

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ARENA FOOTBALL ONE, LLC,

Plaintiff,

vs.

Case Number: 10-CV-118

ARENA2 OF ARKANSAS, LLC,

Defendant.

JOINT STATUS REPORT

JURY DEMANDED: X Yes _____ No

I. Summary of Claims:

A. Arena Football One, LLC's Claims: 1) breach of contract: Plaintiff alleges that Defendant's failed to honor its duties and obligations under a contract with Plaintiff whereby Defendant agreed to operate a professional arena football team in Little Rock, Arkansas; 2) declaratory relief : Plaintiff requests that this Court determine that Plaintiff is entitled to receive \$100,000.00 as beneficiary of a letter of credit provided by Defendant from One Banc, in Little Rock, Arkansas.

B. Arena Football One, LLC's Claims to be Dismissed: None

C. Arena2 of Arkansas, LLC's Claims: Defendant alleges as follows:

In August 2009, certain individuals approached Defendant about the formation of a new arena football league (the "League") and Defendant's interest in operating an arena football league team in Arkansas. Based on representations and promises made by or on behalf of Plaintiff, Defendant understood, among other things, that (i) there would be two tiers in the League, (ii) operating a team in the second tier of the League would be less expensive than operating a first-tier team, (iii) there would be a minimum of seven teams in the second tier, and (iv) Defendant would only be required to operate a team in the second tier. With that understanding, in September 2009, Defendant agreed to purchase a membership in the second tier of the League, which would have made Defendant a member of Arena Football One, L.L.C. At all times, Plaintiff was aware the Defendant was only interested in operating a second-tier team and would only participate in the League if there were two tiers in the League with a minimum of seven teams in the second tier. Plaintiff and Defendant and the other members of the League agreed that if less than seven second-tier teams were in the League, Defendant would not be required to operate a team in the League. Defendant paid \$5,000.00 as part of its purchase of a

membership in the second tier of the League, and Defendant delivered to Plaintiff a letter of credit in the amount of \$100,000.00 issued by One Banc. In November 2009, it was apparent that there would not be seven second tier teams in the league. Accordingly, Defendant was not required to operate a team. Additionally, the conditions required to authorize payment under the terms of the letter of credit have not been satisfied and cannot be satisfied, and the letter of credit should be canceled.

In its first cause of action, Defendant seeks rescission of its purchase of a membership in the League from Plaintiff and all related contracts on the alternative legal theories of mutual mistake, failure of consideration, unilateral mistake, no mutual consent, and no meeting of the minds. For its second cause of action, Defendant contends that the parties agreed that Defendant would not be required to operate a team if there were fewer than seven teams in the second tier of the League. By suing Defendant for its failure to operate a team in the League, Plaintiff has breached that agreement. For its third cause of action, Defendant seeks to enforce an indemnification provision contained in the Articles of Organization of Arena Football One, L.L.C. requiring Plaintiff to indemnify members of the League against liability if those members are made a party to a suit by reason of the fact that they were a member of Arena Football One, L.L.C. For its fourth cause of action Defendant alleges that Plaintiff violated the antifraud provisions of the Oklahoma Uniform Securities Act of 2004 in selling or offering to sell to Defendant a membership in Arena Football One, L.L.C. and, as a result, Defendant is entitled to recover the consideration paid for the membership in the league, plus interest, costs, and reasonable attorneys' fees.

D. Arena2 of Arkansas, LLC's Claims To Be Dismissed: None

II. Summary of Defenses:

A. Arena Football One, LLC's Defenses: Failure to plead fraud with the required specificity, unclean hands, estoppel, failure of consideration, waiver, statute of frauds.

B. Arena Football One, LLC's Defenses to be Abandoned: None.

C. Arena2 of Arkansas, LLC's Defenses: Any alleged contract is unenforceable and should be rescinded on the alternative legal theories of mutual mistake, unilateral mistake, fraud in the inducement/misrepresentation, failure of consideration, no mutual consent, and no meeting of the minds. If there was a contract, Plaintiff was the first party to materially breach the alleged contract. Plaintiff would be unjustly enriched if the alleged contract is enforced.

D. Arena2 of Arkansas, LLC's Defenses to be Abandoned: None

III. Motions Pending (Include Docket Number, Description and Date at Issue): None. However, Defendant will file a motion on July 16, 2010 under Rule 15 for leave to amend or supplement pleadings.

IV. Stipulations:

- A. **Jurisdiction Admitted:** Yes No (If no, explain.)
- B. **Venue Appropriate:** Yes No (If no, explain.)
- C. **Facts:** None
- D. **Law:** None

V. Proposed Deadlines

- A. **Parties to be added by:** November 15, 2010
- B. **Proposed discovery cutoff date** (4 months of discovery unless extended by the court for good cause): March 31, 2011
- C. **Fact Witness lists to be exchanged by:** December 15, 2010
- D. **Proposed Date for Expert Reports by Plaintiff & Defendant:**
December 15, 2010 – Expert Reports; January 15, 2011 – Rebuttal Reports

VI. Fed. R. Civ. P. 26(f) Discovery Plan

- A. **Should any changes be made to the timing, form or requirements for disclosures under Rule 26(a)?** No.
- B. **When were or will initial disclosures under Rule 26(a)(1) be made?**
July 30, 2010

Note that pursuant to Rule 26(a)(1), initial disclosures must be made within 14 days after you confer for the purpose of preparing this discovery plan. All parties are under an affirmative duty to (i) comply with the mandatory disclosure requirements, and (ii) notify the Court of any nondisclosure so that the issue can be promptly referred to a Magistrate Judge for resolution. Failure of any party to disclose information, or failure of any party to bring disclosure issues to the Court's attention in a timely manner, may result in sanctions, including prohibiting the use of that information at trial, pursuant to Rule 37(c)(1).

- C. **Should discovery be conducted in phases and/or should discovery be limited at this time to the particular subject matters or issues?** No.
- D. **Should any changes be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the Court's local rules?** Yes.

If yes, please explain: Time for completion of discovery should be enlarged due to the anticipated large number of depositions and the location of potential witnesses in cities across the country.

E. Proposed number of fact and expert depositions:

1. To be allowed for Plaintiff? 15 fact witnesses; 1 expert witness

2. To be allowed for Defendant? 15 fact witnesses; 1 expert witness

F. Is there any need for any other special discovery management orders by the Court? No.

If yes, please explain:

G. The parties are directed to Guidelines for Discovery of Electronically Stored Information on the public website at www.oknd.uscourts.gov for advice on the production of electronic information.

VII. Are Dispositive Motions Anticipated? Yes.

If yes, describe them: Plaintiff will file a Motion for Summary Judgment on its claims against Defendant and on Defendant's claims against Plaintiff. Defendant will file a motion for summary judgment against Plaintiff on Defendant's claims and on Plaintiff's claims against Defendant.

VIII. Do All Parties Consent to Trial before the Assigned Magistrate Judge?

Yes No

If yes, please attach completed Trial Consent form and indicate the month and year in which trial by the Magistrate Judge is requested. _____.

IX. Is there any matter that should be referred to the assigned Magistrate Judge for final disposition upon partial consent of all the parties pursuant to Local Rule 73.1?

Yes No

(If yes, please attach a completed Partial Consent form)

X. Settlement Plan (check one)

Settlement Conference Requested after: October 1, 2010

Describe settlement judge expertise required, if any:

Private Mediation Scheduled in

Other ADR (Explain)

ADR is not appropriate in this case (Explain)

Has a copy of the Court's ADR booklet been provided to clients as required?

Plaintiff: Yes No

Defendant: Yes No

XI. Does this case warrant special case management? No.

XII. Do the parties request that the Court hold a scheduling conference?

Yes No

If a conference is not requested, or ordered by the Court, the Court will, after receiving this report, issue a scheduling order based on the information contained in this report.

XIII. Estimated trial time: 5 days

XIV. Amendment of Pleadings: Pursuant to Rule 15, Defendant has requested Plaintiff to consent to Defendant's filing of amended or supplemental pleadings by August 13, 2010. Plaintiff has stated that it will not give consent at this time, but will make a determination on whether or not to consent after it has been advised of the name and nature of the proposed amended or supplemental pleading and has been provided with an opportunity to review the proposed amended or supplemental pleading.

Read and Approved by:

s/Adam J. Strange
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