

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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REPORT AND RECOMMENDATION

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LaMar Gunnarson, Kay
Gunnarson, Gene Johnson,
Mary Johnson, Catherine
Gempeler, Henry Gempeler,
Mary Gempeler, Marlowe
Senske, Ron Tobkin, Greg
Thurman, and Phossco, LLC,

Plaintiffs,

vs.

Federal Deposit Insurance
Corporation as receiver for
First Integrity Bank, N.A.;
K. Patrick Kruchten; Bruce
Carr; Marco Cat, L.L.P.; TCK,
L.L.P.; Marco Associates,
L.L.P.; and Olde Marco Suites,
L.P., d/b/a Olde Marco Inn &
Suites,

Defendants.

Civ. No. 08-5095 (DWF/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge, upon routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

It appears from the Record that this action was commenced in Minnesota State Court, by the service of a Summons and Complaint upon the Defendants, on or around July 18, 2007. On August 14, 2008, pursuant to the Stipulation of the parties, the Federal Deposit Insurance Corporation (“FDIC”) was substituted as the Defendant for First Integrity Bank, N.A. Thereafter, on September 3, 2008, the FDIC filed a Notice of Removal to this Court, see, Docket No. 1, and, on that same date, the FDIC filed its Answer. See, Docket No. 2. On September 3, 2008, the Defendants Bruce Carr, K. Patrick Kruchten, Marco Cat, L.L.P., and TCK, L.L.P., also filed their Answers.¹ See, Docket Nos. 3, 4, and 5. However, on March 10, 2009, it having appeared that twenty (20) days had passed, and that the Defendants Marco Associates, L.L.P., and Olde Marco Suites, L.P. had not filed an Answer, or otherwise responded to the

¹By Order dated September 24, 2008, the District Court, the Honorable James M. Rosenbaum presiding, stayed this action, pending the resolution of the FDIC’s claims process. See, Docket No. 11. On December 12, 2008, this action was reassigned, see, Docket No. 25, and, by Order dated March 6, 2009, the District Court, the Honorable Donovan W. Frank presiding, granted the Plaintiffs’ Motion to Lift the Stay. See, Docket No. 38.

Complaint, as required by Rule 81(c), Federal Rules of Civil Procedure, this Court issued an Order, which stated as follows:

That counsel for the Plaintiffs is directed to:

1. Notify the Defendants Marco Associates, L.L.P., and Olde Marco Suites, L.P., that they are required to serve and file an Answer or some other responsive pleading, or to move for an extension of time to do so, and that an application for entry of default is required within 10 days of such notification if no response is filed;
2. File an application for entry of default unless the required pleadings are filed within 10 days of the referenced notification; or
3. Advise the Court in writing of any good cause to the contrary.

Unless counsel for the Plaintiffs complies with this Order within twenty (20) days of this date, this case may be dismissed for lack of prosecution, as to the Defendants Marco Associates, L.L.P., and Olde Marco Suites, L.P.

The Plaintiffs have failed to abide by the terms of our Order of March 10, 2009. Since we have previously forewarned the Plaintiffs of the potential consequences in failing to abide by the Orders of this Court, we recommend that this action be dismissed as to the Defendants Marco Associates, L.L.P., and Olde Marco Suites, L.P., for failure to comply with our Order of March 10, 2009, and for lack of prosecution.

NOW THEREFORE, It is --

RECOMMENDED:

That this action be dismissed as to the Defendants Marco Associates, L.L.P. and Olde Marco Suites, L.P., for failure to comply with this Court's Order of March 10, 2009, and for lack of prosecution.

Dated: April 20, 2009

s/ Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than May 7, 2009**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than May 7, 2009**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.