

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:09-CV-465-MOC-DCK

PROSPECT CAPITAL CORPORATION, )  
individually and derivatively on behalf of )  
ESA ENVIRONMENTAL SPECIALISTS, )  
INC., )

Plaintiffs, )

v. )

ORDER

NATHAN M. BENDER, DAVID C. EPPLING, )  
JACOB COLE, JOHN M. MITCHELL, )  
SHELTON SMITH, SANDRA DEE COLE, )  
MICHAEL ANTHONY HABOWSKI, )  
DENNIS M. MOLESEVICH, TRACEY )  
HAWLEY, ADKISSON, SHERBERT & )  
ASSOCIATES, HOULIHAN SMITH, )  
and SUNTRUST BANKS, INC., )

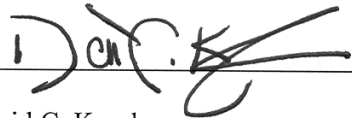
Defendants. )

THIS MATTER IS BEFORE THE COURT on Defendant Adkisson Sherbert & Associates, P.A.’s “Motion To Permit Filing Of Materials Under Seal” (Document No. 71) filed February 2, 2012. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion, and the record, the undersigned will deny the motion, without prejudice to re-file.

Defendant’s motion does not appear to indicate that the requirement of consultation has been met pursuant to Local Rule 7.1(B). In addition, the Court’s consideration of a motion to file materials under seal would be assisted by the movant’s clarification as to whether it proposes access to certain documents only be denied to the public, or also denied to other specified parties in this litigation.

**IT IS, THEREFORE, ORDERED** that Defendant Adkisson Sherbert & Associates, P.A.'s "Motion To Permit Filing Of Materials Under Seal" (Document No. 71) is **DENIED WITHOUT PREJUDICE**.

Signed: February 2, 2012



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David C. Keesler  
United States Magistrate Judge

