



Bank of America, N.A. v. Palm Hills Homeowners Association, Inc. et al

2018 | Cited 0 times | D. Nevada | May 1, 2018

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA BANK OF AMERICA, N.A.

Plaintiff, v. PALM HILLS HOMEOWNERS ASSOCIATION, INC.; VERN ELMER; and NEVADA ASSOCIATION SERVICES, INC.

Defendants.

VERN ELMER, an individual,

Counterclaimant, vs. BANK OF AMERICA, N.A., a National Association; DOE INDIVIDUALS I-X; and ROE CORPORATIONS I-X, inclusive.

Counterdefendants.

Case No.: 2:16-cv-00614-APG-GWF

[PROPOSED] STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES



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[THIRD REQUEST]

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[PROPOSED] STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES

[THIRD REQUEST]

Pursuant to Local Rules IA 6-1 and 26-4, Plaintiff/Counterdefendant BANK OF AMERICA, N.A. ("BANA"), by and through its attorneys Gerrard Cox Larsen; Defendant PALM HILLS HOMEOWNERS ASSOCIATION, INC., ("Palm Hills HOA") by and through its attorneys Boyack Orme & Anthony; Defendant NEVADA ASSOCIATION SERVICES, INC. ("NAS"), by and thorough its attorney, Brandon E. Wood, Esq.; and Defendant/Counterclaimant VERN ELMER ("Elmer"), by and through his attorneys, Ayon Law PLLC (collectively, the "Parties"); hereby stipulate and agree, subject to approval by the Court, to extend the discovery deadline set out in the Stipulation and Order to Extend Discovery Deadlines [Second Request] dated February 9, 2018 [ECF No. 55], as further set forth herein.

I. INTRODUCTION AND RELEVANT PROCEDURAL HISTORY On March 18, 2016, BANA filed its Complaint in this case. [ECF No. 1]. On April 7, 2016, Palm Hills HOA filed its Answer. [ECF No. 9]. On April 25, 2016, NAS filed its Answer. [ECF No. 14]. On April 22, 2016, BANA served its Initial Disclosures of Witness and Documents pursuant to Fed. R. Civ. P. 26(A)(1).

On May 17, the Parties submitted their proposed Joint Discovery Plan and Scheduling Order, and on May 18, 2016, the Court entered its Order approving the same. [ECF No. 23].

On June 20, 2016, Elmer filed his Answer and a Counterclaim against BANA. [ECF No. 31].

On July 27, 2016, BANA filed its Answer to the Counterclaim. [ECF No. 35]. On August 19, 2016, the Court, sua sponte, entered its Order Temporarily Staying the Case, pending the Ninth Circuit issuing a mandate in Bourne Valley Court Tr. v. Wells Fargo Bank, NA (the "Stay Order") [ECF No. 36]. ////

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On December 14, 2016, the Ninth Circuit issued its mandate in Bourne Valley. And on June 26, 2017, the United States Supreme Court denied the Bourne Valley petition to the United States Supreme Court for a writ of certiorari.

On July 27, 2017, BANA filed its Motion to Lift Stay, based on the Bourne Valley appellate court rulings. [ECF No. 44].

On September 6, 2017, this Court entered its Order Granting Motion to Lift Stay. [ECF No. 46] (the “Order Lifting Stay”). The Court’s Order Lifting Stay provides that the “[t]he stay in this case is lifted for all purposes”.

On October 16, 2017, the Court entered a Stipulation and Order to Extend Discovery Deadlines [First Request] [ECF No. 48] to reopen discovery following the Order Lifting Stay and set a new date for the close of discovery of April 9, 2018. The parties have been diligently engaged in discovery and nearly all discovery has been completed. BANA has requested an extension of discovery to allow for the answering of Elmer’s discovery requests and to allow Elmer any necessary additional discovery arising from BANA’s responses. The Parties therefore now propose extending discovery to June 27, 2018.

II. STATEMENT OF AUTHORITIES AND PROPOSED AMENDED DISCOVERY DEADLINES A. LR 26-4 - EXTENSION OF SCHEDULED DEADLINES

LR 26-4 governs the extension of discovery deadlines, and provides in relevant part: A motion or stipulation to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR IA 6-1, be supported by a showing of good cause for the extension. A motion or stipulation to extend a deadline set forth in a discovery plan must be received by the court no later than 21 days before the expiration of the subject deadline. A request made within 21 days of the subject deadline must be supported by a showing of good cause. A request made after the expiration of the subject deadline will not be granted unless the movant also demonstrates that the failure to act was the result of excusable neglect. A motion or stipulation to extend a discovery deadline or to reopen discovery must include:

(a) A statement specifying the discovery completed; (b) A specific description of the discovery that remains to be completed; (c) The reasons why the deadline was not satisfied or the remaining discovery was



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not completed within the time limits set by the discovery plan; and (d) A proposed schedule for completing all remaining discovery.

(emphasis added). B. STATEMENT PURSUANT TO LR 26-4:

1. Completed Discovery.

To date, the following discovery has been completed in this case: (i). BANA's initial disclosures (served on April 22, 2016). (ii). Palm Hills HOA's initial disclosures (served on May 12, 2016). (iii). BANA served its Initial Expert Disclosure (November 7, 2016). (iv). BANA served discovery requests on Nevada Association Services, Inc. and Vern Elmer (December 13, 2017) which requests were then responded to (February 23, 2018 and March 26, 2018). (v). Elmer's Initial Disclosures (served on March 19, 2018). (vi). Elmer's Supplemental Disclosures (served on April 2, 2018). (vii). Palm Hills HOA's initial disclosures (served on May 12, 2016). (viii). The deposition of Michael Short has been taken (March 26, 2018). (ix). Vern Elmer served discovery requests on BANA (March 28, 2016). (x). The deposition of Vern Elmer has been taken (March 26, 2018). (xi). The deposition of Palm Hills HOA has been taken (April 6, 2018). (xii). The deposition of Nevada Association Services has been taken (April 9, 2018). 2. Discovery That Remains to Be Completed.

BANA has requested an extension of discovery to allow for the answering of Elmer's discovery requests and to allow Elmer any necessary additional discovery arising from BANA's responses.

3. Reasons Why The Discovery Deadline Was Not Satisfied.

BANA has had some difficulty in gathering information for its discovery responses and in obtaining verification for interrogatories. The Parties all seek to allow Elmer a fair

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opportunity to conduct further discovery following responses to his discovery requests.

4. Proposed Schedule For Completing All Remaining Discovery.

LR 26-1(b)(1) provides that “[u]nless the court orders otherwise, discovery periods longer than 180 days from the date the first defendant answers or appears will require special scheduling review”.

The Parties STIPULATE and AGREE to amend and extend the discovery dates set forth in the Stipulation and Order to Extend Discovery Deadlines [Second Request] dated February 9, 2018 [ECF No. 55], according to the following schedule:

Pre-Discovery Disclosures. No change - Friday, October 20, 2017. Discovery Cut-Off Date. The discovery cut-off date shall be extended to Wednesday, June 27, 2018.

Amending Pleadings and Adding Parties. No change - Tuesday, January 9, 2018. FRCP 26(a)(2) Disclosures of Experts. No change - Thursday, February 8, 2018, Rebuttals - Monday, March 12, 2018.

Interim Status Report. No change - Monday, February 26, 2018. Dispositive Motions. The Parties shall have until Monday, July 30, 2018, to file dispositive motions, the Monday after thirty-one (31) days after the discovery cut-off. In the event the discovery cut-off is extended, the deadlines for filing dispositive motions automatically will be extended until thirty (30) days after the new discovery cut-off date.

Pre-Trial Order. The Parties will prepare a Consolidated Pre-Trial Order on or before Wednesday, August 29, 2018, which is not more than thirty (30) days after the date set for filing dispositive motions in the case. This deadline will be suspended if dispositive motions are timely filed until thirty (30) days after the decision of the dispositive motions or until further order of the Court. The disclosure required by FRCP Rule 26(a)(3) and objections thereto, shall be made in the pretrial order.

Court Conferences. The Parties are not requesting a conference with the Court regarding this proposed Stipulation and Order to Extend Discovery Deadlines. If the Court has questions



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regarding the dates proposed by the Parties, the Parties request a conference with the Court.

Extensions or Modification of the Discovery Plan and Scheduling Order. LR 26-4 governs modifications or extensions of this Discovery Plan and Scheduling Order. Any stipulation or motion to extend a deadline set forth in the discovery plan and scheduling order must be made not later than twenty-one (21) days before the subject deadline. Any stipulation or motion to extend the discovery cut-off period must be made no later than Wednesday, June 6, 2018, twenty-one (21) days before the discovery cut-off date.

DATED this 30 th

day of April, 2018. GERRARD COX LARSEN /s/ Douglas D. Gerrard, Esq. Douglas D. Gerrard, Esq. Nevada Bar No. 4613 Nathan R. Henderson, Esq. Nevada Bar No. 13145 2450 St. Rose Parkway, Suite 200 Henderson, NV 89074 Attorneys for Plaintiff / Counterdefendant Bank of America, N.A.

NEVADA ASSOCIATION SERVICES, INC. /s/ Brandon E. Wood, Esq. Brandon E. Wood, Esq. Nevada Bar No. 12900 6224 West Desert Inn Road Las Vegas, Nevada 89146 Attorney for Defendant Nevada Association Services, Inc.

BOYACK ORME & TAYLOR /s/ Colli McKiever, Esq. Edward D. Boyack, Esq. Nevada Bar No. 5229 Colli C. McKiever, Esq. Nevada Bar No. 13724 7432 W. Sahara Ave. Las Vegas, Nevada 89117 Attorney for Defendant Palm Hills Homeowners Association

AYON LAW, PLLC

/s/ Luis A. Ayon, Esq. Luis A. Ayon, Esq. Nevada Bar No. 9752 9205 W. Russell Road Building 3, Suite 240 Las Vegas, Nevada 89148 Attorneys for Defendant/Counterclaimant, Vern Elmer

ORDER IT IS SO ORDERED.

_____ JUDGE

DATED: _____



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UNITED STATES MAGISTRATE JUDGE

5-1-2018

