

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

WELLS FARGO BANK, NATIONAL )  
ASSOCIATION, JERALD )  
LUNDGREN, STEVEN A BLOCHER, )  
and TREV E PETERSON, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
CLARK E. BETTENHAUSEN, )  
) )  
Defendant. )

4:10CV3120

MEMORANDUM AND ORDER

The defendant, Clark Bettenhausen (“Bettenhausen”) has moved to disqualify Trev Peterson as counsel for plaintiff Wells Fargo Bank, (filing no. [12](#)), and for a default judgment against plaintiffs Wells Fargo, Jerald Lundgren, and Steven A. Blocher, (filing nos. [13](#) and [16](#)).

Bettenhausen’s motions for default judgment state Wells Fargo, Jerald Lundgren, and Steven A. Blocher were properly served but failed to answer defendant’s counterclaim. The court’s record directly contradicts Bettenhausen’s assertions. Specifically, the plaintiffs filed and served their answer to Bettenhausen’s counterclaim on August 13, 2010. Filing No. [8](#). Accordingly, the motions for default judgment lack merit and will be denied.

Bettenhausen’s motion to disqualify Trev Peterson as counsel states Peterson will be called to testify at trial and has a conflict of interest in representing Wells Fargo. Bettenhausen has not, however, submitted any evidence or argument in support of his motion. He has failed to identify the topics or content of Peterson’s anticipated testimony, how that testimony may affect Wells Fargo, or the potential risk of confusion to the court if

Peterson testifies at trial. A mere blanket allegation that Peterson may be a trial witness is not a sufficient basis to disqualify him as counsel for Wells Fargo. See, e.g., [Macheca Transport Co. v. Philadelphia Indem. Co.](#), 463 F.3d 827, 833 (8th Cir. 2006). Moreover, even assuming Peterson may be a necessary trial witness on a disputed material fact, the defendant's motion is overbroad and premature. A lawyer who is likely to be a necessary witness at trial may still represent a client in the pretrial stages of the case. [Droste v. Julien](#), 477 F.3d 1030, 1035 (8th Cir. 2007).

Accordingly,

- 1) Defendant Bettenhausen's motions for default judgment, (filing nos. [13](#) and [16](#)), are denied; and
- 2) Defendant Bettenhausen's motion to disqualify Trev Peterson as counsel for plaintiff Wells Fargo Bank, (filing no. [12](#)), is denied.

DATED this 7<sup>th</sup> day of October, 2010.

BY THE COURT:

*s/ Cheryl R. Zwart* \_\_\_\_\_  
United States Magistrate Judge

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