

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DOCKET NO. 3:09-cv-45-FDW

ANNE MARIE CLUKEY,

Plaintiff,

vs.

CITY OF CHARLOTTE, NC,

Defendant.


ORDER

THIS MATTER comes now before the Court upon Defendant’s Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 4). Having considered the serious allegations in Plaintiff’s Complaint, the Court believes that the determination of the legal sufficiency of Plaintiff’s claims should be deferred until the next dispositive stage of litigation. See Flue-Cured Tobacco Co-op. Stabilization Corp. v. U.S. EPA, 857 F. Supp. 1137, 1145 (M.D.N.C. 1994) (“This claim can be adjudicated more accurately after the parties have developed the factual record.”); Initial Scheduling Order, 3:07-MC-47 (Doc. No. 2) at 3(c)(2) (“[T]he Court may elect to defer ruling on issues raised in Rule 12 and similar motions until the close of discovery.”).

Accordingly, Defendant’s Motion to Dismiss is DENIED. The Court will revisit the merits of Plaintiff’s allegations at the conclusion of discovery, on either a Rule 12(c) motion for judgment on the pleadings or Rule 56 motion for summary judgment.

IT IS SO ORDERED.

Signed: March 16, 2009


Frank D. Whitney
United States District Judge

