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United States District Court
For the Northern District of California

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

THE MITCHELL LAW GROUP,
Plaintiff,
v.
OCC VENTURE LLC,
Defendant

No. C-09-3466 MMC

**ORDER DENYING PLAINTIFF’S MOTION
TO STRIKE COUNTERCLAIMS AND
NOTICE OF RELATED CASE;
DIRECTING RONALD D. SCHIVO TO
COMPLY WITH GENERAL ORDER 45;
VACATING DECEMBER 11, 2009
HEARING**

Before the Court is plaintiff The Mitchell Law Group’s (“Mitchell”) “Motion to Strike the Counterclaims and Notice of Related Case Filed October 1, 2009 by Paul Utrecht on Behalf of OCC Venture LLC,” filed October 21, 2009. Counterclaimant OCC Venture LLC (“OCC Venture”) has filed opposition, to which plaintiff has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the parties’ respective filings, VACATES the hearing scheduled for December 11, 2009, and rules as follows.

On August 17, 2009, OCC Venture first appeared in the instant action by filing a motion to dismiss eight claims in Mitchell’s initial complaint; the motion to dismiss was signed and electronically filed by Michele Kirrance (“Kirrance”) of the law firm of LeClairRyan LLP (“LeClairRyan”). Thereafter, on October 1, 2009, OCC Venture filed its Counterclaim for Breach of Lease and Common Counts and, in addition, a Notice of

1 Related Case (“October 1, 2009 Filings”). Each of the October 1, 2009 Filings includes a
2 scanned image of the signature of Ronald D. Schivo (“Schivo”), an attorney with the law
3 firm of Zacks & Utrecht, P.C. (“Zacks & Utrecht”), and the docket reflects that said
4 documents were electronically filed by Paul F. Utrecht (“Utrecht”), another attorney with
5 Zacks & Utrecht, or a person using his User ID. In connection with the instant motion, OCC
6 Venture has advised the Court that Schivo electronically filed the October 1, 2009 Filings
7 using Utrecht’s User ID, with Utrecht’s permission. (See Schivo Decl., filed November 20,
8 2009, ¶ 4, Ex. B.)

9 Mitchell argues that the October 1, 2009 Filings should be stricken for two separate
10 reasons.

11 First, Mitchell argues, the October 1, 2009 Filings violate Rule 11(a) of the Federal
12 Rules of Civil Procedure. Rule 11(a) provides that “[e]very pleading, written motion, and
13 other paper must be signed by at least one attorney of record in the attorney’s name,” and
14 that “[t]he court must strike an unsigned paper unless the omission is promptly corrected
15 after being called to the attorney’s or party’s attention.” See Fed. R. Civ. P. 11(a). Mitchell
16 argues that the October 1, 2009 Filings are “unsigned” because, prior to the filing thereof,
17 OCC Venture had not filed a notice of appearance to indicate it was being represented by
18 Zacks & Utrecht. In light of events occurring subsequent to the above-referenced
19 circumstances, however, the Court disagrees. Specifically, on October 13, 2009, counsel
20 for Mitchell sent Utrecht an e-mail asserting that the October 1, 2009 Filings had “no legal
21 effect” in the absence of a notice of appearance or a substitution of counsel. (See Mitchell
22 Decl., filed October 21, 2009, ¶ 2 and first unnumbered exhibit thereto.) The same day,
23 Kिरrance filed an Association of Counsel, in which she stated: “LeClairRyan . . . hereby
24 associates the law firm of Zacks & Utrecht [] as another counsel for defendant/
25 counterclaimant OCC Ventures.” (See Association of Counsel, filed October 13, 2009, at
26 1:17-20.) In short, assuming, arguendo, the October 1, 2009 Filings were, on the date they
27 were filed, “unsigned” by reason of the absence, at such time, of formal notification that
28 OCC Venture was being represented by Zacks & Utrecht, such “omission” was “promptly

1 corrected” on the very date it was brought to Zacks & Utrecht’s attention. See Fed. R. Civ.
2 P. 11(a).

3 Second, Mitchell argues the October 1, 2009 Filings should be stricken because
4 they were electronically filed in a manner that violated General Order No. 45. In particular,
5 Mitchell argues, the signatory, Schivo, did not use his own User ID, but, rather, used
6 Utrecht’s User ID. General Order No. 45 provides, inter alia, that “[e]ach attorney of record
7 is obligated to become an ECF User and be assigned a user ID and password for access to
8 the system upon notification that the action is subject to ECF.”¹ See General Order No. 45,
9 § IV.A. Mitchell argues that such provision implies that if, as here, a document is signed by
10 a single attorney, that attorney must electronically file the document using his own User ID,
11 as opposed to using the User ID of another attorney. OCC Ventures, however, relies on
12 another provision of General Order No. 45, specifically, the section providing that “[a]n ECF
13 User may authorize another person to file a document using the User ID and Password of
14 the ECF User, and the ECF User shall retain full responsibility for any document so filed.”
15 See General Order No. 45, § IV.D. Because it is undisputed that Utrecht authorized Schivo
16 to use Utrecht’s User ID to electronically file the October 1, 2009 Filings, the Court declines
17 to strike the October 1, 2009 Filings on account of Schivo’s having failed to electronically
18 file them using his own User ID.

19 Accordingly, the motion to strike will be denied.

20 The Clerk of the Court has indicated, however, that Schivo is not, at present, an EFC
21 User, which, by reason of the Association of Counsel filed October 13, 2009, he is
22 obligated to become should he wish to continue to appear herein on behalf of OCC
23 Ventures. Accordingly, the Court will direct Schivo to comply with General Order No. 45 by
24 obtaining his own User ID.

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28 ¹On July 28, 2009, the date Mitchell filed the initial complaint, the Clerk designated
the action for participation in the district court’s ECF program.

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CONCLUSION

For the reasons stated above, the motion to strike is hereby DENIED.

Ronald D. Schivo is hereby DIRECTED to become an ECF User, and, specifically, to apply to the Clerk of the Court, no later than December 18, 2009, for a user ID and password, and to file, by December 18, 2009, a declaration indicating his compliance with such order.

IT IS SO ORDERED.

Dated: December 8, 2009


MAXINE M. CHESNEY
United States District Judge