

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

DAVID GROCHOCINSKI, not individually )  
but solely in his capacity as the Chapter 7 )  
Trustee for the bankruptcy estate of )  
CMGT, INC., )

Plaintiff, )

v. )

MAYER BROWN ROWE & MAW LLP and )  
RONALD B. GIVEN, )  
Defendants. )

No. 06 C 5486

Judge Virginia M. Kendall

Magistrate Judge Morton Denlow

**JOINT INITIAL STATUS REPORT**

Grochocinski v. Mayer Brown Rowe & Maw LLP et al  
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The parties file this Joint Initial Status Report in accordance with the order of Magistrate Judge Morton Denlow dated December 18, 2007.

1. **Brief Summary of Claims.** The Complaint asserts two counts of legal malpractice. Count I alleges that Defendants negligently represented CMGT, Inc. (“CMGT”) with respect to a dispute that arose between CMGT and Spehar Capital, LLC (“Spehar”), which was CMGT’s financial advisor, and that, as a result of Defendants’ alleged negligence, the dispute expanded into litigation that made it impossible for CMGT to remain in business. Count II alleges that Defendants were obligated to defend CMGT in the lawsuit Spehar filed in California but did not do so with the result that a default judgment (the “Default Judgment”) was entered against CMGT.

2. **Brief Statement Of Relief Sought.** Count I seeks unspecified damages for the lost value of CMGT’s business. Count II seeks to recover the \$17 million Default Judgment entered in favor of Spehar and against CMGT.

3. **Matter Referred To The Magistrate Judge.** In their motion to dismiss Plaintiff’s Complaint, Defendants argued that this case should be dismissed as a “fraud on the court” because, among other things, Spehar sued CMGT and obtained a Default Judgment (which Defendants characterize as “bogus”), used the Default Judgment to put CMGT into involuntary bankruptcy, entered into an agreement with the Trustee, who did not move to vacate the Default Judgment, to pay the costs of this suit in return for a large percentage of any recoveries, and, according to Defendants, to win the case, the Trustee must prove that Spehar’s original lawsuit against CMGT was without merit. After nearly all of their motion to dismiss was denied, Defendants moved for reconsideration.

On October 30, 2007, Judge Kendall denied Defendants’ motion to reconsider, but ordered the parties to engage in limited discovery with respect to, in Judge Kendall’s words, the “unclean

hands” issue. A copy of the October 30, 2007 transcript is attached as Exhibit 1, and a copy of Judge Kendall’s order dated October 30, 2007 is attached as Exhibit 2. (A more complete explanation of Defendants’ “fraud on the court” and “unclean hands” defense and Plaintiff’s responses thereto can be found in the briefs on Defendants’ motion to dismiss and Defendants’ motion for reconsideration.)

The Court gave the parties until March 3, 2008 to complete such discovery and permission to file motions for summary judgment at that time if they so choose. After that, remaining portions of the case, if any, would go forward. Copies of Judge Kendall’s referral order dated December 13, 2007 and her amended referral order dated December 17, 2007 are attached hereto as Exhibits 3 and 4.

On November 5, 2007, Defendants served document requests and interrogatories on Plaintiff. Plaintiff has not yet responded to those discovery requests. On November 20, 2007, Defendants issued a subpoena requesting documents on Spehar and its owner, Gary Spehar. Plaintiff moved for a protective order, arguing that some of his communications with Spehar may be protected by the work product doctrine and requesting the opportunity to review Spehar’s documents and assert such a privilege before the documents are produced to Defendants. At a hearing on December 13, 2007, Judge Kendall granted Plaintiff’s request and stated that she would refer the privilege issues to this Court for resolution. A copy of the transcript dated December 13, 2007 is attached hereto as Exhibit 5.

Judge Kendall ordered the parties to complete discovery relating to the “unclean hands” issues on or before March 3, 2008, and she ordered Plaintiff to provide a final privilege log no later than March 10, 2008. However, the parties need the document and privilege issues resolved before they

take the depositions, not afterwards. For example, it would waste resources for the parties to take the deposition of Spehar in California and then to have to repeat that deposition because documents were held back on privilege grounds that should not have been.

Counsel agreed that Plaintiff would review the Spehar documents and produce a privilege log as soon as possible so that any disagreements about privilege issues can be brought to this Court's attention before the depositions begin. Plaintiff's counsel received documents from Spehar's counsel on January 7, 2008 and hopes to have the privilege log for the Spehar documents produced in early January.

There are a number of discovery disputes that the parties are trying to work out and will bring to the Court's attention if necessary.

4. **The Status Of Briefing And Related Matters.** There are currently no motions pending. However, Spehar filed objections to Defendants' document subpoena and a court hearing on the subpoena may be necessary.

5. **Trial Before Magistrate Judge.** The parties do not consent to proceed to trial before the Magistrate.

6. **Status of Settlement Discussions.** There have not been any settlement discussions to date.

MAYER BROWN LLP and  
RONALD B. GIVEN,

DAVID GROCHOCINSKI, not individually but solely  
in his capacity as the Chapter 7 Trustee for the bankruptcy  
estate of CMGT, INC.,

By: /s/ Mitchell L. Marinello  
One Of Their Attorneys

By: /s/ Robert Carroll  
One Of His Attorneys