

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

|                         |   |                  |
|-------------------------|---|------------------|
| KFH REALTY, LLC and KIM | ) |                  |
| F. HENDERSON,           | ) |                  |
|                         | ) |                  |
| Plaintiffs,             | ) |                  |
|                         | ) | CIVIL ACTION NO. |
| v.                      | ) | 2:11cv278-MHT    |
|                         | ) | (WO)             |
| WELLS FARGO BANK, N.A., | ) |                  |
|                         | ) |                  |
| Defendant.              | ) |                  |

OPINION AND ORDER

Plaintiffs KFH Realty, LLC and Kim F. Henderson brought this action against defendant Wells Fargo Bank, N.A. asserting breach of contract and various state-law torts. Jurisdiction is proper under 28 U.S.C. § 1332 (diversity of citizenship). Now pending is Wells Fargo's motion to exclude the expert testimony of Harris Hollans. For the following reasons, that motion will be denied.

This court's scheduling order gave the plaintiffs until April 9, 2012, to serve his expert reports on Wells Fargo. On that date, they moved for an extension of the deadline. They amended that motion the following day to

indicate that Wells Fargo had no objection to the extension and went ahead and served Wells Fargo with a copy of Hollans's expert report. Nevertheless, this court denied the motion because the plaintiffs had failed to explain the reason for their last-minute request and the court's scheduling order plainly states that such requests will be denied absent unforeseen and unavoidable circumstances beyond the movant's control.

On April 12, 2012, Wells Fargo moved to exclude Hollans's expert report and to preclude him from testifying at trial. The plaintiffs responded that same day, explaining for the first time that Hollans had been working on the report for many weeks and, despite repeated assurances that it would be completed on time, needed an additional day to complete it. During an on-the-record hearing held on July 3, 2012, the plaintiffs asked this court to treat their response as a motion to reconsider the earlier denial of their motion to extend. No objections were raised.

The circumstances of this case warrant reconsideration. First, there can be no prejudice to Wells Fargo. It received Hollans's report the day after the deadline and there is still ample time to depose him and otherwise prepare for trial. Second, the explanation for the last-minute nature of the plaintiffs' motion to extend justifies a short extension of the expert deadline. Hollans has only infrequently served as an expert witness, and he appears to have misjudged the time it took to prepare a report. The plaintiffs reasonably relied on Hollans's repeated assurances that the report would be done on time and contacted both Wells Fargo and the court as soon as they realized that an extension would be necessary. Finally, the finder of fact will no doubt benefit from expert testimony on the somewhat complicated issues related to damages that this case appears to present. For all those reasons, it makes sense to permit a short extension of the time that the parties have to exchange expert reports.

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For the foregoing reasons, it is ORDERED that:

(1) Defendant Wells Fargo Bank, N.A.'s motion to exclude (doc. no. 37) is denied.

(2) Plaintiffs KFH Realty, LLC and Kim F. Henderson's response in opposition (doc. no. 38) is treated as a motion to reconsider this court's April 12, 2012, order (doc. no. 34), and said motion to reconsider is granted.

(3) The parties have seven days from the date of this order to make expert testimony disclosures and fully comply with Federal Rule of Civil Procedure 26(a)(2).

DONE, this the 5th day of July, 2012.

          /s/ Myron H. Thompson            
UNITED STATES DISTRICT JUDGE