

Miriam Equities, LLC v. LB-UBS 2007-C2 Millstream Rd., LLC, 2020 NCBC Order 48.

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8523

MIRIAM EQUITIES, LLC, a New
Jersey Limited Liability Company,

Plaintiff,

v.

LB-UBS 2007-C2 MILLSTREAM
ROAD, LLC, a North Carolina Limited
Liability Company,

Defendant.

**ORDER ON MOTION TO WITHDRAW
AND PROVIDING FOR A LIMITED
MODIFICATION OF THE CURRENT
AMENDED CASE MANAGEMENT
ORDER**

1. THIS MATTER is before the Court on the Motion to Withdraw filed on October 30, 2020 by counsel for Plaintiff, Robert N. Maitland, II of Maitland & English Law Firm, PLLC (“Motion to Withdraw”), (ECF No. 36) and pursuant to Defendant LB-UBS 2007-C2 Millstream Road, LLC’s request submitted on October 29, 2020 pursuant to Business Court Rule 10.9 to address Plaintiff’s failure to comply with its discovery obligations (“Rule 10.9 Request”), (*see* ECF No. 38).

2. Defendant properly noticed a deposition of Plaintiff Miriam Equities, LLC (“Plaintiff” or “Miriam Equities”) pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure for October 28, 2020. Miriam Equities did not object to the deposition notice and did not appear for the noticed deposition.

3. The Court is advised that Miriam Equities, in lieu of appearing, has advised by remote means that it anticipates hiring new counsel and would agree to appearing at a later deposition even though the discovery period has expired. Defendant has advised that it intends to seek summary judgment. The Court wishes

to assure that it considers any dispositive motion upon a closed record. Although not required to do so, the Court now, in an abundance of caution, enters this Order to provide Plaintiff a last opportunity to provide Defendant any information Plaintiff contends should be considered in support of its claims, while avoiding prejudice to Defendant by disallowing any wholesale further extension of the discovery period.

4. Defendant does not oppose the Motion to Withdraw, provided, however, that it requests protection against the loss of or prejudice of its right to secure summary judgment based on the record as it existed at the close of discovery.

5. Fact discovery in this matter closed on October 30, 2020, and any dispositive motion is now due on November 30, 2020 absent modification of the current Amended Case Management Order.

6. Defendant properly served its First Set of Interrogatories and Requests for Production of Documents on Plaintiff on July 16, 2020, and has followed with repeated requests for a response. Miriam Equities has failed to respond to this discovery request. Miriam Equities cannot fairly rely on any document and information that it has not timely provided to Defendant.

7. For good cause shown, the Court hereby GRANTS the Motion to Withdraw on the following conditions.

8. Attorney Robert N. Maitland, II of Maitland & English Law Firm, PLLC is hereby permitted to withdraw as counsel for Miriam Equities effective immediately. He shall serve this Order on Miriam Equities by certified mail return receipt requested and shall provide the Court with the return receipt confirming

delivery. The Court is further mailing a copy of this Order to Miriam Equities, LLC, 428 Clifton Ave, PMB 9, Lakewood, NJ 08701, attn: Officer in Charge. Miriam Equities has known throughout the course of the litigation that the Court's docket is also accessible via its public website.

9. As a corporation, Miriam Equities cannot proceed *pro se*. Should it wish to be represented, it shall file a notice of appearance of counsel on or before 5:00 p.m. on November 20, 2020.

10. Should Miriam Equities wish that any discovery from it, whether by interrogatory response, document production, or deposition testimony, be considered by the Court, it shall:

- a. Respond to Defendant's outstanding discovery requests on or before November 20, 2020;
- b. On or before November 20, 2020 advise counsel for Defendant whether it wishes to be deposed so that its testimony may be considered as a part of the record upon which any dispositive motion shall be considered.

11. In the event Plaintiff elects to be deposed, Defendant shall on or before November 23, 2020, provide Plaintiff with a notice of deposition pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiff shall within three (3) days in advance of such deposition advise Defendant's counsel of Plaintiff's choice to designate one or more individuals who will testify on its behalf and further provide

Defendant's counsel with any document it intends to rely in support of its deposition testimony.

12. The current Amended Case Management Order is further amended as follows:

- a. Fact discovery is closed except for the limited purpose of allowing the completion of discovery as expressly provided by paragraphs 10 and 11 above. No further discovery shall be allowed absent further Court order.
- b. Should Plaintiff elect not to be deposed, for purposes of dispositive motions, fact discovery shall be deemed to have closed at 5:00 p.m. on November 20, 2020.
- c. Should Plaintiff elect to be deposed, fact discovery shall be deemed to have closed upon the completion of that deposition.
- d. Any dispositive motion shall be filed within thirty (30) days of the close of fact discovery as provided above.

13. Absent leave of Court, any dispositive motion must rely solely on matters made a part of the record within the discovery period.

IT IS SO ORDERED, this the 3rd day of November, 2020.

/s/ James L. Gale

James L. Gale
Senior Business Court Judge