

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-1045-JTM

**Bank of America Account Number
005041639105, Styled as Alajah Fitchpatrick
in the approx. amount of \$10,416.58 more or
less, et al.,**

Defendants.

MEMORANDUM AND ORDER

On June 24, 2008, the court conducted a hearing on pending motions in this case with the parties. Plaintiff appeared through counsel Annette Gurney and Colin Wood. Claimants Shatanya L. Fitchpatrick, Emma J. Douglas and ABS Rentals and Investments, Inc. appeared through counsel James McIntyre, and Shatanya L. Fitchpatrick also appeared in person.

Presently before the Court are the following motions and responses:

1. Motion of James T. McIntyre to withdraw as counsel for Byron Fitchpatrick. (Doc. 138);
2. Plaintiff's Motion for Interlocutory Sale of Defendants 9 and 10 (Doc. 130); responses of Bank of America, N.A., lienholder on Defendant No. 10, and Deutsche Bank f/k/a Bankers Trust Company, lienholder on Defendant No. 9 (Doc. 134); and Claimants' Response to Motion for Immediate Sale (Doc. 139);

3. Motion of James T. McIntyre to withdraw as counsel for all remaining Claimants including specifically Shatanya L. Fitchpatrick a/k/a Tonya Douglas, a/k/a Shatanya L. Douglas, a/k/a Tonya Douglas as mother and natural guardian of Alajah B. Fitchpatrick, a minor child, and Emma J. Douglas, a/k/a Emma Jean Kanawati, a/k/a Emma J. Baker (Doc. 152); and
4. Plaintiff's Motion to Strike Claimants for Failure to Comply With Discovery Orders (Doc. 150).

After consultation with the parties, the court enters the following ORDERS as to these motions:

I. Motion of James T. McIntyre to withdraw as counsel for Byron Fitchpatrick. (Doc. 138)

Mr. McIntyre has not provided the Court with proof of service of the motion on Mr. Fitchpatrick either in person or by certified mail, restricted delivery, or with a showing satisfactory to the court that the signature of the client could not be obtained, all as required by D. Kan. Rule 83.5.5. The motion is therefore TAKEN UNDER ADVISEMENT pending receipt by the Court of the required proof of service.

II. Plaintiff's Motion for Interlocutory Sale of Defendants 9 and 10. (Doc. 130)

As noted above, this matter has been fully briefed by the parties. However, since Claimants filed their brief on March 3, 2008 (Doc. 139), it appears that circumstances may have changed. As to Defendant No. 9 [3102 S. Pinecrest, Wichita, Kansas], the private buyer referenced in Claimants' response is no longer interested in purchasing the subject property. Claimants are therefore given until **July 14, 2008** to supplement their prior response stating any reason why the motion should not be granted, the property sold and the proceeds substituted as the defendant.

As to Defendant No. 10 [11218 W. Neville Street, Wichita, Kansas], Claimants state that the mortgage on this property has been brought current and is no longer in default. Claimants are therefore given until **July 14, 2008** to supplement their prior response by providing proof, by means of an affidavit or other probative evidence, to establish that the mortgage on the property is in good standing and is not in default. If this is established to the satisfaction of the Plaintiff, counsel has indicated that they may withdraw the motion for interlocutory sale as to this specific defendant.

Upon the filing of a supplemental response by Claimants, the matter will be ruled on by the Court. If Claimants fail to file the required timely supplemental response, the Court will consider the motion to be submitted and will rule accordingly.

III. Motion of James T. McIntyre to withdraw as counsel for all remaining Claimants. (Doc. 152)

Mr. McIntyre's written motion seeks to withdraw for the following named claimants: "Shatanya L. Fitchpatrick a/k/a Tonya Douglas, a/k/a Shatanya L. Douglas, a/k/a Tonya Douglas as mother and natural guardian of Alajah B. Fitchpatrick, a minor child, and Emma J. Douglas, a/k/a Emma Jean Kanawati, a/k/a Emma J. Baker." (Doc. 152 at 1-2.) At the hearing, Mr. McIntyre indicated that he also wished to withdraw for Claimant ABS Rentals and Investments, Inc.

Claimant Shatanya L. Fitchpatrick confirmed that she was the sole shareholder and officer of ABS Rentals and Investments, Inc., and that the company did not object to Mr. McIntyre's withdrawal nor did she individually object to his withdrawal. Claimant Emma J. Douglas, a/k/a Emma Jean Kanawati, a/k/a Emma J. Baker is the mother of Shatanya L. Fitchpatrick, and Ms. Fitchpatrick stated that she has notified Ms. Douglas of the requested withdrawal of counsel and of this hearing, and that Ms. Douglas did not object to the withdrawal.

Accordingly, the motion to withdraw by James T. McIntyre is hereby GRANTED and he is allowed to withdraw as counsel for Shatanya L. Fitchpatrick a/k/a Tonya Douglas, a/k/a Shatanya L. Douglas, a/k/a Tonya Douglas as mother and natural guardian of Alajah B. Fitchpatrick, a minor child, and Emma J. Douglas, a/k/a Emma Jean Kanawati, a/k/a Emma J. Baker, and ABS Rentals and Investments, Inc.

Claimants are in the process of obtaining replacement counsel. Until that counsel enters his/her appearance in this case, notice to all Claimants can be given by mailing to Shatanya L. Fitchpatrick, 11007 West First Street, Wichita, Kansas 67212. If any separate notice is required for Claimant Emma J. Douglas, a/k/a Emma Jean Kanawati, a/k/a Emma J. Baker, Shatanya L. Fitchpatrick shall so notify the court and shall also provide an address where such separate notices can be sent.

IV. Plaintiff's Motion to Strike Claimants for Failure to Comply With Discovery Orders.

(Doc. 150)

Plaintiff's motion was filed on June 9, 2008. Because this motion would be dispositive if granted, the Court determines that it should be treated as a dispositive motion for purposes of the timing of responses and replies under D. Kan. Rule 6.1(d)(2) such that responses and replies are due 23 days after the service of the pleading to which a response or reply is being submitted. Accordingly, Claimants' response to the motion is currently due on July 2, 2008. However, due to the withdrawal of counsel, the time for Claimants to file a response to the motion is hereby extended to **July 14, 2008**.

Claimants are hereby advised that any response they may submit must be accompanied by a full and complete set of answers and responses to all of the outstanding discovery requests previously served on Claimants by Plaintiff, and a failure to submit such answers and responses with their response to the motion may result in the imposition of sanctions by the Court pursuant to Fed. R. Civ. P.

37(b)(2), including, but not limited to, an order striking the claims and answers of Claimants in these proceedings.

IV. Other Matters.

The Revised Scheduling Order (Doc. 137) filed on February 15, 2008 may need to be again modified after Claimants have retained new counsel. Therefore all deadlines and hearings set in that Revised Scheduling Order are hereby TEMPORARILY STAYED pending completion of the filings required pursuant to the terms of the present Memorandum and Order, and pending further order of the Court.

IT IS SO ORDERED.

Dated this 24th day of June, 2008, at Wichita, Kansas.

s/ DONALD W. BOSTWICK
Donald W. Bostwick
U.S. Magistrate Judge