

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02373-BNB-KLM

MAKYNNA HIGH,

Plaintiff,

v.

JIK, INC., a Colorado corporation, d/b/a Denny's Restaurant,
JUN KIM, and
DAN BYRNES,

Defendants.

**ORDER AND
ORDER TO SHOW CAUSE**

This matter arises on the **Motion to Withdraw As Attorney for the Defendants** [Doc. # 82, filed 10/18/2013] (the "Motion to Withdraw"). I held a hearing on the motion this morning and made rulings on the record, which are incorporated here. The Motion to Withdraw [Doc. # 82] is DENIED.

The plaintiff was a waitress at a Denny's restaurant. JIK, Inc., is the franchisee of the restaurant; Jun Kim is the owner of JIK; and Dan Byrnes is the district manager of JIK. The plaintiff brings five claims all stemming from a twelve day period during which she alleges that Mr. Kim made improper sexual advances and then retaliated when the plaintiff refused those advances. The case proceeded through the pleading stage, discovery, a final pretrial conference, and my order denying the defendants' motion for summary judgment. Trial is set to begin on December 2, 2013.

Approximately six weeks after I denied the defendants' motion for summary judgment and approximately six weeks before the trial is to begin, defense counsel moved to withdraw. At the hearing on the Motion to Withdraw, defense counsel admitted that his request is based on instructions from his clients to stop work on the case other than to attempt to negotiate a settlement.

The defendants are engaged in abusive litigation tactics intended to postpone the trial, disrupt the court's docket, and deprive the plaintiff of her right to present her case in a timely manner. No judicial system can function if defendants may avoid trial simply by instructing their lawyer to stop work. Under these facts, there is no basis to allow defense counsel to withdraw.

I ordered all defendants, including Mr. Kim, to be present at the hearing this morning in person. Minute Order [Doc. # 83] at ¶2. Defense counsel confirmed that Mr. Kim is aware of my order and is aware that his failure to appear could constitute a contempt of court. Nonetheless, Mr. Kim failed to appear as ordered.

IT IS ORDERED:

- (1) The Motion to Withdraw [Doc. # 82] is DENIED.
- (2) All deadlines established in my minute order [Doc. # 81] remain in effect, and the trial remains scheduled to begin on December 2, 2013.
- (3) Jun Kim shall show cause, if any there be, in writing and on or before **November 8, 2013**, why he should not be held in contempt for his failure to appear at the hearing this morning as ordered.

Dated October 28, 2013.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge