

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

COBRA CAPITAL, LLC, et al., etc.,)	
)	
Plaintiffs,)	
)	
v.)	No. 08 C 6884
)	
POMP'S SERVICES, INC., et al.,)	
)	
Defendants.)	


MEMORANDUM ORDER

After this morning's status hearing, at which counsel for Cobra Capital, LLC and Forest Park National Bank & Trust Co. (collectively for convenience "Cobra," treated as a singular noun) submitted a motion that (contrary to court rules) had not previously been delivered to chambers, this Court reviewed the affidavit of Steve Kochensparger. That affidavit's statements, if credited, would support a determination that Cobra either (1) had deliberately violated the intention and understanding of Pomp's Services, Inc. and Frank Pomprowitz (collectively "Pomps") in having made the loan application or (2) more generously, had simply made a mistake.

Either of those possible determinations would raise further questions. As to the former, would that equate to perpetrating a deliberate fraud? And if so, could Cobra then rely on its not having been caught because Pomps did not read and understand the documentation? And as to the latter, would that support a conclusion that there had been a mutual mistake of fact?

In any event, because the Kochensparger affidavit was contained in a supplement to Poms' partial summary judgment motion, so that Cobra did not have the opportunity to treat with it in responding to that motion, leave will be granted to Cobra to depose him promptly. What Cobra's counsel has submitted does not, however, support the other portion of the motion that seeks leave to depose Leighton Crutcher as well. Accordingly that portion of the motion is denied.

In the meantime, Cobra's counsel is to comply with the December 11 schedule set for its brief this morning. Its brief shall be based on the materials currently submitted by the parties, subject to possible supplementation when the Kochensparger deposition has been taken.



Milton I. Shadur
Senior United States District Judge

Date: December 3, 2009