

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE RAYMOND P. MOORE**

Courtroom Deputy: Emily Seamon
Court Reporter: Tammy Hoffschildt

Date: June 25, 2014

CASE NO. 13-cv-01930-RM-MJW

Parties

DANIEL LYSYJ,
DAVID RHOADS, on behalf of themselves
and others similarly situated,
BOGDAN PETRESCU,
RICH AULICH,
JASON JACOBS,
JONATHAN PANURE,
MARC MOHR,
SARA KRUEGER,
SHANNON DOLCE,
BRENT MCDANIEL,
LONNIE ENDERLE,
ANDY MARTIN, and
DEREK SMITH,

Plaintiffs,

v.

MILNER DISTRIBUTION ALLIANCE, INC.,
d/b/a MAXX SUNGLASSES, a Colorado
corporation,
NANCY MILNER, Individually, and
RICHARD MILNER, Individually,

Defendants.

Counsel

Donna Dell'Olio

Jeffrey Morganroth
Mark Barrionuevo

COURTROOM MINUTES

MOTION HEARING

COURT IN SESSION: 1:02 p.m.

Court calls case. Appearances of counsel. Also seated at Plaintiff's table: Plaintiffs Daniel Lysyj and Shannon Dolce.

Motion Hearing called regarding Plaintiffs' Motion for Summary Judgment on Liability [32], Plaintiff Daniel Lysyj, Brent McDaniel, Sonny Berry and Rich Aulich's Motion to Lift Stay and Return Claims to the District Court [79], Defendant's Motion to Stay Proceedings and Compel Arbitration as to Opt-in Plaintiffs, Shannon Dolce and John Andrew Martin, Pursuant to Section 3 of the Federal Arbitration Act [95], Defendant's Motion to Stay Proceedings and Compel Arbitration as to Opt-in Plaintiff, Ashley Welsh, Pursuant to Section 3 of the Federal Arbitration Act [106], Defendant's Motion to Stay Proceedings and Compel Arbitration as to Opt-in Plaintiff, Jason Jacobs, Pursuant to Section 3 of the Federal Arbitration Act [107], Plaintiff's Motion for an Extension of Time to Respond to Defendant's Brief in Support of Motion to Stay Proceedings [109], Defendants' Motion to Dismiss Amended Complaint (Docket No. 115) Pursuant to Fed. R. Civ. P. 12(b)(6) and/or to Strike Immaterial Allegations Pursuant to Fed. R. Civ. P. 12(f) [125], and Plaintiffs' Motion to Supplement Plaintiffs' Motion for Summary Judgment (Doc #32) with Transcripts of Bret Milner's Deposition and Rebecca Milner's Deposition [131].

Preliminary remarks by the Court.

Court and counsel confirm that this case is no longer a class action or collective action litigation.

Court proposes denying without prejudice Plaintiffs' Motion for Summary Judgment on Liability [32].

1:06 p.m. Argument by Ms. Dell'Olio regarding Plaintiffs' Motion for Summary Judgment on Liability [32].

1:13 p.m. Argument by Mr. Morganroth regarding Plaintiffs' Motion for Summary Judgment on Liability [32].

ORDERED: Plaintiffs' Motion for Summary Judgment on Liability [32], Defendants' Motion to Dismiss Amended Complaint (Docket No. 115) Pursuant to Fed. R. Civ. P. 12(b)(6) and/or to Strike Immaterial Allegations Pursuant to Fed. R. Civ. P. 12(f) [125], and Plaintiffs' Motion to Supplement Plaintiffs' Motion for Summary Judgment (Doc #32) with Transcripts of Bret Milner's Deposition and Rebecca Milner's Deposition [131] are **DENIED WITHOUT PREJUDICE**.

1:20 p.m. Argument by Ms. Dell'Olio regarding Plaintiff Daniel Lysyj, Brent McDaniel, Sonny Berry and Rich Aulich's Motion to Lift Stay and Return Claims to the District Court [79].

1:36 p.m. Argument by Mr. Morganroth regarding Plaintiff Daniel Lysyj, Brent McDaniel, Sonny Berry and Rich Aulich's Motion to Lift Stay and Return Claims to the District Court [79].

1:49 p.m. Response by Ms. Dell'Olio.

ORDERED: Defendant's Motion to Stay Proceedings and Compel Arbitration as to Opt-in Plaintiff, Ashley Welsh, Pursuant to Section 3 of the Federal Arbitration Act [106] is **DENIED AS MOOT**.

Discussion regarding remaining parties to the case.

ORDERED: Plaintiff Daniel Lysyj, Brent McDaniel, Sonny Berry and Rich Aulich's Motion to Lift Stay and Return Claims to the District Court [79] is **DENIED AS MOOT as to Sonny Berry only**.

ORDERED: With respect to Mr. Lysyj, the Court will entertain any additional affidavit Plaintiffs wish to submit, that is focused on the fees that are now before him. Plaintiffs shall also address whether or not the Court has jurisdiction. Plaintiffs shall file this brief within 30 days of today's date. Defendants shall have 2 weeks thereafter to respond.

ORDERED: With respect to Mr. McDaniel, Mr. Aulich, Ms. Dolce, and Mr. Martin, Plaintiffs shall address what the financials are and what Plaintiffs' position is, if any, in terms of the effect of the stipulation. Plaintiffs shall file this brief within 30 days of today's date. Defendants shall have 2 weeks thereafter to respond.

ORDERED: Plaintiffs may file anything additional with respect to Mr. Jacobs within 30 days of today's date. Defendants shall have 2 weeks thereafter to file a response, if any.

2:16 p.m. Argument by Mr. Barrionuevo regarding arbitration and the fee agreement Ms. Dell'Olio had the plaintiffs sign.

COURT IN RECESS: **2:21 p.m.**

Total in court time: **1:19**

Hearing concluded