

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF RICHARD BYRD,)	No. CV-F-06-900 OWW/GSA
)	
)	MEMORANDUM DECISION AND
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	COUNSEL'S REQUEST FOR
vs.)	RECONSIDERATION (Doc. 155)
)	
ATWATER RESERVE OFFICER)	
MICHAEL TEATER, et al.,)	
)	
Defendants.)	
)	
)	

Before the Court is the request for reconsideration of the Court's December 19, 2008 Order filed by Kevin Little, counsel for Plaintiff.

The December 19, 2008 Order addressed Mr. Little's request for additional time to pay \$840.00 in discovery sanctions. Mr. Little's request for additional time to comply was supported by his declaration filed under seal. The December 19, 2008 Order provided in relevant part:

Mr. Little's confidential declaration filed on December 15, 2008 describes his current

1 economic and financial condition in detail
2 and asserts that Mr. Little lacks the present
3 ability to pay the Court-ordered monetary
4 sanction. However, because Defendants have
5 not been served with Mr. Little's December
6 15, 2008 confidential declaration, they do
7 not have the ability to contest any of the
8 representations or to consent to the
9 extension of time based on those
10 representations. This confidential
11 declaration does not pertain to Mr. Little's
12 mental condition, only his financial
13 condition. In fairness to Defendants and to
14 assure that the Court and all parties are
15 fully advised of the facts and circumstances,
16 the Court defers ruling on Mr. Little's
17 request for additional time to pay the
18 monetary sanctions, pending Mr. Little
19 forthwith serving his confidential
20 declaration on Defendants under protective
21 order by which Defendants and their attorneys
22 are precluded from disclosing the
23 confidential declaration to third parties.
24 Upon service of the confidential declaration,
25 Defendants shall have until January 5, 2009
26 to conduct discovery or otherwise contest Mr.
Little's averments. Mr. Little shall
cooperate fully in any such discovery
requested by Defendants. Defendants shall
file a response to Mr. Little's confidential
declaration by January 12, 2009. All further
proceedings shall be by Order of the Court.

Mr. Little requests reconsideration that he be required to
serve the December 15, 2008 confidential declaration on counsel
for Defendants Carl Campodonica, William and Lillian Campodonica
Trust, John Julius, Garth Pecchenino, David Gresham, Hostetler
Investments, LLC, and Bellevue Road Partners, LLC. Mr. Little
complains that the Court ordered disclosure of his confidential
declaration *sua sponte*; that the Court did not consider less
restrictive alternatives, including submission of additional
financial information to the Court *in camera*; that the Order did

1 not provide any protection against publication or dissemination
2 of the confidential declaration; and that the Order gives
3 Defendants "an expedited, undefined, and seemingly unfettered
4 right to discovery into plaintiff's counsel's finances."

5 Mr. Little's request for reconsideration is DENIED.

6 Disclosure of Mr. Little's December 15, 2008 confidential
7 declaration was ordered because Defendants could not contest the
8 factual representations made by Mr. Little, depriving Defendants
9 of fundamental fairness.

10 The December 19, 2008 Order provided that disclosure of the
11 December 15, 2008 confidential declaration be made pursuant to a
12 protective order by which Defendants and their attorneys are
13 precluded from disclosing the confidential declaration to third
14 parties and may only be used in addressing the issues raised by
15 Mr. Little's request for extension of time. Mr. Little points to
16 no evidence from which it may be inferred that counsel for
17 Defendants would ignore the protective order. However, to
18 assuage Mr. Little's concerns, disclosure of the December 15,
19 2008 confidential declaration shall be made solely to Defendants'
20 counsel, Stephen E. Carroll and/or David L. Emerzian, and shall
21 not be disclosed to any third parties, including Defendants,
22 absent prior approval of this Court.

23 Although Mr. Little has placed his ability to pay the Court-
24 ordered sanction at issue, it is a needless expenditure of the
25 Court and the parties' resources to prolong this dispute. If
26 Defendants chose to do so, they may file a response to Mr.

1 Little's confidential declaration by February 17, 2009.¹ Mr.
2 Little's reply, if any, shall be filed by February 23, 2009. All
3 further proceedings shall be by Order of the Court.

4 IT IS SO ORDERED.

5 Dated: January 6, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20 ¹At the January 5, 2009 hearing, Defendants' counsel argued
21 that the Court's reliance in the December 19, 2008 Order on *Thomas*
22 *v. Gerber Productions*, 703 F.2d 353 (9th Cir.1983), that Mr.
23 Little's inability to pay the sanction excuses his compliance, was
24 misplaced. Because Mr. Little moved to dismiss this action against
25 Defendants pursuant to 28 U.S.C. § 1367(d), Defendants, citing
26 *Unioil, Inc. v. E.F. Hutton & Co., Inc.*, 809 F.2d 548 (9th
Cir.1986), argue that Mr. Little's inability to pay the Court-
ordered sanction means that Plaintiff's conditional motion to
dismiss the action must be withdrawn. The Court does not address
Defendants' contention at this juncture. If Defendants chose to
respond to Mr. Little's confidential declaration, they may submit
their arguments on this issue, not to exceed three pages. Mr.
Little's reply shall address Defendants' contention.