

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

No. 2:11-CV-44-F

BEACH MART, INC., )  
Plaintiff )  
 )  
v. )  
 )  
L&L WINGS, INC., )  
Defendant. )  
\_\_\_\_\_ )  
L&L WINGS, INC., )  
Counterclaimant )  
 )  
v. )  
 )  
BEACH MART, INC., )  
Counter Defendant. )

ORDER

This matter is before the court on the parties's responses to the court's March 11, 2014 Order [DE-201], in which the court requested the parties' positions regarding setting a hearing on Beach Mart's motion to enjoin and L&L's motion to stay. After considering the parties' submissions, the court has decided to ALLOW Beach Mart's request for oral argument on the motions. The Clerk of Court is DIRECTED to schedule and notice a hearing on the motion to enjoin [DE-191] and L&L's motion to stay [DE-198] for 10:00 a.m. on April 2, 2014. Although most of the court's April criminal and civil trials have been continued, it is still possible that a defendant may elect to proceed to trial. In that event, the court will need to begin jury selection around 1:00 p.m. on April 2 and the parties will be limited to two hours for argument. Either at the hearing or within one or two business days thereafter, the court will issue an order summarily

allowing or denying the motions. Subsequently, the court will enter an order explaining its reasons for the decisions in detail.

As a housekeeping matter, the court has decided to DENY AS MOOT the parties' pending motions for summary judgment [DE-77, -89]. Because the court has allowed Beach Mart to bring a host of substantially new claims in this case and the parties agree that the new claims will require new dispositive motions, the court sees no reason to keep the current motions for summary judgment active on the docket sheet. In the event Beach Mart's claims from its original complaint and L&L's counterclaims are reinstated, the parties may file new motions for summary judgment and jointly move to adopt the prior briefing [docket entries 78, 101, 108, 90, 91, 99, 109].<sup>1</sup> The court's decision to deny the motions for summary judgment should not be construed as a ruling on the merits of either of the motions and should in no way preclude either party from litigating those issues at a later date.

To summarize, Beach Mart's request for hearing is ALLOWED and the Clerk of Court is DIRECTED to schedule and notice a hearing on the motion to amend and motion to enjoin for April 2, 2014 at 10:00 a.m. The current motions for summary judgment [DE-77, -89] are DENIED AS MOOT.

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<sup>1</sup> In this event, the parties would not need to attach the exhibits to the motions for summary judgment or submit courtesy copies. In addition, assuming L&L files the same counterclaims in its answer to the current amended complaint [DE-184], the parties may also elect to adopt the prior summary judgment briefing solely as to those counterclaims.

SO ORDERED.

This the 17<sup>th</sup> day of March, 2014.

  
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JAMES C. FOX  
Senior United States District Judge