

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

CASE NO. 09-80480-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN, Esq., as court appointed Receiver of Creative Capital Consortium, LLC, et al., Plaintiff, v. DOROTHY DELISFORT-THEODULE Defendant.	
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RECEIVER'S OBJECTION TO DEFENDANT'S MOTION TO CONTINUE TRIAL

The Plaintiff, Jonathan E. Perlman, Esq., the court-appointed Receiver (the "Receiver") of Creative Capital Consortium, LLC and affiliates files his objection to the Defendant's Motion to Continue Trial (the "Motion") filed on October 23, 2010 which incorrectly states that the Motion is *unopposed* when, in fact, undersigned counsel has advised counsel for the Defendant that the Receiver opposes any further continuance of this Trial. [DE 76]. The Receiver, by and through undersigned counsel, requests that this Court deny the Motion and in support thereof states as follows:

1. This matter is specially set for trial commencing Monday, October 25, 2010.
2. On October 23, 2010, the Saturday prior to commencement of trial, counsel for the Defendant has filed a Motion to Continue Trial which *incorrectly* states that it is an unopposed motion.

3. Counsel for the Receiver has advised counsel for Defendant that the Plaintiff opposes a continuance of this matter. This representation has been made both verbally, after the taking of a deposition in this matter on October 22, 2010, and, in writing, by e-mail between counsel dated October 15, 2010. A copy of the e-mail is attached hereto as Exhibit 'A'.

4. The Receiver has incurred expenses preparing for trial including but not limited to travel and lodging expenses for counsel and for trial witnesses.

5. The Receiver and his counsel have diligently prepared for this trial and are ready to proceed on Monday morning, October 25, 2010. Any delay in proceeding with the trial would be prejudicial to the Receiver and financially detrimental to the Receivership Estate.

WHEREFORE, the Receiver, respectfully requests that this Court deny Defendant's Motion to Continue Trial.

Dated: October 24, 2010.

GENOVESE JOBLOVE & BATTISTA,
P.A.

Attorneys for the Plaintiff
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100 S.E. Second Street, Suite 4400
Miami, Florida 33131

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Facsimile: (305) 349-2310

By: /s/ David P. Lemoie

DAVID C. CIMO

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DAVID P. LEMOIE

Florida Bar No. 188311

dlemoie@gjb-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 24, 2010, 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.

/s/ David P. Lemoie
David P. Lemoie, Esq.

SERVICE LIST

**JONATHAN E. PERLMAN, ESQ., as court appointed Receiver of Creative Capital Consortium, LLC, et al. v. DOROTHY DELISFORT THEODULE, et al.
CASE NO. 09-80480-CIV-HURLEY/HOPKINS
United States District Court, Southern District of Florida**

Michael Garcia Petit, Esq.
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Attorneys for Dorothy Delisfort-Theodule
Via CM/ECF

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174 Trinity Avenue
Atlanta, GA 30303
Allanalberga@aol.com
Attorney for Dorothy Delisfort-Theodule
Via Electronic mail

EXHIBIT A

Sanchez, David

From: Lemoie, David
Sent: Fri 10/15/2010 1:32 PM
To: 'allanalberga@aol.com'
Subject: RE: Delisfort trial and deposition

Allan:

I am certainly sympathetic to your family issues and hope the best for a full and speedy recovery for your daughter. With that being said, the Receiver cannot agree to a continuance of the trial date. If you plan to file a motion for continuance, you should be aware that the court granted your motion to appear pro hac vice on October 5th. Therefore, you now have the authority to file the motion.

Regards

David

GENOVESE
JOBLOVE &
BATTISTA
PA.
Attorneys at Law

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Miami, Florida 33131
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Direct: (305) 349-2311
Facsimile: (305) 349-2310
E-mail: dlemoie@gjb-law.com
www.gjb-law.com

-----Original Message-----

From: allanalberga@aol.com [<mailto:allanalberga@aol.com>]
Sent: Friday, October 15, 2010 12:21 PM
To: Lemoie, David
Subject: Re: Delisfort trial and deposition

David,

I face a dilemma with this case.

Since requesting a 23rd date for our trial, I have received 4 notices from local courts for hearings of one kind or another between the 25th and 29th. A couple of them are resets so obtaining continuances are unlikely.

I conferred with Dorothy two days ago, and she is determined to explain to the court that she had nothing to do with anything illegal. I see some grounds for her position, and am willing to defend her, given some more time.

As you should know by now, I had a motion for a pro hac admission, but I have not yet received an order of approval.

However, I am not yet ready to try the matter for several personal reasons. In addition to the above court demands, I have my two daughters visiting and they are making additional demands/requests for travel to different points in the country. One of them is recovering from cancer treatment, and I feel obliged to do what I can while she is here. I cannot prepare for any trial of this kind in such a frame of mind.

Add to this are the advance arrangements Dorothy and I have to make for travel. We do not both share the same concerns.

In closing, I am asking for you to agree to a continuance off this calendar. If you do agree, you could represent to the court that it is my request, rather than yours.

Let me have your response early so that I can turn my attention elsewhere.

10/24/2010

Allan

-----Original Message-----

From: Lemoie, David <Dlemoie@gjb-law.com>
To: allanalberga@aol.com
Sent: Wed, Oct 6, 2010 3:23 pm
Subject: RE: Delisfort trial and deposition

Allan:

I will send a deposition notice to you for 5:30 PM on October 21st. Deposition to be conducted via telephone at your office.

We did previously serve our witness list upon Ms. Delisfort. We are happy to provide you with another copy.

Regarding settlement, given my client's frame of mind and the lack of progress concerning our past settlement discussions, I think it would advance our negotiations substantially if Ms. Delisfort makes a good faith offer as opposed to my providing you with a target "number". We can proceed from there if Ms. Delisfort is truly interested in an out of court resolution.

Best regards

David

-----Original Message-----

From: allanalberga@aol.com [<mailto:allanalberga@aol.com>]
Sent: Wednesday, October 06, 2010 10:04 AM
To: Lemoie, David
Subject: Re: Delisfort trial and deposition

David,

Dorothy suggests the 21st at 5:30 on my office telephone.
Did you ever send her a list of your witnesses?
What figure does your client find digestible for a settlement?

Allan

-----Original Message-----

From: Lemoie, David <Dlemoie@gjb-law.com>
To: allanalberga@aol.com
Cc: Contreras-Martinez, Carmen <ccontreras@gjb-law.com>; Cimo, David C. <DCTemp@gjb-law.com>; Perlman, Jonathan <JPerlman@gjb-law.com>
Sent: Tue, Oct 5, 2010 2:08 pm
Subject: Delisfort trial and deposition

Allan:

As we discussed previously, I intend to depose Ms. Delisfort prior to the October 25 trial date. In order to timely receive a transcript of the deposition for use at trial, we should plan to have the deposition completed no later than Thursday, October 21.

I expect that the deposition will last no longer than 2 hours. I am available on the following dates to conduct the deposition, via telephone at your convenience:

10/24/2010

October 8, 15, 19 , 20 and 21.

Please respond this week with potential available dates.

We spent some time discussing settlement yesterday and I want to reiterate my position that given the order on partial summary judgment it appears very unlikely that Ms. Delisfort will be successful in defending against the Receiver's fraudulent transfer claims. We would like for her to consider confessing to judgment in an agreed amount to avoid the costs of trial. I will gladly present any reasonable settlement offer made by Ms. Delisfort for consideration to the Receiver. I remain amenable to further discussions in this regard.

Regards

David Lemoie

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