on the following schedule:

i. Plaintiff's disclosures shall be made no later than Thursday, March 10, 2022.

ii. Defendant's disclosures shall be made no later than Wednesday, March 30, 2022.

iii. Depositions of experts shall occur no later than Friday, April 29, 2022.

5. Amendment of Pleadings and Addition of Parties

a. Except as provided by Rule 15(a), the parties must obtain leave of court to amend the pleadings or add parties.

b. The parties shall file motions to amend the pleadings or join additional parties no later than Wednesday, October 13, 2021.

6. Protective Orders

Any proposed protective orders that discuss filing materials under seal must comply with Local Civil Rule 79.2 and the presiding judge's practice preferences. Failure to include the necessary language will result in the court denying the motion without prejudice.

7. Dispositive Motion Deadline

The parties shall file any dispositive motions by Tuesday, May 31, 2022.

8. Alternative Dispute Resolution

a. The parties shall participate in a mediated settlement conference prior to the end of the discovery period. The parties have identified Judge James Gale as their agreed-upon mediator.

b. If a party or parties believe that this case should be exempted from the requirement to mediate, they may file a motion requesting an exemption. The motion should reflect the position of any party that has not joined in the motion. The court will consider the motion and determine, in its discretion, whether to grant the motion.

c. If a party or parties believes that a form of alternative dispute resolution other than mediation, such as a summary trial or court-hosted settlement conference, would be beneficial, they may file a motion requesting to proceed in that manner.

9. Trial Date and Related Deadlines

The trial date and related deadlines will be set by separate order at a later date. However, the court reserves the right to schedule the case for trial as soon as 30 days after the dispositive motion deadline.

10. Discovery of Electronically Stored Information

The parties do not anticipate any issues with the preservation or discovery of ESI.

11. Extensions of Time to Respond to Discovery Requests

Under Rule 29(b) of the Federal Rules of Civil Procedure the parties may stipulate to extensions of time to respond to discovery and do not need to seek court approval unless the proposed extension would interfere with the time set for completing discovery, for hearing a motion, or for trial. Motions for extensions of time to respond to discovery that could be addressed through a stipulation will be viewed with disfavor by the court.

12. Consent to Magistrate Judge Jurisdiction

A United States magistrate judge is available to conduct all proceedings in this action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent and the district judge agrees that referral would be appropriate. The consent form is available on the court's website.

The remaining portions of the Rule 26(f) Report that are not inconsistent with this Scheduling Order are approved and adopted by the court.

Dated: August 26, 2021



Robert T. Numbers, II
United States Magistrate Judge