

1) Counsel of Record, James Stewart, Jr., and the law firm of Stewart, Taylor & Jones, LLP (hereinafter collectively referred to as “Counsel”) petitioned this court for consent to withdraw as Counsel for the Plaintiffs in the instant case, on October 23, 2009, October 28, 2009 and again on November 4, 2009.

(2) On November 9, 2009, Pursuant to Superior Court Civil Rule 12-I(d) and Superior Court Civil Rule 12-I(e), Plaintiffs filed an opposition Motion to their Counsel’s Motion to Withdraw with the Clerk of the Court . **(Exhibit A)**.

(3) On November 25, 2009 an order was issued by the Court **GRANTING** Counsel’s renewed motion to withdraw as Counsel for the Plaintiff stating that Plaintiffs had **NOT** filed a timely objection to their counsel’s motion pursuant to Super. Ct. Civ. R. 12-I(e). **(Exhibit B)**.

(4) Plaintiffs, now without benefit of Counsel and without the necessary financial resources to obtain replacement Counsel by December 24, 2009, as ordered by the Court, ask the Court to examine the specific facts and circumstances and invoke its equitable power and rule in favor of the instant motion for Plaintiff My Company to proceed *pro se* through Smith, its one and only member, with the expectancy of Plaintiffs to re-engage Counsel at a later date, or alternatively to obtain substitute counsel in the near future, or when financially in a position to do so.

II. ARGUMENT

(1) District of Columbia Superior Court Civil Rule 1 states:

“These Rules govern the procedure in all suits of a civil nature in the Civil Division of the Superior Court of the District of Columbia whether cognizable as cases at law or in equity... They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.”

This provision of the DC Superior Court gives the Court authority to rule based on the principles of fairness and the equities involved. DCSC Civil Rule 1 provides that when common law is lacking, an equitable remedy should be available to protect the interests of all parties to a civil action. The Supreme Court has held that the trial court has the right to invoke its equitable power in the interest of justice.

(2) A “just” determination can, and must include components of fairness and a search for the “truth”. The concept of justice is necessarily skewed when a party, in this case My Company, must forego a legally valid claim because it can no longer carry the heavy financial burden to continue the extended and expensive court battle which began in November 2007.

(3) The instant case is a companion action to *Litigator, LLC v My Company, LLC, et al* filed in the Circuit Court for Montgomery County, Maryland, 987654V (hereafter the “Maryland Action”). This is a fraud matter whereby Plaintiffs alleged that Defendant LITIGATOR, LLC and Kate Beckinsale (hereinafter “Defendants”) intentionally interfered with prospective advantage, falsely represented her intentions to purchase real properties against which she filed notices of *lis pendens* all of My Company’s properties, intentionally inflicted emotional distress upon Plaintiff, slander of title and maliciously filed suit in the Circuit Court against Plaintiffs. Plaintiffs Smith and My Company having prevailed on all counts in the Maryland Action are continuing their defense of the underlying Maryland Action as Plaintiffs in the instant DC action before this Court and seek justice. Every person who has a legal interest in a proceeding, and that person’s lawyer, should have the full right to be heard according to law. (Code of Judicial Conduct Canon III b 7). My Company can

only exercise its full right to be heard, in this instance, by the Court invoking its equitable power to enable Smith to proceed on behalf of My Company *pro se*.

(4) DCSC Civil Rule 1 goes on to state: “A speedy, and inexpensive determination of every action” The right to a “speedy determination of every action” can be traced back to Amendment VI of the US Constitution. The Speedy Trial Clause was designed by the Founding Fathers to minimize the time in which a litigant’s life is disrupted and burdened by the anxiety and scrutiny accompanying a public trial and to reduce the chances that a prolonged delay of due process would impair the ability of all parties to justice. The longer the commencement of a trial is postponed, courts have observed, the more likely it is that witnesses will disappear, evidence will be lost or destroyed, and memories will fade. It is probable that the documents from the underlying Maryland Action exceeded 10,000 – 15,000 in number, if not more. At trial each party brought in at least 3-4 banker boxes full of documents and the total number of exhibits, including all of the multiple pages of them when added up probably exceed 5,000 – 6,000 pages. With over 50 witnesses and the volume of documents alone, even if substitute Counsel could be secured, the instant action is likely to be disrupted by the sheer task of the time it would take to bring new counsel up to speed not to mention the additional expense to Plaintiffs for new Counsel to learn not just the instant action, but to understand and familiarize themselves with the underlying Maryland action which began November 2007.

(5) All defendants have a Sixth Amendment right to self-representation and to proceed on their own behalf. Criminal defendants enjoy Sixth Amendment rights, yet equitable relief is necessary to ensure the rights of civil plaintiffs who find themselves having

prevailed as a Defendant on all counts in one action and must then become a Plaintiff in another action to seek damages from the first action.

(6) Although DCSC Rule 1 states these “rules shall be construed and administered to secure the just, speedy and inexpensive determination of every action” It is impossible for My Company to envision an inexpensive civil action when it finds itself in debt for nearly a million dollars as a direct result of Defendants malicious and outrageous actions stemming from Defendant Beckinsale’s expressed regret over the dissolution of a romantic/personal relationship that was ended in 2002 with John Cusack. (Smith’s co-defendant in the Maryland Action, hereinafter “Cusack”). Upon information and belief, Defendant Beckinsale only filed the Maryland Action against Marie Smith and My Company because Cusack and Smith were romantically involved.

(7) On or about November 28, 2007, after a full evidentiary hearing, the Circuit Court for Montgomery County denied , Litigator, LLCs Motion for Emergency Relief and refused to enjoin My Company from buying and selling property. On or about November 12, 1007, unbeknownst to My Company or Smith, LITIGATOR had already filed notices of *lis pendens* with the District of Columbia Recorder of Deeds on all of My Company properties. Despite failing on its Motion for Preliminary Injunction, and the numerous requests made by counsel for My Company; Defendant refused to withdraw the notices of *lis pendens* on Plaintiff’s properties until March 3, 2009. In refusing to withdraw the notices of *lis pendens*, Defendants intentionally and with malice encumbered and clouded title to Plaintiff’s real property with the specific intent to cause not only emotional distress to Smith, but intentionally interfered with several existing contracts for the sale of real property inducing a termination of Plaintiff’s business relationships and thereby causing the financial crisis that brings My Company before

the Court in the instant action. Contrary to its assertion in the notices of *lis pendens* that Defendants filed on My Company properties, Defendant only requested monetary damages on 6 properties in the Maryland Action.

(8) As a result of Defendant Beckinsale's inability to sever emotional ties with Cusack, Plaintiff My Company has expended large sums of money and exhausted all of its financial resources to defend itself and to bring the Maryland action to a successful close and now finds itself without the benefit of Counsel and without the necessary funds to engage substitute counsel to bring the instant case to *its* completion. Caught in the crossfire of what is just an expensive domestic dispute between Cusack and Defendant Beckinsale, Plaintiffs attribute their financial inability to engage substitute Counsel as being directly related to the merits of the instant case.

(9) Defendant Beckinsale's ulterior motive to purposely punish Plaintiff Smith and her company,, was a willful action that abused the judicial process causing damages to not only Plaintiff Smith, but also to Plaintiff My Company. Plaintiff My Company is also an injured party to the instant action and it is not in the interest of justice for an injured party to have sustained injury with little hope for resolution. It is for this reason that Plaintiff Smith requests the Court to exercise its equitable power to rule in favor My Company to proceed *pro se* through Smith so that Plaintiff My Company can also seek justice for the wrongs that have been inflicted upon it by the Defendants.

(10) Rule 101(a)(2) of the Superior Court Rules of Civil Procedure states:

“No corporation shall appear in the Division except through a person authorized by this Rule. However, nothing in this Rule shall be construed to prevent any natural person from prosecuting or defending any action in the person's own behalf if the person is without counsel.”

“In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” (28 USC Sec. 1654). An exception to the general rule that a non-lawyer can always represent himself arises in the area of corporations. Corporations being artificial persons under the law cannot appear *pro se*. However, Plaintiff, Marie Smith, should be able to proceed with My Company claims *pro se* because:

(a) My Company, LLC is *not* a corporation and not the type of entity contemplated by the Superior Court when Rule 101 was drafted. My Company is required by the IRS to file its taxes in the same manner as a sole proprietor on a Schedule C for income tax reporting purposes. (Treas. Reg. §301.7701-3(a)).

(b) Plaintiff Smith, a natural person, is also an Enrolled Agent licensed to practice by the Federal Government, (the US Dept of Treasury) and has been admitted to practice and authorized to appear before The United States Tax Court. (**Exhibit C**).

(c) The United States Tax Court, a Federal trial court of record established by Congress as a court of record under Article I of the U.S. Constitution by the Tax Reform Act of 1969 (83 Stat. 730), is a full judicial court, like the Superior Court of the District of Columbia and as such the rules of evidence in Tax Court proceedings are the same as those which apply to civil procedure in the instant court.

(d) Smith, being licensed to practice since 1989 by the Federal Government and admitted to practice before The United States Tax Court is more than just a “natural person” as identified by DC Superior Court Civil Rule 101 (a)(2) and is requesting the Court to grant equitable relief in this instance and exercise its equitable power to make an exception based on the facts and circumstances before the Court.

(11) My Company, LLC was organized as a single-member LLC in the State of Maryland and has been operating as such since 2004. It was registered with the IRS as a sole-member LLC on September 20, 2004, and it was registered to do business under the District of Columbia Limited Liability Company Act of 1994 as of May 24, 2007. A single-member LLC, is clearly not a corporation in the eyes of the IRS, nor does it file a corporation income tax.

(12) The definition of the Limited Liability Company as stated under The D.C. Official Code §29-1001(16) states that a ““Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association, having perpetual duration, having one or more members that is organized and existing under this chapter.” [emphasis supplied]. The Amendments to the DC LLC Act (D.C. Law 13-133) enables single member LLCs to choose to be an LLC rather than a Professional Corporation. As such, The D.C. Official Code Title 29 Chapter 10 clearly distinguishes Plaintiff My Company as an unincorporated association and not a corporation.

III. CONCLUSION

DC Superior Court Civil Rule 1 states that the rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action and gives the court authority to invoke its equitable power to make an exception warranted by the facts and circumstances of this specific case to prevent discrimination against My Company, an un-incorporated business, from continuing *pro se* through its sole and only member Marie Smith.

Smith is requesting the Court to grant equitable relief in this specific instance because there is no adequate remedy as allowed by common law for Plaintiff My

Company's interests to be protected and a favorable ruling of this motion is the only remedy for the specific action in the interest of justice.

WHEREFORE, Plaintiff respectfully requests this Honorable Court:

GRANT Plaintiff Smith relief to proceed with My Company claims *Pro Se*

Dated the 2nd day of December, 2009

Respectfully Submitted,

MY COMPANY, LLC
and
MARIE SMITH

My Company, LLC
Marie Smith
1234 Anywhere Lane
Some Town, MD 20899

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Response was served via US mail on this 2nd day of December 2009 upon the following:

Counsel for Defendants
Via USPS

MY COMPANY, LLC
And
MARIE SMITH

My Company, LLC
Marie Smith
1234 Anywhere Lane
Some Town, MD 20899

THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division
Washington, DC 20001

MY COMPANY, LLC, <i>et al.</i> ,	§	
	§	
Plaintiffs	§	CA No.: 2008 CA 001234 B
	§	Calendar: 1
v.	§	Judge: Hon. Earl Gooding
	§	Next Event: Discovery Closes
LITIGATOR, LLC, <i>et al.</i>	§	February 19, 2010
	§	
Defendants.	§	

ORDER

Upon consideration of Plaintiff MARIE SMITH'S Motion to proceed on behalf of MY COMPANY, LLC *pro se*, it is this _____ day of _____ 2009,

ORDERED that Plaintiff's Motion to proceed on behalf of MY COMPANY *pro se* be, and hereby is, GRANTED.

Entered this _____ day of _____ 2009

Judge, Hon Earl Gooding
DC Superior Court for District of Columbia

Copies to:

Counsel for Defendants