

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)**

JONATHAN E. PERLMAN, Esq., as court
appointed Receiver of Creative Capital
Consortium, LLC, et al.,

CASE NO. 11-80331-CIV-HURLEY/HOPKINS

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

**RECEIVER'S LIMITED OBJECTION TO DEFENDANT'S MOTION FOR
EXTENSION OF TRIAL DATE AND CASE MANAGEMENT DEADLINES AND
REQUEST FOR EXTENSION OF TIME TO FILE OBJECTION *NUNC PRO TUNC***

Plaintiff, JONATHAN E. PERLMAN, ESQ., as court appointed Receiver for Creative Capital Consortium, LLC, et al. (the "Receivership Entities"), hereby files this Limited Objection to Defendant's Motion For Extension Of Trial Date And Case Management Deadlines [DE 58] and states as follows:

1. The Receiver agrees with the Defendant agree that certain of the Case Management Deadlines in this case should be extended to allow the parties sufficient time to conduct discovery and complete all necessary pretrial activity so that the parties may be fully prepared in the event of trial.

2. However, the Defendant's request to extend the trial date for 180 days is unwarranted in light of the pretrial progress to date, and will only result in needless delay. Instead, the Receiver requests only that the deadline for filing summary judgment motions and the deadline for mediation each be extended for 30 days, respectively.

3. As correctly stated by the Defendant, this Court only recently (on December 22, 2011) issued its Order Granting in Part and Denying in Part the Defendant's Motion to Dismiss

(the "Dismissal Opinion", [DE 51].) However, there is nothing in the Court's order which necessitates a six-month delay of the trial in this case. Instead, the Dismissal Opinion resolved nearly all controverted pleading issues, leaving subject to re-pleading only certain narrow issues related to the Receiver's FUFTA claims. On January 9, 2012, the Receiver filed an amended complaint addressing the FUFTA issues raised by the Court. Even if the Defendant moves again to dismiss the FUFTA claims, the pleadings in this can be finalized in without affecting the presently pending April 2012 trial date.

4. The Receiver has proceeded diligently with discovery in this case notwithstanding that the pleadings were subject to clarification by the Court until December of 2011. Detailed document requests have been served upon the Defendant, the responses to which have been duly received. In January of 2012, the Receiver conducted the depositions of certain of the Defendants material witness. Further depositions of the Defendant's witnesses are scheduled during the first week of February of 2012. The Receiver does not anticipate that any additional fact depositions will be necessary after the completion of the "next round" of deposition in February. However, to the extent the testimony of the pending deponents reveals the need for one or two more depositions, the Receiver has sufficient time to complete them within the confines of the present trial schedule.

5. To date, the Defendant has served document requests upon Receiver, to which the Receiver has duly responded, but has not noticed or requested any fact depositions, or otherwise embarked upon any other discovery. However, the Receiver stands ready to cooperate with the Defendant with respect to any further reasonable additional written discovery or deposition requests. The Receiver notes that the Defendant was served with the Receiver's initial

disclosures in this case on September 19, 2011¹, which identified in detail those individuals having knowledge of the claims this case.

6. The Defendant does not state its anticipation of, or the need for, any unusual discovery which would warrant a six month extension of the trial date. Instead, the Defendant merely points out that it *may* need more time for depositions based upon further analysis of the Receiver's documents. The Defendant's *laissez-faire* approach to discovery is insufficient reason for its request for an exorbitantly lengthy extension of the trial date, and the Defendant raises no other arguments regarding why the efficient and orderly process of this case ought be further retarded.

7. Due to miscommunication among the Receiver's counsel and staff, the Receiver notes that despite its diligent efforts, this Limited Objection is being filed one day later than the January 26, 2012 filing deadline. The Receiver therefore requests that this Court accept the filing of this Limited Objection by granting the Receiver an extension of time for filing *nunc pro tunc* to January 27, 2012. The Receiver notes that the Defendant is not prejudiced in any manner by the one-day delay.

WHEREFORE, the Receiver requests that the Defendant's Motion For Extension Of Trial Date And Case Management Deadline (for 180 days) be denied, and that instead, that deadlines for the filing of summary judgment and for the completion of mediation be extended by 30 days, respectively.

¹ The Defendant has never filed initial disclosures in this case despite the Receiver's requests.

Respectfully submitted this 27th day of January, 2012.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on January 27, 2012, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and is also being served on all counsel of record listed in the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: s/David P. Lemoie, Esq.

David P. Lemoie

SERVICE LIST

**Jonathan E. Perlman, Esq. v. Wells Fargo Bank, N.A.
Case No. 10-81612-CIV-HURLEY/HOPKINS
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