

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

August 20, 2015 at 2:30 p.m.

1. 13-91999-E-7 JESSE/WENDY WYLIE STATUS CONFERENCE ON TRIAL SET
14-9009
RE: COMPLAINT
FALTON CUSTOM CABINETS, INC V. 2-10-14 [[1](#)]
WYLIE

Plaintiff's Atty: James A. Fonda
Defendant's Atty: Cort V. Wiegand

Adv. Filed: 2/10/14
Answer: 3/10/14

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Notes:

Trial scheduled for August 24 & 25, 2015.

AUGUST 20, 2015 PRE-TRIAL STATUS CONFERENCE

Trial in this Adversary Proceeding is scheduled for August 24 and 25, 2015. Trial Setting Order, Dckt. 27. The court set the following dates and deadlines in the Trial Setting Order:

A. Evidence shall be submitted pursuant to Local Rule 9017-1.

B. On or before May 26, 2015, Falton Custom Cabinets, Inc. ("Plaintiff") shall lodge with the court and serve on Jesse Wylie ("Defendant") direct testimony statements and exhibits. The Plaintiff's witnesses and exhibits are stated in Attachment A to the Trial Setting Order.

C. On or before June 17, 2015, Defendant shall lodge with the court and serve on Plaintiff direct testimony statements and exhibits. The Defendant's witnesses and exhibits are stated in Attachment A to the Trial Setting Order.

D. On or before June 24, 2015, evidentiary objections and trials briefs for both parties shall be lodged with the court and served.

E. On or before July 1, 2015, oppositions to evidentiary objections shall be lodged with the court and served.

On June 25, 2015, Plaintiff filed its trial brief. Pckt. 30.

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The trial brief states that false representations had been made to deceive Plaintiff to continue to provide labor and materials.

On June 26, 2015, Defendant filed an objection to Plaintiff providing testimony and exhibits at trial as part of its case in chief, asserting that no direct testimony statements and exhibits had been served on Defendant. No direct testimony statements and exhibits have been lodged with the court by Plaintiff. The timely lodging of the direct testimony statements and exhibits are required for the presentation of such witnesses and exhibits at the time of trial.

On August 13, 2015, a representative of Plaintiff notified the court that James A. Fonda, counsel of record for Plaintiff in this Adversary Proceeding, was no longer eligible to practice law and had been arrested. The California State Bar website lists that Plaintiff's counsel was ordered not eligible to practice law effective July 27, 2015, and continuing to the present. FN.1.

FN.1. <http://members.calbar.ca.gov/fal/Member/Detail/45160>

Plaintiff was required to have lodged with the court and serve on Defendant direct testimony statements and exhibits. Failure to so lodge and serve the direct testimony statements subject the non-complying party to sanctions (L.B.R. 1001-1(g)), which includes not being permitted to present the testimony and exhibits which were not lodged with the court and served. Compliance with the Trial Scheduling Order is mandatory and essential to maintain a fair judicial process. To not enforce the order would immediately lead to gamesmanship and "sandbagging" of witnesses, testimony, and exhibits. The provisions of Local Bankruptcy Rule 9017-1 are mandatory ("shall," not "may" specified in this Rule).

All of these requirements for preparation and lodging with the court the direct testimony statements and exhibits predate Mr. Fonda being ordered ineligible to practice law. The Plaintiff's direct testimony statements had to have been lodged with the court and served no later than May 26, 2015. That was sixty-one days before Mr. Fonda was ordered ineligible to practice law. On June 25, 2015, Mr. Fonda was actively appearing in this case, filing Plaintiff's Trial Brief.

The Plaintiff being a corporation, which must be represented by counsel and ineligible to appear in *pro se*. To address the absence of counsel, the court set this emergency Pre-Trial Status Conference on August 20, 2015, to allow Plaintiff to present the court with its new counsel and status of its prosecution of the Adversary Proceeding.