

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY and CHERYL STEVENS,

Plaintiffs,

v.

DALE SMITH, NATIONAL FIDELITY
and IRVING STEINER,

Defendants.

ORDER

04-C-985-X

Back on December 30, 2004, plaintiffs filed this FDCPA lawsuit against defendants, two of whom—Howard Olson, a/k/a Irving Steiner, and his company, National Fidelity (a sole proprietorship)—are located in California. The case file is littered with documents establishing the tortuous progress of this case toward resolution, with Olson, who was represented by counsel at that time, ultimately settling the case for \$12,000 as commemorated in a stipulation and order entered by the court on January 10, 2006. *See* dkt. 38; *see also* dkt. 40, Exh. A (copy of the settlement agreement).¹ The court’s order, drafted by the parties, dismissed the case with prejudice, “excepting only that jurisdiction is retained by this Court for the purpose of ensuring compliance with the settlement agreement between the parties.” *See* dkt. 38.

A year later, on January 12, 2007, plaintiffs filed a motion for relief from judgement, contending that Olson had breached the settlement agreement by stopping his monthly payments as of last August, 2006, after paying only \$2700. Plaintiffs alleged that they tried to

¹ The agreement allowed Olson off the hook upon paying \$10,000 in monthly payments of \$500.

contact Olson but that he did not respond to their correspondence. In a March 13, 2007 letter to the court, Olson claimed that he had not received any previous letters or phone calls from plaintiffs about this matter and had not learned about their attempt to re-open the lawsuit until February 8, 2007. I allowed Olson a 20 day extension, stating that he would not receive further extensions.

Olson timely responded. First, he expresses surprise that no one has been able to reach him; second he indicates that he has no money and asks either to receive an appointed attorney or for permission to represent himself; and third, he wishes to re-open the entire case, claiming that he had been coerced into settling by plaintiff's attorney and by his *own* attorney. Olson alleges that plaintiff's attorney has himself violated the FDCPA and should be held accountable by means of a counterclaim.

There is no statutory basis to appoint counsel to represent a litigant in a civil case, but Olson does have the right to represent himself in this lawsuit. The doctrine of *res judicata* suggests that Olson cannot reopen any substantive aspect of this lawsuit in light of his decision to settle it and to stipulate to dismissal with prejudice, subject only to this court's retention of jurisdiction to ensure compliance with the parties' settlement agreement. That said, it is at least possible, in light of the court's *dicta* in *Shapo v. Engle*, 463 F.3d 641, 645 (7th Cir. 2006), that *res judicata* does not apply to a case over which the court retained jurisdiction while purporting to dismiss it with prejudice.

Frankly, it may be that the dismissal order entered by the court, while apparently sufficient to retain enforcement jurisdiction under Supreme Court precedent, *see Kokkonen v.*

Guardian Life Ins. Co., 511 U.S. 375, 381-82 (1994), is insufficient under recent Seventh Circuit precedent, *see Shapo v. Engle*, 463 F.3d at 646; *Lynch v. SamataMason, Inc.*, 279 F.3d 487, 489 (7th Cir. 2002); *see also Blue Cross Blue Shield Ass’n v. American Express Co.*, 467 F.3d 634, 636 (7th Cir. 2006); *but see Hill v. Baxter Healthcare Corp.*, 405 F.3d 572, 576 (7th Cir. 2005)(agreeing with *Kokkonen*); *Goulding v. Global Medical Products Holdings, Inc.*, 394 F.3d 466, 468 (7th Cir. 2005)(same). What’s the proper outcome when circuit law on this topic conflicts with itself and appears to conflict with Supreme Court precedent?

Although I do not wish to prolong the resolution of the instant dispute, rather than barge ahead without input from the parties, I will allow a last round of briefing on all remaining issues. Plaintiffs, as the party initiating this go-round, may brief first and last. Here are the questions the court needs answered: (1) Does the language in the court’s dismissal order suffice to permit this court to re-open this lawsuit and enforce the settlement agreement? (2) If so, and if this court re-opens this case, does the doctrine of *res judicata* bar Olson from seeking relief in this court from the settlement agreement? (3) Has Olson breached the settlement agreement, and if so, what remedy is appropriate? (4) If *res judicata* does not bar Olson from seeking to rescind the settlement agreement, is he entitled to rescission? The parties may address in their briefs any other issues they believe are pertinent to deciding what ought to happen next in this case.

Plaintiffs may have until May 15, 2007 within which to file and serve their brief on these issues. Olson may have until May 29, 2007 within which to file and serve his response to plaintiffs’ arguments and to offer any additional arguments of his own. Plaintiffs may have until June 8, 2007 to file and serve any reply. Same-day or next-day service is required. All evidence

and other documentation supporting any and every claim made by a party must accompany that party's brief(s).

Entered this 1st day of May, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge