

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

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COOL EXPRESS OF WISCONSIN, INC.,  
P.O. Box 314  
Highland, WI 53543,

Plaintiff,

v.

LOCAL & WESTERN OF TEXAS, INC.,  
P.O. Box 822463  
Dallas, Texas 75382-2463,

Defendant.

ORDER

04-C-456-C

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Darrell Wessels, president of plaintiff Cool Express of Wisconsin, Inc., filed this action in the Richland County, Wisconsin small claims court. Defendant removed the case to this court pursuant to 28 U.S.C. § 1441(a), asserting the existence of federal jurisdiction over plaintiff's complaint under the general jurisdiction statute, 28 U.S.C. §§ 1331 and 28 U.S.C. § 1337, a statute granting district courts the authority to hear cases arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

On July 20, 2004, defendant answered the complaint and moved to dismiss plaintiff's

complaint on several different grounds, including lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief may be granted. Also on July 20, 2004, Darrell Wessels submitted a letter to the court addressed to “Whom It May Concern,” in which Wessels asks that the court allow him to dismiss the complaint against defendant “without prejudice.”

Wessels’s letter does not appear to have been served on Richard Westley, counsel for defendant, as Rule 5 of the Federal Rules of Civil Procedure requires. Therefore, I am enclosing a copy of the letter to counsel with this order. In the future, however, the court will not consider any document filed by any party that does not show clearly that it has been mailed to the opposing party or the opposing party’s lawyer, if the opposing party is represented by a lawyer.

There is a second problem with Wessels’s letter. Although Wessels may appear on behalf of or perform legal services for the plaintiff corporation in Wisconsin’s small claims courts, Carmain v. Affiliated Capital Corp., 654 N.W.2d 265 (Wis. App. 2002), “[a] non-lawyer cannot represent or appear on behalf of a corporation in federal court. Muzikowski v. Paramount Pictures Corp., 322 F.3d 918, 924 (7th Cir. 2003). This is so even when the person seeking to represent the corporation is its president and major stockholder. Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194 (1993) (citing Strong Delivery Ministry Assn. v. Board of Appeals of Cook County, 543

F.2d 32, 34 (7th Cir. 1976)); Lewis v. Lenc-Smith Mfg. Co., 784 F.2d 829, 830 n.4 (7th Cir.1986) (citation omitted). The reasoning behind the rule is that "a corporation can do no act except through its agents and that such agents representing the corporation in Court must be attorneys at law who have been admitted to practice, are officers of the court and subject to its control." MacNeil v. Hearst Corp., 160 F. Supp. 157, 159 (D.Del. 1958). This rule holds even if the corporation has only one shareholder. Shamey v. Hickey, 433 A.2d 1111 (D.C. App.1981). In Shamey, the court explained that the purpose of the rule was "not the protection of stockholders but the protection of the courts and the administration of justice," and that a person who accepts the advantages of incorporation for his or her business must also bear the burdens, including the need to hire counsel to sue or defend in court. Id. at 1113 (quoting Mercu-Ray Industries, Inc. v. Bristol-Myers Co., 392 F. Supp. 16, 17 (S.D.N.Y.)), affd, 508 F.2d 837 (2d Cir. 1974).

\_\_\_\_\_A corporation attempting to proceed pro se in federal court must be provided notice that it is required to appear by counsel, just as a pro se plaintiff must be provided notice of the serious consequences of failing to submit affidavits in response to a motion for summary judgment. Lewis v. Faulkner, 689 F.2d 100, 102 (7th Cir.1982). It appears that Darrell Wessels is attempting to file a notice of voluntary dismissal of this action pursuant to Fed. R. Civ. P. 41. However, I cannot accept the notice unless it is filed by counsel for plaintiff's corporation.

I note one other potential problem. When a request for voluntary dismissal is filed after the defendant has filed an answer or motion for summary judgment such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendant has been required to defend this action, I would grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice. This means that the order dismissing the case will serve as a judgment on the merits in favor of defendant. Alternatively, however, defendant may be willing to stipulate to a dismissal of the case without prejudice. If this is the case, plaintiff, through its lawyer, would be able to execute such a stipulation and submit it to the court and the case would be closed.

#### ORDER

IT IS ORDERED that plaintiff may have until August 4, 2004, in which to enter a notice of appearance of a lawyer who will represent plaintiff in this case. Alternatively, the parties, through counsel, may stipulate to a dismissal of this action. If, by August 4, 2004, plaintiff does not file a notice of appearance of counsel or hire a lawyer to obtain a stipulated dismissal from defendant, then I will dismiss this case on the court's own motion without

prejudice to the plaintiff corporation's filing suit by counsel at some later date.

Entered this 22nd day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge