UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

Will McRaney, Plaintiff, v. The North American Mission Board of the Southern Baptist Convention, Inc., Defendant.	Case No. 1:17-cv-00080-GHD-DAS

PLAINTIFF'S MEMORANDUM IN SUPPORT OF RULE 56(d) RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

In accordance with the Court's direction, Plaintiff hereby respectfully submits this Rule 56(d) response to Defendant's motion for partial summary judgment, and reserves all other responses and arguments in opposition to Defendant's motion, to be filed with the Court at a later date, as directed by the Court. *See* Doc. 84.

* * * *

NAMB seeks summary judgment with respect to Counts I and II of the Complaint based on NAMB's contention that it was released by a Separation Agreement between Dr. McRaney and his former employer, BCMD, claiming NAMB was as a "supporting organization" of BCMD, covered by general release language in Section 5 of the Separation Agreement.[1]

The term "supporting organization," upon which NAMB's entire argument rests, is undefined in the Separation Agreement. But, as described below, and in the accompanying Declaration of Charles Lindsay, CPA, "supporting organization" is a well-known term in the world of non-profit organizations, including many religious organizations, with a specific and clear meaning. *See* Declaration of Charles R. Lindsay, CPA ("Lindsay Declaration") ¶¶ 6-8. Applying that specific and clear meaning to the Separation Agreement, it is evident that NAMB has failed to advance evidence establishing it was, at the time of the Separation Agreement, a supporting organization of BCMD, released under the Separation Agreement. *See* Lindsay Declaration ¶¶ 11-13.

However, if the Court is disinclined to deny NAMB's motion now, based on this manifest defect, the Court should defer considering the motion or deny it, pursuant to Federal Rule of Civil

[1] Based on the same argument, NAMB contends it is shielded from "punitive damage and intentional infliction of emotion distress claims" in Count VI. Doc. 80 at 4. In accordance with the Court's Order (Doc. 84), Plaintiff will address that aspect of NAMB's motion at a later date, as directed by the Court.

Procedure 56(d), so that Plaintiff may obtain information through discovery relevant to adjudicating NAMB's motion. *See* Lindsay Declaration ¶ 14.

BACKGROUND

Plaintiff's Lawsuit Against NAMB

In April 2017, Dr. Will McRaney filed a lawsuit in Mississippi state court against the North American Mission Board of the Southern Baptist Convention, Inc. ("NAMB"), a non-profit corporation organized under the laws of Georgia. The lawsuit alleges NAMB violated state common law, causing McRaney economic and non-economic harm actionable under state law.

Dr. McRaney is not, and never has been, an employee of the defendant, NAMB. The alleged conduct by NAMB occurred both during and after McRaney was employed by a separate, autonomous organization—the Baptist Convention of Maryland/Delaware ("BCMD"). BCMD is not a party to McRaney's lawsuit.

After removal to federal court, NAMB convinced this Court to dismiss Dr. McRaney's complaint for lack of subject matter jurisdiction. A multi-year appellate process then ensued, during which the Fifth Circuit reversed and reinstated Dr. McRaney's case, and the Supreme Court of the United States denied NAMB's request for review.

More than four years after this case began, the parties are back before this Court, to finally commence discovery and adjudicate the merits of Dr. McRaney's complaint against NAMB, which asserts claims for intentional interference with business relationships, defamation, and intentional infliction of emotional distress.

On August 23, 2021, Magistrate Judge Sanders conducted a case management conference, after which he entered a case management order. *See* Doc. 82. Discovery is just getting underway, and scheduled for completion by March 28, 2022. *Id*. at 4. A jury trial is set for November 7, 2022. *Id*; Doc. 83.

The Separation Agreement Between BCMD and Dr. McRaney

In July 2015, Dr. McRaney and his former employer, BCMD, entered into a Separation Agreement and Release ("Separation Agreement"). NAMB was not a signatory or party to the Agreement.

The Agreement provides it is to be "construed and governed in accordance with the laws of the State of Maryland." Doc. 37-1 at 7 (Section 15). The Agreement also provides: "All suits, proceedings and other actions related to, arising out of or in connection with this Agreement shall be brought exclusively" in the courts of Maryland. *Id*.

NAMB's Motion for Partial Summary Judgment Based on the Separation Agreement

Although not included as a defense on its original Answer (Doc. 3), NAMB now claims the Separation Agreement to which it was not a party—and apparently did not possess until after this lawsuit was underway—released it from liability under Counts I and II of the Complaint.

Specifically, NAMB contends that "at the time of Plaintiff's execution of the Separation Agreement and Release, [it] was one of the 'supporting organizations'" of BCMD (Doc. 47 at 2), and it seeks partial summary judgment on the theory that NAMB was released in the Separation Agreement. *See* Doc. 80 (citing Section 5, "General Release," of the Separation Agreement).

In support of its motion, NAMB has submitted an affidavit from Carlos Ferrer, executed on October 18, 2018. Doc. 79-1. The Ferrer affidavit is the only evidence NAMB filed in support of its motion. *See* Doc. 79 at 1-2. Although not filed in support of its current motion, NAMB's Memorandum refers to an affidavit executed by Tom Stolle on October 3, 2018. *See* Doc. 80 at 7.

LEGAL STANDARD

I. Rule 56(d) Standard

Rule 56(d) requests "for additional discovery are 'broadly favored and should be liberally granted' because the rule is designed to 'safeguard non-moving parties from summary judgment motion that they cannot adequately oppose.'" *American Family Life Assur. Co. of Columbus v. Biles*, 714 F.3d 887 (5th Cir. 2013).

II. Maryland Law Principles of Contract Interpretation

The Agreement provides that it is to be "construed and governed in accordance with the laws of the State of Maryland." Doc. 37-1 at 7 (Section 15).[2]

Objective Interpretation of Contracts

Maryland uses the law of the objective interpretation of contracts, which means the search to determine the meaning of a contract is focused on the four corners of the agreement. *See Expo Properties, LLC v. Experient, Inc.*, 956 F.3d 217, 224 (4th Cir. 2020). Under this approach, if the language of the contract is unambiguous, courts interpret the contract "based on what a reasonable person in the position of the parties would have understood the language to mean and not 'the subjective intent of the parties at the time of formation.'" *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 393, 220 A.3d 303 (2019). "Thus, 'the written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract.'" *Maryland Cas. Co. v. Blackstone Int'l*

[2] Section 15 of the Agreement also provides: "All suits, proceedings and other actions related to, arising out of or in connection with this Agreement shall be brought ***exclusively***" in the courts of Maryland. *See* Doc. 37-1 at 7 (emphasis added); *see also* Doc. 49 at 2 n.2 (NAMB acknowledging the Separation Agreement's "forum selection clause"). NAMB's motion for partial summary judgment violates that provision, and should be denied on that basis, in addition to other grounds for dismissal asserted here and to be asserted later in accordance with this Court's order regarding the sequencing of briefing regarding NAMB's motion. *See* Doc. 84.

Ltd., 442 Md. 685, 114 A.3d 676, 694 (2015) (citing *Long v. State*, 371 Md. 72, 84, 807 A.2d 1, 8 (2002) (quoting *Slice v. Carozza Props., Inc.*, 215 Md. 357, 368, 137 A.2d 687, 693 (1958))).

Only "[w]here a court determines contractual language to be ambiguous, [do] the narrow bounds of the objective approach give way, and the court is entitled to consider extrinsic or parol evidence to ascertain the parties' intentions." *Credible Behavorial Health*, 466 Md 380, 220 A.3d at 394. Ambiguity arises when a term of a contract, as viewed in the context of the entire contract and from the perspective of a reasonable person in the position of the parties, is susceptible of more than one meaning. *Impac Mortg. Holdings, Inc. v. Timm*, 474 Md. 495, 255 A.3d 89, 96 (Md. 2021). In such instances, extrinsic evidence "should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources." *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n*, 321 Md. 152, 157-158 (1990). To be admissible, extrinsic evidence of intent as to the meaning of a contract term must demonstrate "an intent made manifest, not a secret intent" at the time of contract formation." *Impac*, 255 A.3d 89, 96 (quoting *Gov't Emps. Ins. Co. v. Coppage*, 240 Md. 17, 25-26, 212 A.2d 523 (1965)). Retrospective, subjective, and unexpressed views about the contract are not proper extrinsic evidence: "It is the intention of the parties as expressed in their words and the paper which they sign, not their own interpretation as to what their statements and acts were supposed to mean, which is determinative." *Id*. at 14 (quoting *Coppage*, 240 Md. at 25). If the extrinsic evidence presents disputed factual issues bearing upon the ambiguity, construction of the contract must await resolution of that dispute by a factfinder, which may be a court or jury. *Id*. at 13 (citing *Truck Ins. Exchange v. Marks Rentals, Inc*., 288 Md. 428, 433, 418 A.2d 1187 (1980)).

Undefined Terms and Ordinary Meaning

Under Maryland law, when a term used in a contract is undefined, the terms should be ascribed its ordinary meaning, "best done" by referring to dictionary definitions, and other similar authoritative sources about its meaning. *Metropolitan Life Insurance Co. v. Promenade Towers Mutual Housing Corporation*, 84 Md. App 702, 718 (1990); *see also In re Solomons One, LLC*, 2014 WL 846084 at *8 (Bankr. D. Md. 2014) (using "standard definition" of term "claim" because not defined in agreement). Courts should "avoid interpreting contract language between two parties in a manner that is void of a commonsensical perspective." *Fister ex rel. Estate of Fister v. Allstate Life Ins. Co*., 366 Md. 201, 219 (2001).

Enforcement of a Contract by a Third-Party

"At common law, only a party to a contract could bring suit to enforce the terms of a contract." *Allen v. Bank of Am., N.A.*, 933 F. Supp. 2d 716, 726 (D. Md. 2013). While the common law rule has expanded to allow third-party beneficiaries to enforce the terms of a contract, "Maryland law is quite restrictive on the issue of whether one may be considered a third-party beneficiary." *CX Reinsurance Co., Ltd. v. Levitas*, 207 F. Supp. 3d 566, 570 (D. Md. 2016), *aff'd*, 691 F. App'x 130 (4th Cir. 2017).

"An individual is a third-party beneficiary to a contract if the contract was intended for his or her benefit and it clearly appears that the parties intended to recognize him or her as the primary party in interest and as privy to the promise. It is not enough that the contract merely operates to an individual's benefit: An incidental beneficiary acquires by virtue of the promise no right against the promisor or the promisee." *CR–RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 56 A.3d 170, 212 (2012); *Cushman & Wakefield of Maryland, Inc. v. DRV Greentec, LLC*, 463 Md. 1, 7, 203 A.3d 835, 838 (2019) ("A person is a third-party beneficiary only where the promise

sought to be enforced was intended for that person's benefit and the parties intended to recognize that person as the primary party in interest with respect to that promise.").

The "crucial fact" for determining whether a party can enforce a contract as a third-party beneficiary is "whether the pertinent provisions in the contract were 'inserted ... to benefit' the third party." *Allen*, 933 F. Supp. 2d at 726 (citing *CR–RSC Tower I,* 56 A.3d at 212).[3]

[3] Although NAMB acknowledges the Separation Agreement is governed by Maryland law (Doc. 80 at 8), NAMB cites only three Maryland cases. None of those cases support NAMB's motion. For example, in *Chicago Title Ins. Co. v. Lumbermen's Mutual Casualty Company*, 707 A. 2d 913, 918 (Md. Ct. Spec. App. 1998), it was undisputed the plaintiff did not intend to release the defendant. Thus, the sole legal question was the effect of the settlement on a party's "duty under its surety bond"—an issue with no relevance to this case. Also unavailing is NAMB's reliance on *Shutter v. CSX Transp., Inc.*, 226 Md. App. 623, 634 (2016), which concerned the scope of a release between the parties—not, as here, whether a release covered someone not a party to the agreement or named in the release. NAMB's third Maryland case, *Jarallah v. Thompson*, 123 F. Supp. 3d 719 (D. Md. 2015), is similarly inapposite, addressing whether a release covered employees of the releasee.

ARGUMENT

Pursuant to the Court's direction, Plaintiff reserves and will present to the Court at a later date set by the Court, a full explanation of why Defendant's motion should be denied. *See* Doc. 84.[4]

I. NAMB inaccurately claims there is "no genuine dispute" it was a "supporting organization" of BCMD

A. NAMB is conspicuously silent about the meaning of "supporting organization"

While NAMB's motion depends entirely on the claim it was a supporting organization of BCMD, NAMB *never* says what it believes the term means, or cites any dictionary, encyclopedia or treatise defining the term. *Cf. Inverness Medical Switzerland GmbH v. Princeton Biomeditech Corp.*, 309 F.3d 1365, 1369 (Fed. Cir. 2002) (noting dictionaries, technical dictionaries, encyclopedias and treatises may be used to identify a term's ordinary meaning).

There may be a good reason for NAMB's avoidance. The term supporting organization has a specific and clear meaning in the non-profit world, and NAMB has offered not a scintilla of evidence showing, under that definition, it was a supporting organization of BCMD.

B. While undefined in the Agreement, "supporting organization" has a specific and clear meaning with respect to non-profits

It is undisputed the term "supporting organization" is undefined in the Agreement. The Agreement provides it is to be "construed and governed in accordance with the laws of the State of Maryland." Doc. 37-1 at 7 (Section 15). Under Maryland law, when a term used in a contract is undefined, the term should be ascribed its ordinary meaning, "best done" by referring to

[4] By asking a federal court to adjudicate the meaning and effect of the Separation Agreement between Dr. McRaney and BCMD, and use that interpretation as a basis to enter partial summary judgment for NAMB, NAMB should be deemed to have waived, or be estopped from making, its "church autonomy" defense (Doc. 47 at 1), which runs directly counter to its effort to invoke the jurisdiction of the federal courts.

dictionary definitions, and other similar authoritative sources about its meaning. *Metropolitan Life Insurance Co. v. Promenade Towers Mutual Housing Corporation*, 84 Md. App 702, 718 (1990); *In re Solomons One*, 2014 WL 846084 at *8 (using "standard definition" of term "claim" because not defined in agreement).

1. The ordinary meaning of "supporting organization" is clear

The ordinary meaning of supporting organization is clear. "A supporting organization, in the United States, is a public charity that operates under the U.S. Internal Revenue Code in 26 USCA 509(a)(3)."). *See* Supporting organization (charity) - Wikipedia[5]; *see also* Philanthropy Dictionary | Philanthropy Terms | NPTrust ("A supporting organization is a charity that is not required to meet the public support test because it supports a public charity. To be a supporting organization, a charity must meet one of three complex legal tests that assure, at a minimum, that the organization being supported has some influence over the actions of the supporting organization."); Bruce R. Hopkins, Nonprofit Law Dictionary 416 (2015); *see also* Supporting Organizations - Requirements and Types | Internal Revenue Service (irs.gov); Lindsay Declaration ¶¶ 6-8. This ordinary, objective understanding of the term, is reflected in myriad articles, treatises and court cases. *See*, *e.g.*, Alyssa A. DiRusso, *Supporting the Supporting Organization: The Potential and Exploitation of 509(A)(3) Charities*, 39 Ind. L Rev. 207 (2006); *Quarrie v. Commissioner of Internal Revenue*, 603 F.2d 1274 (7th Cir. 1979) (discussing requirements to qualify as a supporting organization); *Polm Family Foundation, Inc. v. United States*, 644 F.3d 406, 408 (D.C. Cir. 2011) (same); 26 CFR § 1.509(a)-4(a)(5) ("For purposes of this section, the

[5] The Agreement "shall be construed . . . in accordance with the laws of the State of Maryland," and Maryland courts utilize Wikipedia as a source for identifying the meaning of terms. *See*, *e.g.*, *Azam v. Carroll Independent Fuel, LLC*, 240 Md. App. 1, 15 (2019) (citing Wikipedia to identify the "standard definition" of "Jobber").

term *supporting organization* means either an organization described in section 509(a)(3) or an organization seeking section 509(a)(3) status, depending upon its context.").

2. NAMB's proposed construction of "supporting organization" is amorphous and contrary to Maryland law

While NAMB offers no definition of "supporting organization"—let alone an objective, plain meaning—its arguments invite this Court to adopt a definition of supporting organization that not only departs from ordinary usage, but would violate basic principles of Maryland law governing contract interpretation.

The Court of Appeals of Maryland has "oft stated" that "a court may not create ambiguity or uncertainty where none otherwise exists." *Fister ex rel. Estate of Fister v. Allstate Life Ins. Co*., 366 Md. 201, 217-18 (2001). Moreover, courts applying Maryland law should "avoid interpreting contract language between two parties in a manner that is void of a commonsensical perspective." *Id*. at 219.

In contrast with the clear, objective, ordinary meaning of "supporting organization" described above and in the accompanying Declaration of Charles Lindsay, NAMB advances a view of supporting organization that is subjective, open-ended, and defies commonsense.

For example, NAMB cites to the Ferrer affidavit for his description of "annual financial contributions to BCMD as well as NAMB's nonmonetary support," claiming it "firmly establish[es]" NAMB was a supporting organization of BCMD. Doc. 80 at 7. But what is the standard that should apply, according to NAMB? How much "financial support" renders one a "supporting organization"? If $1 enough? $1,000? If not, how much? Does it matter how the funds are used? How much money goes in the other direction—for example, from BCMD to NAMB? NAMB offers no definition, let alone one which can be applied with objective, administrable criteria.

Moreover, NAMB appears to believe that "nonmonetary support" is relevant to determining whether an entity is a supporting organization. Doc. 80 at 7. But what kind of "nonmonetary support" qualifies? How much of it is required? Again, NAMB offers no objective, administrable standard.

Maryland law does not permit the displacement of the clear, objective, ordinary meaning of "supporting organization" described here by Plaintiff with NAMB's subjective and open-ended conception. NAMB's approach would "create ambiguity or uncertainty where none otherwise exists," and defy commonsense. Id. at 217-18

C. NAMB has proffered no evidence showing that NAMB was a "supporting organization" of BCMD, using the ordinary meaning of that term

The scant evidence that NAMB has proffered in support of its motion fails to establish that NAMB was a "supporting organization" of BCMD.

1. NAMB's affiant does not state that NAMB was a "supporting organization" of BCMD

NAMB's affiant, Mr. Ferrer, does not assert that NAMB was a "supporting organization" of BCMD. *See* Doc. 79-1. This is a telling omission—and one about which he should be examined at a deposition.[6]

2. Mr. Ferrer's assertions about financial and nonmonetary support for BCMD does not establish that NAMB was a "supporting organization" of BCMD

Applying the ordinary and correct definition of supporting organization, Mr. Ferrer's affidavit is irrelevant, and lends no support to NAMB's motion. *See* Lindsay Declaration ¶ 12.

[6] The affidavit from Mr. Tom Stolle, filed in 2018, which NAMB has not submitted with its current motion for partial summary judgment (Doc. 79), but refers to in its memorandum (Doc. 80 at 7), also does not contend that NAMB was a supporting organization of BCMD.

But even taken on its own terms, the Ferrer affidavit fails to support NAMB's motion. For example, the Separation Agreement was executed in 2015, but Mr. Ferrer's affidavit describes the period 2013-2018. Doc. 79-1 at ¶¶ 3 & 4. Thus, most of the period his affidavit refers to was *after* the Separation Agreement—which is irrelevant, even under NAMB's view. Moreover, Mr. Ferrer's affidavit is devoid of specific financial information for a time period relevant to Agreement. He makes a representation about "the total amount of financial support provided by NAMB to BCMD" for 2013-October 17, 2018 (*id*. ¶ 3), but even if true the affidavit provides no information about the nature or amount of "financial support" *preceding* execution of the Separation Agreement.[7]

Pursuant to Federal Rule of Civil Procedure 56(d), Plaintiff seeks to take the deposition of Mr. Ferrer to discover information relevant to the adjudication of NAMB's motion for partial summary judgment.

3. BCMD's 2018 motion to quash does not establish that NAMB was a "supporting organization" of BCMD

Although not filed in support of its current motion, NAMB's Memorandum refers to an affidavit executed by Tom Stolle on October 3, 2018, previously filed by BCMD in support of a motion to quash a subpoena from NAMB. *See* Doc. 80 at 7 (citing Doc. 37-1). Applying the ordinary and correct definition of supporting organization, Mr. Stolle's affidavit is irrelevant, and lends no support to NAMB's motion. *See* Lindsay Declaration ¶ 13.

[7] For this reason alone, the Ferrer affidavit is inadmissible. Only admissible evidence can be used to support a motion for summary judgment. *See*, *e.g.*, *U.S. v. $92,203.00 in U.S. Currency*, 537 F.3d 504 (5th Cir. 2008) (reversing summary judgment improperly based on inadmissible affidavit). Plaintiff objects to the Ferrer affidavit pursuant to Federal Rule of Civil Procedure 56(c)(2).

But even taken on its own terms, the Stolle affidavit fails to support NAMB's motion. For example, the Separation Agreement was executed in 2015, but Mr. Stolle's affidavit, executed in October 2018, refers to "the past five years"—*i.e.*, the period 2013-2018. Thus, as with Mr. Ferrer, most of the period his affidavit refers to was *after* the Separation Agreement—which is irrelevant, even under NAMB's view.

As for Mr. Stolle's representations about NAMB's financial support of BCMD, pursuant to Federal Rule of Civil Procedure 56(d), Plaintiff seeks to take the deposition of Mr. Stolle to discover information relevant to the adjudication of NAMB's motion for partial summary judgment, including examination about the statement in this affidavit, and other issues relevant to determining whether NAMB was a supporting organization of BCMD during the relevant period.

4. Dr. McRaney's Complaint Does Not "Confirm" that NAMB was a "supporting organization" of BCMD

NAMB is wrong in contending the Complaint "confirm[s] that NAMB was one of BCMD's supporting organizations." (Doc. 80 at 7-8). This argument is predicated on NAMB's misguided view of the meaning of that term in the Agreement, which is contrary to Maryland law.

II. Discovery is necessary to gather all relevant facts and adjudicate whether NAMB was a "supporting organization" of BCMD

NAMB's failure to (1) identify the proper definition of "supporting organization" as used in the Agreement, and (2) proffer evidence that NAMB was, during the relevant period, a supporting organization of BCMD,[8] are fatal defects in its motion, warranting its denial.[9]

[8] *See* Lindsay Declaration ¶¶ 11-13.

[9] As noted earlier, Pursuant to the Court's Order, Plaintiff reserves and will present to the Court at a later date directed by the Court, a full explanation of why Defendant's motion should be denied. *See* Doc. 84.

However, if the Court is disinclined to deny NAMB's motion now, then Dr. McRaney is entitled to discovery relevant to determining whether NAMB was a supporting organization of BCMD.

1. Discovery has just begun, and is necessary to gather all relevant facts and adjudicate whether NAMB was a "supporting organization" of BCMD

Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a) have been served by each party, but discovery is just getting underway, and scheduled for completion by March 28, 2022. *See* Doc. 82 (Case Management Order, entered August 23, 2012).

Dr. McRaney is entitled to discovery relevant to disproving that NAMB was a supporting organization of BCMD during the relevant period. As explained in the Declaration of Charles Lindsay, CPA, "[i]n order to determine if NAMB was a supporting organization of BCMD, and when, more information is required than has been submitted to the Court." *See* Lindsay Declaration ¶ 14. Mr. Lindsay identifies numerous relevant documents and areas of inquiry, which Plaintiff should be permitted to pursue in discovery to defend against NAMB's motion. *Id.*[10] In addition, Plaintiff wishes to take several depositions which will, among other things, provide discovery relevant to NAMB's motion, including: Mr. Ferrer; Mr. Stolle; a 30(b)(6) deposition of NAMB; and a 30(b)(6) deposition of BMCD. Plaintiff also intends to seek in discovery all communications between NAMB and BMCD about the Separation Agreement—before and after it was executed.

[10] "Due to the complexity of supporting organization rules, satisfaction of each of the nuanced requirements is not straightforward. Failure to meet each of these ongoing technical requirements generally results on the organization defaulting to private foundation status as of the first day of tax year during which the failure occurred." 27 Tax'n Exempts 3, Supporting Organizations (2015).

2. If not denied outright now, NAMB's motion for partial summary judgment should be deferred until the completion of fact discovery

More than four years after this case began, after a lengthy appeals process which reversed the dismissal of Plaintiff's case, the parties are back before this Court, to finally commence discovery and adjudicate the merits of Dr. McRaney's complaint against NAMB. Discovery is scheduled for completion by March 28, 2022, and the case is set for trial in November 2022.

NAMB appears intent on unduly complicating, carving up or slowing down this case. But the rules are to be administered "to secure the just, speedy, and inexpensive determination of every action and proceeding." Federal Rule of Civil Procedure 1.

CONCLUSION

For the foregoing reasons, Defendant's motion for partial summary judgment should be deferred or denied.

September 20, 2021

Respectfully Submitted,

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