

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01424-DME-BNB

LOU LOU GOSS,

Plaintiff,

v.

PAUL ZUEGER,
AMERICAN DESIGN, LTD.,
CLAYTON LANE FINE ARTS LLC,
GALLERY DENVER, INC.,
SOLARIS GALLERY AT VAIL, LLC,
GROVE FINE ARTS LTD.,
ASPEN GROVE FINE ARTS, LTD.,
C ANTHONY GALLERY, INC.,
MASTERS GALLERY AT VAIL, LLC,
BRECKENRIDGE FINE ARTS LLC,
GALERIE ZUGER, LTD., and
JOHN DOES 1-20,

Defendants,

v.

THE ESTATE OF EARL V. BISS, JR.,

Third-Party Defendant.

ORDER

This matter arises on the defendants' **Motion to Strike "Third-Party Defendant's Answer and Counterclaims"** [Doc. # 84, filed 2/19/2013] (the "Motion to Strike"). The Motion to Strike, which has been referred to me, is intertwined with the third-party defendant's Opposed Motion to Set Aside Default Judgment [Doc. # 79, filed 1/28/2013] (the "Motion to Set

Aside”),¹ which is not referred. Indeed, as the third-party defendant states in its Response [Doc. # 92]:

Finally, the Estate wishes to note that, contrary to Defendants’ allegations, it did ask the Court to accept its Answer and Counterclaims in its Motion to Set Aside Default Judgment. Filing the Motion to Set Aside Default Judgment without simultaneously filing the Answer and Counterclaim would have been inefficient and disrespectful of the Court’s time.

Response [Doc. # 92] at ¶16.

The Motion to Strike is set for hearing before me this afternoon. In view of the relationship between the Motion to Set Aside and the Motion to Strike and because the Motion to Set Aside has not been referred, it is premature to consider the Motion to Strike.

IT IS ORDERED:

(1) The hearing on the Motion to Strike set for this afternoon (March 12, 2013) at 2:30 p.m. is VACATED;

(2) The Motion to Strike is TAKEN UNDER ADVISEMENT pending a determination of the Motion to Set Aside; and

(3) The parties shall file a status report within ten days of any ruling on the Motion to Set Aside.

¹The Motion to Set Aside is incorrectly captioned. Default has entered pursuant to Fed. R. Civ. P. 55(a), but default judgment pursuant to Fed. R. Civ. P. 55(b) has not been sought or entered.

Dated March 12, 2013.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge