

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

WELLS FARGO BANK, N.A.,

Plaintiff,

:

Case No. 3:07-cv-449

-vs-

Magistrate Judge Michael R. Merz

:

LaSALLE BANK NATIONAL
ASSOCIATION,

Defendant.

DECISION AND ORDER VACATING TRIAL DATE

This case is before the Court *sua sponte*.

This case has been set for trial on August 24, 2009, since March 5, 2009 (Amendment to Scheduling Order, Doc. No. 147). At the same time the final pretrial conference was set for August 3, 2009. In their Joint Proposed Final Pretrial Order (Doc. No. 190), the parties advised the Court that twenty-seven witnesses would be presented by deposition, although some of the same witnesses were also listed as likely to appear live. In the Final Pretrial Order as filed (Doc No. 213), the Court wrote:

In their Joint Proposed Final Pretrial Order, the parties stated:

Plaintiff and Defendant will cooperate to provide the Court with a chart of all designations and objections, as well as highlighted versions of the above transcripts, to assist the Court in ruling upon the parties' objections to designated testimony. Due to the voluminous nature of the designations, the chart will be submitted to the Court on July 31, 2009, and the highlighted versions of the transcripts will be submitted to the Court the morning of August 3, 2009.

The expected cooperation broke down when LaSalle filed a chart (Doc. No. 193-2) which contained LaSalle's responses to Wells Fargo's objections. Wells Fargo moved to strike (Doc. No. 194). By notation order, the Court denied that Motion and granted Wells Fargo leave to file its responses to LaSalle's objection separately (Notation Order, 8/3/2009).

Id. at 14.

The parties provided the Court two four-inch ring binders with color-coded deposition transcripts on August 3, 2009, before the final pretrial conference. At the final pretrial conference, Wells Fargo requested and received until August 10, 2009, to file its responses to LaSalle's objections in the deposition designations. The result was Doc. No. 225-2, a 360-page document, printed on ledger-size (11" x 17") paper, containing designations and argument about those designations in sixteen parallel columns. A printed copy of that document was delivered to the undersigned in Washington, D.C., at 9:50 p.m. on Monday, August 10, 2009.

In the midst of completing the Final Pretrial Order and deciding several motions in limine, the Court had examined the deposition designations and the original chart (Doc. No. 193-2) during the week of August 3, 2009. Concerned about the scope of the task it apparently presented, the Court convened a telephone conference on August 7, 2009, at which counsel confirmed they expected the Court to rule on each of the objections made in the designations and chart prior to trial. A video consultant on retainer by Wells Fargo would then edit the video record of the depositions to create video clips of the testimony the Court had allowed. LaSalle would then "audit" that person's work product to ensure that it complied with the Court's order. The video clips would then be available to show the jury without interruption for ruling on objections.

None of the attorneys was, then or since, able to give the Court an estimate of how much time the video consultant would need to complete the approved clips after the Court finished its work. However, the Court has put that question to several people who have done video editing, each of whom described the process as tedious and time-consuming, especially if the court order did not

provide time indices for admissible testimony. So far as the Court can tell, this cannot be done from the existing transcripts.

On the evening of August 11, 2009, the Court devoted approximately two hours to reviewing the October 1, 2008, deposition of Patricia Reimann and ruling on the objections made to the designations from that deposition. Some rulings had to be deferred until the Court obtained from Wells Fargo's counsel a clarification of some language in the designations chart.

Assuming that the time spent on the first Reimann deposition is typical, completion of ruling on the designations will require sixty hours of court time. This time will have to be followed by an undetermined amount of time spent on video editing. The Court agrees with counsel that these tasks must be completed before the trial starts; otherwise the jury will be kept waiting on court rulings and video editing after they have been seated. Because the subject matter of this case is well outside the ken of the average juror, it is important to make the presentation as fluid as possible.

However, these tasks cannot be completed in time to begin trial on August 24, 2009. If counsel had advised the Court that they needed two weeks of the Court's time immediately before trial to complete these and other pretrial tasks, perhaps the Court could have arranged its schedule differently. As it is, the Court had three long-standing and immovable commitments out of town during the two weeks immediately before trial.

Accordingly, the trial date of August 24, 2009, is VACATED. Counsel shall consult with each other as to their respective availability for the projected two-week trial and communicate their availability to the Court by email as promptly as possible.

August 13, 2009.

s/ Michael R. Merz
United States Magistrate Judge