

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

WATERMARK SOLID SURFACE, INC.,

Plaintiff,

v.

STA-CARE, INC.,

Defendant.

ORDER

08-cv-418-slc

In an order entered March 17, 2009, the court granted defendant's motion for summary judgment as to plaintiff's claims and ordered that judgment be entered for defendant and the case closed. However, defendant is asserting counterclaims; because no party has moved for summary judgment on them, it is premature to enter judgment for defendant as to those claims or to close this case. Therefore, pursuant to Fed. R. Civ. P. 60(a), I will vacate judgment and reopen the case; defendant may proceed to trial on its counterclaims. In addition, I will amend the March 17, 2009 order to make it clear that the grant of defendant's summary judgment motion applies only to plaintiff's claim.

In addition, in the March 17, 2009 order, I concluded that plaintiff could not prevail on its breach of bailment claim because it had failed to establish either monetary damages or a basis for allowing it injunctive relief as to that claim. As to the latter form of relief, I noted that defendant had proposed facts establishing that defendant no longer possesses any of the molds identified in the complaint. Upon reviewing the record, it has become apparent that the reason defendant no longer possesses these molds is because Judge Echols entered a preliminary injunction before this case was transferred allowing plaintiff to retrieve the molds upon posting a bond of \$37,889.64. Therefore, a basis does exist for plaintiff to seek final injunctive relief for its claim for breach of bailment. In these circumstances, it is proper to reconsider the decision to grant defendant's motion for summary judgment as to this claim. Fed. R. Civ. P. 60(a) (on its own, "the court may correct a . . . mistake arising from oversight or omission

whenever one is found in a judgment, order or other part of the record.”) Therefore, I will also amend the March 17, 2009 order to state that defendant’s motion for summary judgment is denied as to plaintiff’s claim for injunctive relief for breach of bailment and granted as to all plaintiff’s other claims.

Finally, because trial the May 4, 2009 trial date is imminent, it would be helpful to hold a telephonic status conference in the near future to discuss what remains to be done in this case and how the parties expect to get there from here.

ORDER

It is ORDERED that:

- (1) The judgment entered March 19, 2009 is VACATED and the clerk is directed to reopen the case;
- (2) The order entered March 17, 2009 is AMENDED. The language in the order is DELETED and replaced with the following:

“Defendant Sta-Care Inc.’s motion for summary judgment is DENIED as to plaintiff Watermark Solid Surface, Inc.’s claim for injunctive relief for breach of bailment and GRANTED as to all other claims of plaintiff’s.”

and,

- (3) The Clerk of Court shall set up a telephonic status conference for the week of March 23, 2009.

Entered this 19th day of March, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge