

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

LINDA CASS, et al.,)	
)	
Plaintiff(s),)	
)	
vs.)	Case No. CIV-13-483-SPS
)	
BALBOA CAPITAL,)	
)	
Defendant(s).)	

JOINT STATUS REPORT

Pursuant to Federal Rules of Civil Procedure 26(f), a meeting was held on April 3, 2014, via telephone. Plaintiff appeared by counsel, Brian R. McLaughlin and defendant appeared by counsel, Jason M. Kreth.

1. Summary of Claims: Conversion, Promissory Estoppel, Fraud, Intentional Infliction of Emotional Distress, Tortious Interference (prospective and contractual), Negligence, Defamation, Willful Deceit, and Malicious Wrong all arising out of actions of Defendant in regard to a business owned by Plaintiffs.

2. Summary of Defenses: Venue is not proper in Oklahoma. Linda Cass ("Cass") and Nicole Fitzer ("Fitzer") lack standing to bring the claims in this case. Plaintiffs have failed to state claims upon which relief can be granted for all causes of action except for promissory estoppel and fraud. Defendants deny that they caused any actionable harm to the Plaintiffs as they, at all times, acted within the bounds of the agreements between the parties.

3. Stipulations:

A. Jurisdiction Admitted: X Yes _____ No Explain:

B. Venue appropriate: _____ Yes X No Explain:

Defendants have filed a Motion to Dismiss, alleging that venue is not proper in Oklahoma and these claims should be brought in California where related claims are already pending. Plaintiffs believe that it is proper in Oklahoma.

C. Facts: 1.) Cass and Fitzer are the owners of Grandma's Grocery, Inc. ("GGI"). 2.) GGI and Balboa Capital Corporation ("Balboa") entered into an Equipment Financing Agreement (the "Agreement") to fund the purchase of equipment for a Subway restaurant to be placed in a Grandma's Grocery location in Quiton, Oklahoma. 3.) The principal amount of the Agreement was \$50,770.96. 4.)

Cass and Fitzer executed Personal Guaranties (the "Guaranties") of the Agreement. 5.) Balboa subsequently repossessed the equipment securing the Agreement. 6.) On July 12, 2012, Balboa filed a collection action in Orange County, California, seeking to collect under the Agreement and Guaranties. This action is still pending. 7.) On August 9, 2012, Plaintiffs filed a virtually identical case to this in the District Court of Pittsburg County, State of Oklahoma, entitled *Linda Cass, et al. v. Balboa Capital*, Case No. CJ-2012-00208 (the "Pittsburg Suit"). 8.) On September 4, 2012, Balboa removed the Pittsburg Suit to the United States District Court for the Eastern District of Oklahoma. 9.) On September 12, 2012, Balboa moved to dismiss the case for improper venue, lack of standing and failure to state a claim. 10.) On October 26, 2012, the Court entered an order granting Plaintiffs' request to voluntarily dismiss their claims. 11.) On September 18, 2013, Cass and Fitzer filed Chapter 7 Bankruptcy in the Bankruptcy Court for the Eastern District of Oklahoma. 12.) On October 24, 2013, Plaintiffs filed the instant suit. 13.) On January 8, 2014, Cass and Fitzer received their discharges under 11 U.S.C. § 727.

D. Law: _____

4. Discovery Plan: The parties jointly propose to the Court the following discovery plan:
(Use separate paragraphs or subparagraphs as necessary if parties disagree.)

Discovery will be needed on the following subjects: Whether Balboa was negligent in sending notices of payment to Plaintiffs; whether Balboa was negligent in taking payments from an improper account; whether Balboa damaged GGI's reputation; whether Balboa converted Plaintiffs' business; whether Balboa is estopped from asserting that Plaintiffs failed to make required payments; whether representatives of Balboa made fraudulent representations to Plaintiffs; whether Plaintiffs have suffered any emotional distress intentionally caused by Balboa; whether Balboa interfered with any contracts of the Plaintiffs; whether Balboa willfully deceived the Plaintiffs; whether Balboa committed the tort of "malicious wrong;" and the amount of Plaintiffs' alleged damages.

All discovery commenced in time to be completed by November 24, 2014.

Maximum of 25 interrogatories by each party to any other party. Responses due 30 days after service.

Maximum of 25 requests for admission by each party to any other party. Responses due 30 days after service.

Maximum of 10 depositions by plaintiff(s) and 10 by defendant(s).

Each deposition limited to maximum of 8 hours unless extended by agreement of parties.

5. All parties consent to trial before Magistrate Judge?
 X Yes _____ No (If yes is marked you
must sign and file a consent form)

6. Settlement Plan:

Settlement Conference requested after July 1, 2014.

7. Estimated Litigation Costs:

A. Plaintiff

(1) Through discovery cutoff	\$25,000.00
(2) Discovery cutoff through trial	\$25,000.00
(3) Appeal	\$25,000.00
Total	\$75,000.00

B. Defendant

(1) Through discovery cutoff	\$60,000.00
(2) Discovery cutoff through trial	\$40,000.00
(3) Appeal	\$25,000.00
Total	\$125,000.00

GRAND TOTAL (All Parties) \$200,000.00

In excess of \$75,000.00 Actual amount in controversy
(may be expressed in a dollar range)

APPROVED:

Attorney for Plaintiff

Attorney for Defendant