

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHARLES BELL, *et al.*,

Plaintiffs,

v.

BIMBO BAKERIES, USA, *et al.*,

Defendants.

Case No. 2:15-CV-2410-KJD-GWF

ORDER

On June 27, 2016, the Court granted Defendants’ motion to dismiss, but granted Plaintiffs leave to file an amended complaint to cure deficiencies in the complaint. The amended complaint was due by July 11, 2016. Instead, Plaintiffs filed an ill-advised interlocutory appeal. Furthermore, on June 20, 2016, the Clerk of Court notified Plaintiffs that Defendant Grupo Bimbo, S.A.B. De C.V. had not been served the summons and complaint in compliance with Rule 4(m). That order set a deadline of July 20, 2016 to file proof of service and notified Plaintiffs that automatic dismissal would result if service had not been made. The same day that Plaintiffs filed the Notice of Appeal (#46), July 20, 2016, Plaintiffs also filed a motion to extend time to serve the summons and complaint to Grupo Bimbo. However, this was nine (9) days after the deadline to file an amended complaint. Plaintiffs had already failed to meet that deadline. The Court denied the motion without

1 prejudice on August 5, 2016, noting that case was on appeal and notifying Plaintiffs that they could
2 refile the motion after the Court of Appeals rule on Plaintiffs' interlocutory appeal.

3 The Ninth Circuit Court of Appeals dismissed Plaintiffs' appeal on December 12, 2016
4 noting that a plaintiff who has been given leave to amend may not file a notice of appeal simply
5 because he does not choose to file an amended complaint. Mandate (#52) issued on January 3, 2017
6 and Order on Mandate (#54) was entered by this Court on January 12, 2017.

7 Since that date Plaintiffs have taken no proceeding of record. They failed to file their
8 amended complaint. They failed to file a motion to extend the time to effect service pursuant to Rule
9 4. Accordingly, the complaint is dismissed in accordance with Court's prior order (#43) which
10 granted leave to file an amended complaint. However, the Court will refrain from entering final
11 judgment until Plaintiffs show cause within fourteen (14) days of the entry of this order why the
12 complaint should not be finally dismissed for failure to prosecute in accordance with Local Rule 41-1
13 and Federal Rule of Civil Procedure 41(b).

14 Accordingly, IT IS HEREBY ORDERED that Plaintiffs' complaint is dismissed for failure to
15 file an amended complaint in accordance with the Court's Order (#43);

16 IT IS FURTHER ORDERED that Plaintiffs show cause within fourteen (14) days of the entry
17 of this order why their complaint should not be finally dismissed for failure to prosecute.

18 DATED this 26th day of October 2017.

19
20
21 

22

Kent J. Dawson
23 United States District Judge
24
25
26