

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 27, 2020

Christopher M. Wolpert
Clerk of Court

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs

ZURIXX, et al.,

Defendants

DAVID K. BROADBENT,

Receiver - Appellee,

v.

DAVID EFRON, et al.,

Interested Parties - Appellants.

No. 20-4090
(D.C. No. 2:19-CV-00713-DAK-DAO)
(D. Utah)

ORDER

This matter is before the court *sua sponte* following the opening of this appeal.

Two procedural matters are addressed in this order.

Pending Motion to Reconsider

The appellants challenge the district court's July 27, 2020 Memorandum Decision and Order (Dist. Ct. Docket No. 166) that found these nonparties in contempt of the receiver's injunction. The district court docket shows the appellants filed a motion to

reconsider the order being appeal that is still pending (*Id.* No. 173 (filed August 21, 2020)). The motion to reconsider appears to have been timely filed, which would toll the time to appeal from the order being appealed. *See* Fed. R. App. P. 4(a)(4)(A); *see also* Fed. R. Civ. P. 59(e). Accordingly, briefing on the merits is ABATED pending further order of this court, but the parties should still complete the preliminary filing requirements stated in the court's case opening letter issued earlier today.

The notice of appeal will become effective when the district court enters an order deciding the pending motion to reconsider. *See* Fed. R. App. P. 4(a)(4)(B)(i); *see also id.* 4(a)(4)(B)(ii) *and Breeden v. ABF Freight Sys., Inc.*, 115 F.3d 749, 752 (10th Cir. 1997). The appellants shall notify this court by filing a status report within five (5) days after the district court decides the pending motion to reconsider. The appellants shall attach a copy of the district court's order to the status report.

Also within five (5) days after the district court enters its order deciding the pending motions, we direct the clerk of the district court to transmit to this court a supplemental preliminary appellate record including the order and an updated docket sheet. *See* 10th Cir. R. 3.2(B).

If the district court has not decided the pending motion by September 28, 2020, the appellants shall file a status report in this court to advise what events have occurred toward resolution of the pending motion.

The parties will receive additional direction following the occurrence of one of the events described above.

Unrepresented Corporate Entity

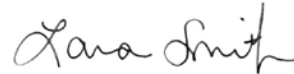
It appears that one of the appellants must cause an attorney licensed to practice in this court to enter an appearance on its behalf before proceeding here. A “long-standing” rule of practice is that “a corporation must be represented by an attorney to appear in federal court.” *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006). Federal courts have uniformly held that this rule applies to all artificial entities. *See, e.g., Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 201-02 (1993) (“It has been the law for the better part of two centuries...that a corporation may appear in the federal courts only through licensed counsel. As the courts have recognized, the rationale for that rule applies equally to all artificial entities.”) (internal citations omitted); *see also Amoco Prod. Co. v. Aspen Grp.*, 25 F. Supp.2d 1162, 1166 (D. Colo. 1998) (same and citing *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738, 829, 6 L.Ed. 204 (1824)). Indeed, the requirement for artificial entities to be represented by counsel has been codified as a federal statute. 28 U.S.C. § 1654 (“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.”)

Appellant Efron Dorado, S.E., appears to be a corporate entity and consequently must be represented by counsel licensed to practice here. David Efron, the other appellant in this case, may not represent Efron Dorado, S.E., because he is not an attorney licensed to practice in this court.

For these reasons, on or before September 28, 2020, Appellant Efron Dorado, S.E., shall cause an attorney licensed to practice in the U.S. Tenth Circuit Court of Appeals to enter an appearance in this appeal on its behalf.

Failure to cause an attorney to appear on behalf of the corporate appellant by the date stated in this order may result in that party being dismissed without further notice for failure to prosecute. 10th Cir. R. 42.1.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



by: Lara Smith
Counsel to the Clerk