

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Number
)	1:07-CV-00953
DUKE UNIVERSITY, et al.,)	
)	
Defendants.)	

**NOTICE OF DUKE UNIVERSITY'S RESPONSE TO PLAINTIFFS'
ALLEGATION OF DESTRUCTION OF EVIDENCE**

Plaintiffs suggest in their Response in Opposition to [the Appealing] Defendants' Motion to Stay Proceedings [Dkt. No. 214] that Duke University destroyed evidence in "[p]erhaps the most striking illustration of the prejudice caused by the stay up to this point in this action" by demolishing the house located at 610 N. Buchanan Boulevard on 12 July 2010. Duke University hereby responds to this misleading characterization by stating the following:

In response to the continuing costs of maintenance and repairs to the house at 610 N. Buchanan Boulevard, and after being notified by the City of Durham Department of Neighborhood Improvement Services in April 2010 of code

violations attendant to the disrepair of the house, on 7 May 2010 the undersigned counsel for Duke University notified all parties in the instant matter, as well as in the *Evans* and *Carrington* litigations, that Duke University intended to demolish the house located at 610 N. Buchanan Boulevard shortly after 30 June 2010. Duke University invited all parties to view the house, inspect and photograph it, or otherwise preserve evidence in a manner of their choosing. Based on the schedules of those who responded, access to the house was made available on 14 June 2010. Plaintiffs' legal counsel did not file any objections to the demolition. Indeed, representatives for the parties, including attorney Robert Ekstrand, availed themselves of the invitation of Duke University and took photographs, measurements, professional videography, and/or architectural "as built" drawings of the house.

In a 16 June 2010 letter from Dixie T. Wells to Robert Ekstrand, attached hereto as Exhibit A, Duke University confirmed that it provided all parties, including counsel for Plaintiffs, with an opportunity to preserve evidence of the house and the parties did, in fact, inspect and

preserve such evidence in manners of their choosing. Thereafter, the demolition took place as planned on 12 July 2010.

Plaintiffs' motion to oppose a stay of proceedings in order to preserve evidence is misleading to the extent it relies on the demolition of the 610 N. Buchanan Boulevard house as a basis. Duke University continues to diligently follow its legal obligations to preserve relevant evidence in this case.

This the 26th day of May 2011.

/s/ J. Donald Cowan, Jr.
J. Donald Cowan, Jr.
N.C. State Bar No. 0968
don.cowan@elliswinters.com
Dixie T. Wells
N.C. State Bar No. 26816
dixie.wells@elliswinters.com
Ellis & Winters LLP
333 N. Greene Street, Suite 200
Greensboro, North Carolina 27401
Telephone: (336) 217-4193
Facsimile: (336) 217-4198

Attorneys for Defendant Duke University

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2011, I electronically filed the **Notice Of Duke University's Response To Plaintiffs' Allegation Of Destruction Of Evidence** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and to Mr. Linwood Wilson, who is also registered to use the CM/ECF system.

This 26th day of May, 2011.

/s/ J. Donald Cowan, Jr.

J. Donald Cowan, Jr.

N.C. State Bar No. 0968

Email: don.cowan@elliswinters.com

Ellis & Winters LLP

333 N. Greene Street, Suite 200

Greensboro, North Carolina 27401

Telephone: (336) 217-4193

Facsimile: (336) 217-4198

*Attorneys for Defendant Duke
University*