

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

THE FEDERAL DEPOSIT INSURANCE)
CORPORATION,)
)
Plaintiff,)
)
v.) Civ. Action No. 2:13-cv-350-WHA
) (WO)
)
HARRY BROWN & CO., LLC;)
STEWARDSHIP INVESTMENTS, LLC;)
HARRY I. BROWN, JR.; and JOHN M.)
BROWN, as personal representative of the)
ESTATE OF HARRY I. BROWN, SR.,)
)
Defendants.)
)
HARRY BROWN & CO., LLC;)
STEWARDSHIP INVESTMENTS, LLC;)
HARRY I. BROWN, JR.; and JOHN M.)
BROWN, as personal representative of the)
ESTATE OF HARRY I. BROWN, SR.,)
)
Counterclaimants,)
v.)
)
THE FEDERAL DEPOSIT INSURANCE)
CORPORATION,)
)
Counterclaim-)
Defendant.)

MEMORANDUM OPINION AND ORDER

This cause is before the court on a Motion for Summary Judgment (Doc. #65), filed by the Federal Deposit Insurance Corporation.

Before the court addresses that motion, the court finds it appropriate to make some procedural observations. The pretrial in this case is set for February 19, 2015, and the trial is set for March 23, 2015 (Doc. #32). There is an outstanding Motion to Compel Discovery to be

decided by the Magistrate Judge. On February 10, 2015, the parties filed a Notice with the Magistrate Judge informing him that the parties had met and agreed to obtain discovery. (Doc. #95). The parties proposed that they report to the Magistrate Judge on the completion of agreed to discovery on March 17, 2015. The parties also filed a motion to continue the hearing on the Motion to Compel, representing that briefs had been filed with the undersigned which could eliminate all discovery disputes and asked for the hearing on the Motion to Compel to be continued until the court had ruled on dispositive issues. (Doc. #96). In response, the Magistrate Judge ordered that the Motion to Compel be held in abeyance until March 17, 2015, and that oral argument on the motion be continued generally.

Turning now to the Motion for Summary Judgment, the FDIC has moved for summary judgment on its claims against Harry Brown, Jr.; Brown & Co.; and Stewardship Investments LLC, arguing that all that is left in the case against those Defendants is a damage calculation.

In response, the Defendants have pointed to evidence that FDIC has no claim at all for the loan to Stewardship Investments, LLC because the loan has been sold.

On February 2, 2015 this court entered an Order stating that FDIC had not responded to the evidence that the Stewardship Investments, LLC loan had been sold, “which the court would consider to be a concession that summary judgment cannot be granted as to that loan,” but gave FDIC time in which to respond, if FDIC had not intended to so-concede. (Doc. #94). FDIC has filed no response within the time allowed. Therefore, summary judgment is due to be DENIED as to the Stewardship Investments, LLC loan.

The Defendants, in opposing summary judgment, also state that there are viable affirmative defenses to liability, including the statute of limitations, lack of standing, collateral and payment, offset, release, and interest only at the statutory rate.

In its February 3, 2015 Order, the court gave FDIC time in which to respond to the argument that summary judgment cannot be granted in FDIC's favor because of affirmative defenses which remain in the case. No response has been received within the time allowed. Therefore, summary judgment is due to be DENIED as to FDIC on this additional ground.

While there are issues raised in the Motion for Summary Judgment as to a Bank Owned Life Insurance policy and issues regarding the release of Harry I. Brown, Sr.'s guaranty, which remain to be and will be addressed by the court, it appears that apart from those issues, the case must proceed to trial at least as to the Stewardship Investments, LLC loan, and to the extent that the aforementioned affirmative defenses apply to all outstanding claims. As noted, this case is set on the March 23, 2015 trial term, but there is an outstanding Motion to Compel which will not be addressed until March 17, 2015, and which could result in a grant of a request for additional discovery the week before trial.

Accordingly, it is hereby ORDERED as follows:

1. The Motion for Summary is DENIED (Doc. #65) as to the claim against Stewardship Investments, LLC and on the Defendants' affirmative defenses of the statute of limitations, lack of standing, collateral and payment, offset, release, and interest only at the statutory rate.
2. In view of the timing of the discovery issues relative to the presently-set trial date, it is hereby ORDERED that the trial of this case is continued until and reset on the August 3, 2015 trial term, and the pretrial hearing scheduled for February 19, 2105 is canceled and reset on June 30, 2015.
3. The deadlines of February 19, 2015, set out in the Uniform Scheduling Order (Doc. #32), entered on February 25, 2014, are amended and reset for June 29, 2015. All

other provisions of the Uniform Scheduling Order remain unchanged.

The court will rule on the remainder of the issues pending in the Motion for Summary Judgment in a separate Order at a later date.

Done this 13th day of February, 2015.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE