

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

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|---|---|---------------------------|
| DAVID GROCHOCINSKI, not individually |) | |
| but solely in his capacity as the Chapter 7 |) | |
| Trustee for the bankruptcy estate of |) | |
| CMGT, INC., |) | |
| |) | |
| Plaintiff, |) | No. 06 C 5486 |
| |) | |
| v. |) | Judge Virginia M. Kendall |
| |) | |
| MAYER BROWN ROWE & MAW LLP |) | |
| and RONALD B. GIVEN, |) | |
| |) | |
| Defendants. |) | |

**UNOPPOSED MOTION FOR LEAVE TO FILE OVERSIZE
SUMMARY JUDGMENT BRIEF AND LOCAL RULE 56.1(a) STATEMENT**

Defendants Mayer Brown Rowe & Maw LLP and Ronald B. Given (together, the “Defendants”), by their attorneys, Novack and Macey LLP, as and for their Unopposed Motion for Leave to File Oversize Summary Judgment Brief and Local Rule 56.1(a) Statement, state as follows:

INTRODUCTION

1. By Order dated March 31, 2009, the deadline to file a dispositive motion relating to the defenses that have at various times been referred to as the “absurd result,” “unclean hands” or “fraud on the court” defenses (the “Unclean Hands Defenses”) is June 1, 2009.

2. Defendants will be filing a summary judgment motion at that time, and hereby seek leave of Court to file: (a) a supporting legal memorandum no longer than thirty (30) pages in length; and (b) a Local Rule 56.1(a) Statement that contains no more than 150 numbered paragraphs. Plaintiff has no objection to this relief.

PROCEDURAL HISTORY

3. Defendants first raised the Unclean Hands Defenses in their motion to dismiss Plaintiff's Complaint. This Court denied the motion to dismiss, as well as Defendants' later motion to reconsider.

4. However, after considering these motions, this Court stated that the Unclean Hands Defenses are "very persuasive" and that there are various questions "lurking" about, among other things, how this case came to be and why the Trustee did not seek to vacate the underlying \$17 million Default Judgment that is at the heart of this malpractice action.

5. Accordingly, by Order dated October 30, 2007, the Court bifurcated this case to allow discovery on the Unclean Hands Defenses and, if appropriate, a dispositive motion regarding those Defenses to proceed first -- before the merits of the malpractice action.

6. Since then, the parties have engaged in substantial document and deposition discovery relating to the Unclean Hands Defenses -- including third-party discovery.

ARGUMENT

7. Defendants have now begun drafting their memorandum of law and Local Rule 56.1(a) statement that will be submitted in support of their summary judgment motion. In so doing, it has become clear that a complete discussion of the Unclean Hands Defenses and the questions identified by the Court will require an oversize legal memorandum and Local Rule 56.1(a) statement.

8. Specifically, both documents must fully address two separate lawsuits -- the underlying California Action in which the Default Judgment was entered against CMGT and this malpractice action. In addition, both documents must address the history of CMGT and the role that Spehar Capital LLC ("Spehar") played in CMGT's failure and bankruptcy. Both documents must

also address Spehar's actions in filing the underlying California Action, obtaining injunctions and the Default Judgment therein, initiating CMGT's involuntary bankruptcy based thereon, and its partnering with the Trustee to assert this malpractice action. Related to that, both documents must address the deal that Spehar cut with the Trustee to receive the lion's share of any recovery in this case. Both documents also must address the Trustee's failure to take any action to try to vacate the Default Judgment, and his pre-filing conduct in deciding to, instead, file this malpractice case -- of which Spehar would be the primary potential beneficiary.

9. In addition to a full discussion of the applicable case law, all of these events must be discussed in detail -- with citations to, and discussion of, numerous documents and deposition transcripts -- in order to fully answer the questions identified by the Court and to make clear why this case should not be allowed to go forward.

10. Counsel for Defendants contacted counsel for Plaintiff and was advised that Plaintiff has no objection to the relief sought by this Motion.

WHEREFORE, Defendants respectfully request that the Court: (a) grant this Unopposed Motion; (b) grant leave for Defendants to file a memorandum of law in support of their summary judgment motion that is no longer than thirty (30) pages in length; (c) grant leave for Defendants to file a Local Rule 56.1(a) statement containing no more than 150 numbered paragraphs; and (d) grant such other and further relief as is appropriate.

Respectfully submitted by,

MAYER BROWN ROWE & MAW LLP and
RONALD B. GIVEN

By: /s/ Stephen Novack
One Of Their Attorneys

Stephen Novack
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CERTIFICATE OF SERVICE

Stephen Novack, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Unopposed Motion for Leave to File Oversize Summary Judgment Brief and Local Rule

56.1(a) Statement to be served through the ECF system upon the following:

Edward T. Joyce
Arthur W. Aufmann
Robert D. Carroll
Edward T. Joyce & Assoc., P.C.
11 S. LaSalle St., Suite 1600
Chicago, IL 60603

on this 8th day of May, 2009.

/s/ Stephen Novack