

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

ROBERT COLLETTE, an individual, and R & L COLLETTE LIMITED PARTNERSHIP, an Idaho limited partnership,

Plaintiffs,

vs.

BEVAN WILDE, an individual, and INTELLECTUAL CAPITAL INVESTMENTS LLC, a Utah limited liability company,

Defendants.

Civil No. 4:09-cv-00041-EJL-REB

MEMORANDUM DECISION AND ORDER RE: PLAINTIFFS' MOTION TO LIFT STAY AND AMEND COMPLAINT CONCERNING THE SECURITIES CLAIMS PENDING AGAINST DEFENDANT BEVAN WILDE

(Docket No. 37)

Currently pending before the Court is Plaintiffs' February 21, 2012 Motion to Lift Stay and Amend Complaint Concerning the Securities Claims Pending Against Defendant Bevan Wilde (the "Motion") (Docket No. 37). Defendant Bevan Wilde's ("Defendant Wilde") response to the Motion was due on or before March 16, 2012. To date, Defendant Wilde has not responded to the Motion. Therefore, having carefully reviewed the record and otherwise being fully advised, the Court enters the following Memorandum Decision and Order:

I. DISCUSSION

On June 24, 2010, U.S. District Judge Edward J. Lodge stayed this action. *See* 6/24/10 Order (Docket No. 32) (" . . . the instant case shall be automatically **stayed** pursuant to 11 U.S.C. § 362 until the stay is lifted by the Bankruptcy Court or other motion is granted allowing the case to proceed without violating 11 U.S.C. § 362.") (emphasis in original).

MEMORANDUM DECISION AND ORDER - 1

On July 27, 2011, the United States Bankruptcy Court for the District of Utah, Central Division, entered an order granting Plaintiffs relief from the automatic stay to pursue their federal and state securities claims against Defendant Wilde in this Court, stating:

Plaintiff/Creditor Collette is GRANTED relief from the automatic stay to pursue certain claims against Defendant/debtor Wilde in a pending action in the United States District Court for the District of Idaho, or such other court where such claims will be litigated

See 7/27/11 Order, p. 2, (Docket No. 37, Att. 3).

Now, Plaintiffs seek an order (1) lifting the stay of their securities claims against Defendant Wilde; (2) allowing Plaintiffs to file an Amended Complaint, identifying an additional Plaintiff and adding federal securities claims which are the subject of the Bankruptcy Court Complaint; and (3) requiring Defendant Wilde to either submit a notice of appearance or appoint counsel by a date certain. *See* Pls.' Mem. in Supp. of Mot., pp. 3-4 (Docket No. 37, Att. 1).

There being no opposition to Plaintiffs' Motion, and otherwise finding good cause, the Court is persuaded that the stay should be lifted as to Plaintiffs' securities claims against Defendant Wilde; however, the stay should remain in place with respect to Plaintiffs' other causes of action against Defendant Wilde for breach of contract, breach of fiduciary duty, fraud, conversion, and unjust enrichment. Additionally, Plaintiffs are granted leave to file their Amended Complaint (attached as Exhibit C in support of the Motion (Docket No. 37, Att. 4)) and shall do so on or before April 30, 2012. Finally, Defendant Wilde shall have twenty-one (21) days from the date of service of Plaintiffs' Amended Complaint to either make a notice of appearance or file a written notice with the Court stating how and by whom he will be represented.

II. ORDER

Based on the foregoing, IT IS HEREBY ORDERED THAT Plaintiffs' unopposed Motion to Lift Stay and Amend Complaint Concerning the Securities Claims Pending Against Defendant Bevan Wilde (Docket No. 37) is GRANTED as follows:

1. The stay should be lifted as to Plaintiffs' securities claims against Defendant Wilde; however, the stay should remain in place with respect to Plaintiffs' other causes of action against Defendant Wilde for breach of contract, breach of fiduciary duty, fraud, conversion, and unjust enrichment.

2. Plaintiffs are granted leave to file their Amended Complaint (attached as Exhibit C in support of the Motion (Docket No. 37, Att. 4)) and shall do so on or before April 30, 2012. Service shall be effectuated pursuant to the Federal Rules of Civil Procedure.

3. Defendant Wilde shall have twenty-one (21) days from the date of service of Plaintiffs' Amended Complaint to either make a notice of appearance or file a written notice with the Court stating how and by whom he will be represented or risk entry of a default judgment on Plaintiffs' securities claims against him. **Absent such notice, Defendant Wilde risks the entry of a default judgment on Plaintiffs' securities claims against him.**



DATED: April 23, 2012

A handwritten signature in black ink, appearing to read "Ronald E. Bush". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Ronald E. Bush
U. S. Magistrate Judge