

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BidZirk, LLC, Daniel G. Schmidt,)
III, and Jill Patterson,)
)
Plaintiffs,)
)
vs.)
)
Philip Smith,)
)
Defendant.)

Civil Action No. 6:06-0109-HMH-WMC

ORDER

This matter is before the court on the plaintiffs' motion to compel the defendant's attendance at deposition. The plaintiffs are represented by counsel, and the defendant is proceeding *pro se*. The defendant did not file a response to the motion.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02)(B)(2)(e) D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration.

On September 14, 2006, the defendant appeared, although 35 minutes late, for his deposition. He became upset during the deposition and left about an hour and a half later (m. to compel, ex. 2 at 73-75). The deposition was then noticed for October 26, 2006. The defendant called plaintiffs' counsel on October 24, 2006, to say that he could not attend on October 26th. They agreed to reschedule for November 3, 2006, but on November 2nd, the defendant left a voicemail at counsel's office stating that he would not be attending the deposition. When the plaintiffs' counsel attempted to telephone the defendant to tell him that he would be forced to file a motion to compel, the defendant hung up on counsel.

Wherefore, based upon the foregoing, the plaintiffs' motion to compel the defendant's attendance at deposition is granted. The plaintiffs' request for sanctions is denied at this time. The plaintiffs' counsel is directed to offer the defendant the choice of

three available dates for deposition. The plaintiff is ordered to appear and stay for the duration of the deposition on the chosen date.

IT IS SO ORDERED.

s/William M. Catoe
United States Magistrate Judge

December 12, 2006

Greenville, South Carolina