

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

PEOPLESSOUTH BANK, a)
Georgia Banking)
Corporation,)
)
Plaintiff,)

v.)

FARMER & MALONE, P.A.,)
an Alabama Legal)
Professional Association,)
)
Defendant.)

CIVIL ACTION NO.
1:11cv36-MHT
(WO)

PEOPLESSOUTH BANK, a Bank)
Chartered in Georgia,)
)
Plaintiff,)

v.)

CHARLES NORTH, an)
Individual,)
)
Defendant.)

CIVIL ACTION NO.
1:11cv176-MHT

OPINION AND ORDER

In Peoplesouth Bank v. Farmer & Malone, civil action
no. 1:11cv36-MHT ("Farmer & Malone case"), plaintiff

PeoplesSouth Bank ("PSB") is pursuing a claim against defendant Farmer & Malone under the Alabama Legal Services Liability Act, 1975 Ala. Code §§ 6-5-570 to -581. The Farmer & Malone case has been consolidated with PeoplesSouth Bank v. North, civil action no. 1:11cv176-MHT ("North case"), a related action brought by PSB against defendant Charles North. Now before the court is PSB's motion to strike any jury request as to the Farmer & Malone case. That motion will be granted.

The parties agree that Farmer & Malone failed to make a timely jury demand under Federal Rule of Civil Procedure 38(b) and therefore waived its right to a jury trial. Fed. R. Civ. P. 38(d); see also Am. Econ. Ins. Co. v. Rutledge, 2006 WL 3924786, at *1 (M.D. Ala. Dec. 20, 2006) (Thompson, J.) (finding waiver of jury trial when party failed to comply with Rule 38). The only available avenue for trial by jury is therefore Federal Rule of Civil Procedure 39(b), which states that, "the court may, on motion, order a jury trial on any issue for

which a jury might have been demanded.” (Emphasis added.) While the court’s docket sheet shows that both the Farmer & Malone and North cases are subject to jury trial and while Farmer & Malone opposes PSB’s motion to strike, no motion or request for jury trial has been docketed in the Farmer & Malone case, and Farmer & Malone has twice expressly denied making such a request, once in its reply to PSB’s motion to strike and again during an on-the-record telephone conference held on June 5, 2012. Without such a motion or request, the plain language of the federal rule precludes this court from forcing a jury trial on the parties in the Farmer & Malone case.

The North case will still be tried to a jury based on the timely demand made in North’s original pleadings.

For the foregoing reasons, it is ORDERED that plaintiff PeoplesSouth Bank’s motion to strike (doc. no.

95) is granted as to PeoplesSouth Bank v. Farmer & Malone, civil action no. 1:11cv36-MHT, and this case will proceed nonjury. PeoplesSouth Bank v. North, civil action no. 1:11cv176-MHT, will still proceed with a jury.

DONE, this the 6th day of June, 2012.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE