

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
ABERDEEN DIVISION**

IN RE:

UNITED FURNITURE INDUSTRIES, INC.,  
*aka* United Furniture, *aka* Lane Furniture

Debtor.

Chapter 11

Case No. 22-13422-SDM

TORIA NEAL; Ja.m.ES PUGH; and KALVIN  
HOGAN, on behalf of themselves and all  
others similarly situated,

Plaintiffs.

Adversary Proc. No. 23-01005-SDM

- against -

UNITED FURNITURE INDUSTRIES, INC.;  
DAVID BELFORD individually and as  
Trustee for SEPARATE PROPERTY TRUST  
CREATED BY DAVID BELFORD and  
DAVID A. BELFORD IRREVOCABLE  
TRUST; and STAGE CAPITAL, LLC,

Defendants.

**NON-EMPLOYER DEFENDANTS' MEMORANDUM  
IN OPPOSITION TO MOTION TO WITHDRAW**

Attorney Claude F. Clayton, Jr. and Attorney S. Ray Hill, III of the Clayton O'Donnell, PLLC law firm ("the Clayton Firm") seek to exit this lawsuit with a Motion to Withdraw, (Dkt. #161)—just two weeks before Mr. Evans' scheduled deposition, which was agreed to by Mr. Evans and Mr. Clayton.

Defendants Stage Capital, LLC; David A. Belford, individually; the David A. Belford Separate Property Trust; and the David A. Belford Irrevocable Trust (collectively "Non-Employer Defendants") do not object to Attorney Clayton or Attorney Hill withdrawing as counsel of record

for Mr. Evans (and Lynda Barr) *per se*; however, additional safeguards are needed to ensure that these proceedings are not further disrupted by Mr. Evans' and Ms. Barr's attempts to evade their depositions.

Non-Employer Defendants request this Court: (1) deny Attorney Clayton's Motion to Withdraw, (Dkt. #161), without prejudice; (2) order Mr. Evans to appear (virtually) for his September 17, 2024 deposition, as agreed to by the parties; (3) order Ms. Barr to appear (virtually) for a deposition on one of the following dates, to be agreed upon by the parties by September 10, 2024: September 19, 2024; September 20, 2024; September 24, 2024; September 25, 2024; September 27, 2024; and (4) order Attorney Clayton and Attorney Hill to facilitate the above as a condition of their withdrawal.

### **FACTS**

1. On August 9, 2024, Non-Employer Defendants noticed the depositions of Mr. Evans and Ms. Barr. (Dkt. #149, ¶13; Ex. 5)
2. On August 14, 2024, S. Ray Hill, III, at Clayton O'Donnell, PLLC, purported counsel for Mr. Evans, sought Non-Employer Defendant's consent to postpone the deposition until "late September." (Dkt. #149, ¶14; Ex. 6 at p. 4.) Attorney Hill did not disclose that Clayton O'Donnell, PLLC also represented Ms. Barr at that time. (*Id.*)
3. In response to Mr. Hill's request, also on August 14, 2024, Non-Employer Defendants informed Mr. Hill (and all counsel of record) that, due to the impending close of discovery, Non-Employer Defendants were unable to postpone the deposition. (Dkt. #149, ¶14; Ex. 6 at p. 3-4.)
4. In the same correspondence, Non-Employer Defendants inquired whether Plaintiffs would stipulate or jointly move to extend the deadline for discovery. (*Id.*)
5. Plaintiffs did not respond to the August 14, 2024 correspondence from Non-Employer Defendants. (Dkt. #149, ¶16.)
6. On August 16, 2024, Mr. Evans filed a Motion for Protective Order, (Dkt. #136), and Motion to Expedite Hearing, (Dkt. #137), which was granted by this Court, (Dkt. #138). Attorney Clayton did not disclose in his motions that he also represented Ms. Barr. (Dkts. #136-138.)

7. At the expedited hearing, on August 22, 2024, this Court issued an oral ruling extending the discovery and dispositive-motion deadlines. (Dkt. #150.) During this hearing, Attorney Clayton did not disclose that he also represented Ms. Barr, despite discussion of her deposition in both Non-Employer Defendants' brief and oral argument.
8. On August 26, 2024, although not disclosed to this Court, in response to Non-Employer Defendants' direct questioning over e-mail, Attorney Clayton revealed that they also represent Ms. Barr, specifically as to her deposition. (Declaration of Geoffrey S. Trotier Made in Support of Non-Employer Defendants' Memorandum in Opposition to Withdraw ("Trotier Decl."), (Dkt. #165), ¶3.)
9. On August 27, 2024, this Court issued an Amended Scheduling Order, reflecting this Court's oral ruling on August 22, 2024. (Dkt. #152.)
10. On September 3, 2024, Attorney Clayton and Attorney Hill moved to withdraw as counsel for Mr. Evans as a result of disagreements over legal fees. (Dkt. #161, ¶1.)
11. On September 3, 2024, Attorney Clayton also informed Non-Employer Defendants that they no longer represent Ms. Barr, as well. (Trotier Decl., ¶4.)

### **LEGAL STANDARD**

A motion to withdraw as counsel "is a matter entrusted to the sound discretion of the [] court." *Diamond Consortium, Inc. v. Hammervold*, 737 F. App'x 194, 196 (5th Cir. 2018) (internal quotations omitted). However, it is "incumbent on the court to assure that the prosecution of the lawsuit before it is not disrupted by the withdraw of counsel, and that the withdrawal of counsel is for good cause." *Broughten v. Voss*, 634 F.2d 880, 882–83 (5th Cir. 1981). Factors to be considered on a motion to withdraw include: "(1) the extent to which the attorney's withdrawal will delay or disrupt the case; (2) the length of time for which the case and any dispositive motions have been pending; (3) the time it would take and the financial burden it would impose on the client to find new counsel; (4) the financial burden the attorney would suffer if not allowed to withdraw; (5) prejudice to other parties; and (6) whether withdrawal will harm the administration of justice." *Denton v. Suter*, WL 5477155, at \*2 (N.D. Tex. Oct. 2, 2013).

## **ARGUMENT**

### **I. This Court Should Order Mr. Evans to Appear for his Deposition.**

This Court has already addressed the scheduling of Mr. Evans' deposition, after multiple filings from all parties including a now-withdrawn 56(d) motion and motion for protective order, and an expedited hearing on the same. (*See e.g.*, Dkt. #129, 130, 131, 136, 137, 145, 147, 148, 150.) The parties agreed to a new deposition date. (Dkt. #157.) No more judicial resources should be wasted on the scheduling of a fact-witness deposition.

While Attorney Clayton and Attorney Hill represented to this Court that Mr. Evans "confirms" that he will appear for his deposition, Mr. Evans' actions to date do not provide the confidence required of pivotal key deposition. To ensure judicial efficiency and the swift disposition of this case, Non-Employer Defendants request that this Court order Mr. Evans' attendance at his scheduled deposition and, as a condition of their withdrawal. Such an order—with the consequence of a contempt finding for failure to appear—would avoid further deposition-dodging by Mr. Evans, if/when he finds new counsel.

### **II. This Court Should Grant Attorney Clayton's Motion Only If He Schedules Ms. Barr's Deposition.**

While not disclosed by in the current Motion to Withdraw, (Dkt. #161), Attorney Clayton and Attorney Hill also represent Ms. Barr but have failed to comply with Non-Employer Defendants' attempts to schedule her deposition. Attorney Clayton's prior representations that he represented Ms. Barr, specifically as to her deposition, and Attorney Clayton's/Attorney Hill's subsequent withdrawal signals that similar issues with deposition scheduling may arise with Ms. Barr, also pivotal in the determination of single-employer status in this case. The circumstances warrant safeguarding against such further delays requiring this Court's intervention.

Similar to Mr. Evans, Ms. Barr has claimed that she was terminated on November 21, 2022 (Dkt. #124-2, ¶6), is therefore a member of the Plaintiff-class, and she has submitted a declaration in support of the Plaintiff-class, (Dkt. #124-12). She has inserted herself into this litigation. As such, she has no basis upon which to avoid her deposition. *See Granillo v. FCA US LLC*, 2018 WL 4676057 at \*7 (D.N.J. Sept. 28, 2018) (stating that “[C]ourts across the country have approved ... depositions of objectors who have voluntarily inserted themselves into [an] action[.]” regarding deposition of objectors to class-action settlements); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1266–67 (11th Cir. 2021) (citing *Granillo* favorably).

Further, lack of adequate and prepared counsel is no objection. Non-Employer Defendants are requesting that Ms. Barr’s deposition be scheduled after September 19, 2024, and before September 27, 2024. This timing is compliant with Miss. Bankr. L.R. 7030-1(d)’s requirement that at least 14-days’ notice be given for a deposition.

On August 26, 2024, Attorney Clayton admitted to Non-Employer Defendants that he also represented Ms. Barr as to her deposition. (Trotier Decl., ¶3.) Non-Employer Defendants then asked for deposition dates for Ms. Barr. (*Id.*, ¶5.) During a telephone conversation on August 30, 2024, Attorney Clayton refused to provide dates, stating that he was having difficulties getting ahold of Ms. Barr. (*Id.*, ¶6.) Non-Employer Defendants asked that Attorney Clayton get possible dates by September 3, 2024. (*Id.*, ¶7.) Attorney Clayton failed to do so. (*Id.*, ¶8.)

Based on the foregoing, Non-Employer Defendants respectfully request that the Court order Attorney Clayton to facilitate scheduling of Ms. Barr’s deposition—to be take virtually to avoid any claims that travel might be burdensome—prior to permitting withdrawal. Non-Employer Defendants further respectfully request that, once a date is agreed upon, this Court order Ms. Barr to appear for her deposition.

**CONCLUSION**

For the foregoing reasons, Non-Employer Defendants ask this Court to: (1) DENY Attorney Clayton's Motion to Withdraw, (Dkt. #161), without prejudice; (2) ORDER Mr. Evans to appear for his September 17, 2024 deposition, as agreed to by the parties; (3) ORDER Ms. Barr to appear for a deposition on one of the following dates, to be agreed upon by the parties by September 10, 2024: September 19, 2024; September 20, 2024; September 24, 2024; September 25, 2024; September 27, 2024; and (4) ORDER Attorney Clayton and Attorney Hill to facilitate the above as a condition of their withdrawal.

DATED: September 4, 2024

HUSCH BLACKWELL LLP

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**CERTIFICATE OF SERVICE**

I certify that on September 4, 2024, I filed a true and correct copy of the foregoing through the Court's ECF system which sent notice to all attorneys of record as follows:

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DATED: September 4, 2024

/s/ Geoffrey S. Trotier  
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