

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Michael J. Watanabe**

Civil Action No. 08-cv-02402-RPM-MJW

FTR - Courtroom A-502

Date: October 19, 2009

Courtroom Deputy, Ellen E. Miller

TRUSTEES OF THE COLORADO FINISHING
TRADES HEALTH AND WELFARE FUND,
TRUSTEES OF THE COLORADO FINISHING
TRADES INSTITUTE,
TRUSTEES OF THE CARPET, LINOLEUM AND
RESILIENT TILE LAYERS VACATION TRUST
FUND, and
TRUSTEES OF THE RESILIENT FLOOR
COVERING PENSION FUND,

Ann K. O'Connell
L. Jay Labe

Plaintiff(s),

v.

ALPINE DESIGN INTERIORS, INC., a Colorado
corporation, and
ABBA BONDING, INC., an Alabama corporation, and
MORRIS C. SEARS, an individual,

Alan Molk

Defendant(s).

COURTROOM MINUTES / MINUTE ORDER

**HEARING: SHOW CAUSE HEARING / RULE 16 SCHEDULING CONFERENCE /
MOTIONS HEARING**

Court in Session: 10:00 a.m.

Court calls case. Appearances of counsel, and defendant Morris C. Sears.

Defendant Morris C. Sears orally responds to the Order to Show Cause. No statement by plaintiff.

It is ORDERED: The ORDER TO SHOW CAUSE [Docket No. 79, Filed September 21, 2009] is deemed satisfied and is discharged.

The Court has personal jurisdiction over Morris C. Sears and Mr. Sears acknowledges that a Bench Warrant may issue if he fails to appear for any future court dates.

The Court raises Abba Bonding Inc. and Morris C. Sears' Motion for Partial Summary Judgment Re: Fraud Claim [Docket No. 35] Plaintiffs' Motion to Amend Complaint (Second Amended Complaint) [Docket No. 51] and Defendants' Motion to Withdraw as Counsel of Record [Docket No 59] for argument. Arguments are heard.

It is ORDERED: Abba Bonding Inc. and Morris C. Sears' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: FRAUD CLAIM [Docket No. 35, Filed February 05, 2009] is **TAKEN UNDER ADVISEMENT**. The court will issue its written Order.

It is ORDERED: Plaintiffs' MOTION TO AMEND COMPLAINT (Second Amended Complaint) [Docket No. 51, Filed April 03, 2009] is **TAKEN UNDER ADVISEMENT**. The court will issue its written Order.

It is ORDERED: Defendants Morris C. Sears and Abba Bonding, Inc.'s MOTION TO WITHDRAW AS COUNSEL OF RECORD [Docket No. 59,] is **TAKEN UNDER ADVISEMENT**. The court will issue its written Order.

Court reminds defendant Morris C. Sears that the defendant corporations cannot appear before this court without counsel, in accordance with D.C.COLO.LCivR 83.3 D and current case law. If attorney Mr. Molk is allowed to withdraw, defendant corporations shall have counsel enter an appearance on their behalf or face possible default.

The Court notes its Report and Recommendation [Docket No 54. Filed April 9, 2009] is pending regarding Plaintiffs' Motion for Entry of Default or, in the alternative, To Compel a Responsive Pleading [Docket No. 45, Filed February 25, 2009].

It is ORDERED: Defendants shall file a Response to Plaintiffs' Motion for Entry of Default or, in the Alternative, to Compel a Responsive Pleading [Docket No. 45, Filed February 25, 2009] **on or before OCTOBER 30, 2009**.

The following will confirm the actions taken and dates set at the scheduling conference held this date in regard to the Amended Scheduling Order.

Joinder of Parties/Amendment to Pleadings: **NOVEMBER 20, 2009**

Discovery Cut-off: **MARCH 31, 2010**

It is noted there are currently outstanding discovery requests that Mr. Sears has not answered.

It is ORDERED: Defendant Morris C. Sears shall respond to the outstanding written discovery requests **on or before NOVEMBER 02, 2009**.

Dispositive Motions Deadline: **APRIL 30, 2010**

Each side shall be limited to four (4) expert witnesses, without further leave of Court.

Parties shall designate Experts **on or before JANUARY 04, 2010**

Parties shall designate Rebuttal Experts **on or before FEBRUARY 04, 2010**.

Interrogatories, Requests for Production, and Requests for Admissions shall be served on or before **FEBRUARY 25, 2010**.

Each side shall be limited to twenty-five (25) Interrogatories, twenty-five (25) Requests for Production, and twenty-five (25) Requests for Admissions, without leave of Court.

Each side shall be limited to ten (10) fact depositions, plus experts. Each deposition shall be limited to one (1) day of a maximum of seven (7) hours, absent leave of Court. All depositions, fact and expert witnesses, shall be completed **no later than MARCH 31, 2010.**

A **SETTLEMENT CONFERENCE** set for **DECEMBER 08, 2009 at 1:30 p.m.** in Courtroom A-502, Fifth Floor, Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado 80294.

Updated Confidential Settlement Statements are due to Magistrate Judge Watanabe (*not the trial judge*) via e-mail, as a PDF attachment, at Watanabe_Chambers@cod.uscourts.gov **on or before DECEMBER 03, 2009.**

In the subject line of the e-mail, counsel shall list the case number, short caption, date of the conference, and "confidential settlement statement."

All attorneys, parties and/or client representatives, including an adjustor if an insurance company is involved, with full settlement authority are ordered to be present **in person** at the settlement conference. Anyone seeking entry into a United States Courthouse is required to show a valid current photo identification. See D.C.COLO.LCivR 83.2. Failure to comply with this requirement may result in denial of entry to the courthouse.

FINAL PRETRIAL CONFERENCE set for **JUNE 29, 2010 at 9:30 a.m.**

in Courtroom A-502, Fifth floor, Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado 80294.

The proposed final pretrial order shall be filed, and then sent as a Word or WordPerfect attachment to Watanabe_Chambers@cod.uscourts.gov, **on or before JUNE 24, 2010.**

In the subject line of the e-mail, counsel shall list the case number, short caption, and "proposed final pretrial order." (See www.cod.uscourts.gov for more information.)

Valid photo identification is required to enter the courthouse. In accordance with Fed.R.Civ.P. 16(d), the conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

TRIAL: Trial Preparation Conference and jury trial will be set by Senior District Judge Richard P. Matsch at a future date. The parties anticipate an eight (8) day trial to a jury.

Parties are directed to www.cod.uscourts.gov and shall fully comply with the procedures of the judicial officer assigned to try this case on the merits.

Absent exceptional circumstances, no request for rescheduling any appearance in this court will be entertained unless a written request is made FIVE (5) business days in advance of the date of appearance.

[X] AMENDED SCHEDULING ORDER is signed and entered with interlineations **OCTOBER 19, 2009.**

Hearing concluded. **Court in recess:** 11:17 a.m. Total in-court time: 01:17

To order a transcript of this proceedings, contact Avery Woods Reporting Service.
(303) 825-6119 Toll Free 1-800-962-3345. FAX (303) 893-8305 www.AveryWoods.net

● PLEASE NOTE ●

When submitting **Confidential Settlement Statements** to Magistrate Judge Watanabe via e-mail as a PDF attachment, the parties are required to enter in the **Subject line**:

1. Case Number
2. Date of the Settlement Conference
3. Short caption
4. "Plaintiff Confidential Settlement Statement"
OR
"Defendant Confidential Settlement Statement"

*EXAMPLE: 00-cv-00123-LTB-MJW Settlement Conf. JUNE 12, 2009 at 1:30 p.m.
Fargo v. Smith Plaintiff CSS*

When submitting **Proposed Final Pretrial Order** to Magistrate Judge Watanabe via e-mail , the parties are required to enter in the **Subject line**:

1. Case Number
2. Date of the Final Pretrial Conference
3. Short caption

GENERAL INFORMATION
FOR
SETTLEMENT CONFERENCES
BEFORE
MAGISTRATE JUDGE WATANABE

Counsel and pro se litigants **shall have parties present** who shall have **full authority** to negotiate all terms and demands presented by the case, and **full authority** to enter into a settlement agreement, including an adjuster if an insurance company is involved. "Full authority" means that the person who attends the settlement conference has the complete and unfettered capacity and authority to meet or pay all terms or amounts which are demanded or sought by the other side of the case without consulting with some other person, committee or agency. If any person has limits upon the extent or amount within which he or she is authorized to settle on behalf of a party, that person does not have "full authority." **No party shall be permitted to attend the settlement conference by phone unless that party has obtained leave of Court following the filing of an appropriate motion, no later than five (5) business days prior to the settlement conference date.**

In order that productive settlement discussions can be held, the parties shall prepare and submit **two** settlement documents: one to be mailed to the other party or parties, and the other to be mailed only to the Magistrate Judge. The documents which are presented to opposing parties shall contain an overview of the case from the presenter's point of view, shall summarize the evidence which supports that side's claims, and shall present a demand or offer. These documents should be intended to persuade the clients and counsel or pro se litigant on the other side.

The document to be mailed to the Magistrate Judge shall contain copies of the above materials, but additionally shall contain any confidential comments which counsel or the pro se litigant wishes to make, any comments with regard to perceived weaknesses in the case and any comments which would be helpful to the magistrate in assisting the parties to negotiate a settlement.

ECF participants shall e-mail their Confidential Settlement Statements to chambers with a subject line *CONTAINING*: Case Number, short caption, date of conference, and "Confidential Settlement Statement" to: Watanabe_Chambers@cod.uscourts.gov, no later than five (5) business days prior to the settlement conference date or by any due date given by the Court. The Confidential Settlement Statement should be in PDF format and sent as an *attachment* to the e-mail. **Statements containing more than 15 pages should also be submitted to chambers on paper (hard copy)**, with the envelope addressed to "Magistrate Judge Watanabe Chambers, Personal and Confidential". Confidential Settlement Statements prepared by parties not represented by counsel, or without access to ECF, shall be submitted on paper to the Clerk's Office.

Anyone seeking entry into a United States Courthouse is required to show a valid current photo identification. See D.C.COLO.LCivR 83.2. Failure to comply with this requirement may result in denial of entry to the courthouse.