

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS *on behalf of the estate of*
LEMINGTON HOME FOR THE AGED,

10cv800

ELECTRONICALLY FILED

Plaintiff,

v.

ARTHUR BALDWIN, ET AL.,

Defendants.

**MEMORANDUM ORDER RE: PLAINTIFF'S EMERGENCY MOTION TO REQUIRE
PRESENCE OF DEFENDANTS AT TRIAL (DOC. NO. 514)**

Presently before this Court is Plaintiff's Emergency Motion to Require Presence of Defendants at Trial. Doc. No. 14. The Motion centers on the lead Defendant, Arthur Baldwin ("Baldwin"), and his purported unavailability for some or all of the jury trial which is set to begin on February 19, 2013. Doc. No. 449 (Court's Amended Pretrial Order entered on November 27, 2012). Defendants' filed a Response to this Motion. Doc. No. 516.

Plaintiff contends that on January 31, 2013, he was informed by defense counsel that "Mr. Baldwin would not be available for Plaintiff's portion of trial due to a 'personal' trip to Turks and Caicos." Doc. No. 514, ¶ 2. According to Plaintiff, defense counsel relayed that Baldwin's trip was scheduled prior to the Court's Amended Pretrial Order being entered on November 27, 2012. Defense counsel offered Baldwin's deposition in lieu of his testimony during trial. *Id.* at ¶ 4. According to Plaintiff, on February 4, 2013, he informed defense counsel that he would require Baldwin's presence at trial. *Id.* at ¶ 7. After first stating that he would accept service of a subpoena, defense counsel later stated that he would be unable to accept service for Baldwin. *Id.* at ¶ 9.

The jury trial in this case has been set since November 27, 2012, over 70 days ago. Doc. No. 449. There have been no objections, filed with the Court, to date as to any parties' unavailability for trial. There has been no notice to the Court, either by motion or orally during the Court's various status conferences, that Baldwin, the lead Defendant, planned to be out of the country on vacation during some or all of the trial.

For both the original trial date, December 5, 2011, and the rescheduled February 19, 2013, trial date, Plaintiff has indicated that Baldwin would be called as a witness in its case-in-chief. Doc. Nos. 308, 449. Baldwin was listed as Plaintiff's second "will call" witness in its first Pretrial Statement, and he is listed as the first "will call" witness in its Amended Pretrial Statement. Doc. Nos. 322, pg. 2 and 464, 7. Therefore, Baldwin has been on notice since at least November 1, 2011, that he would be called in Plaintiff's case-in-chief, and has been on notice since November 27, 2012, that he could be called as early as February 19, 2013, the first day of trial. Id.

Furthermore, during the Court's Conference re: witness statements, on January 16, 2013, defense counsel acknowledged that Baldwin would be called in Plaintiff's case-in-chief. 12/4/12 Text Order, Doc. No. 477. Baldwin, along with other Co-Defendants was in attendance at this Conference and the January 10, 2013, status conference re: exhibits. Doc. Nos. 470, 477.

AND NOW, this 6th day of February, 2013, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's counsel, Defense Counsel for Defendant Directors, and Arthur Baldwin are ordered to personally attend a Status Conference on Thursday, February 7, 2013, at 8:45AM, before this Court, for argument/hearing on the pending Motion (Doc. No. 514);
and

2. Arthur Baldwin, or his counsel, shall deliver Baldwin's passport to the U.S. Marshals Service for the Western District of Pennsylvania, 2nd Floor, United States Courthouse, 700 Grant Street, Pittsburgh, PA, 15219, by 3:00PM, today (February 6, 2013), for delivery to the Clerk of Court. A Rule to Show Cause as to when the passport shall be returned will be argued at the Status Conference scheduled for February 7, 2013, at 8:45AM.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties
United States Marshals Service
Clerk of Court, Western District of Pennsylvania