

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 05-2299-CM
)	
NEOFORMA, INC., et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

The history of this case is lengthy and complicated. It has been discussed in detail in previous orders of this court and by the Tenth Circuit (Docs. 78, 104, 118). The case resurfaces before the court on Mr. Lipari's "Rule 60(b) Motion" (Doc. 122). Because Mr. Lipari remains unable to represent plaintiff, the motion is stricken from the record.

On August 7, 2006, this court struck four motions filed by Mr. Lipari. In that order, the court stated:

Because Medical Supply was incorporated under the laws of Missouri, the effect of corporate dissolution on pending litigation is governed by Missouri law. Pursuant to Mo. Ann. Stat. § 351.476.2(6), "[d]issolution of a corporation does not: . . . (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution." *See also Reben v. Wilson*, 861 S.W.2d 171, 176 (Mo. App. E.D. 1993). Therefore, even though Medical Supply was dissolved, its corporate existence continues for purposes of proceeding with this litigation. Medical Supply remains the sole plaintiff in this case.

Moreover, Mr. Lipari cannot proceed *pro se* on behalf of Medical Supply because a *pro se* individual may not represent a corporation. *See Nato Indian Nation v. State of Utah*, 76 Fed. Appx. 854, 856 (10th Cir. 2003) ("Individuals may appear in court pro se, but a corporation, other business entity, or non-profit organization may only appear through a licensed attorney.") (citations omitted).

The court also finds that Mr. Lipari may not substitute himself for Medical Supply. Federal Rule of Civil Procedure 25(c), which governs the procedural

substitution of a party after a transfer of interest, states: “In case of any transfer of interest, the action *may* be continued by or against the original party, *unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action.*” Fed. R. Civ. P. 25(c) (emphasis added). As evidenced by the plain language of Rule 25(c), the court has discretion to allow Mr. Lipari to substitute. *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1324 (10th Cir. 1978). The court declines to exercise its discretion, however, because this case has been dismissed, and substitution will not change that outcome.

(Doc. 104).

Since that filing the status of the parties has not changed. Mr. Lipari is not a plaintiff. The court does not have any notice that Mr. Lipari is now a licensed attorney. Without any intervening change in the interim, the previous conclusions regarding Mr. Lipari’s ability to represent plaintiff apply to the present motion. For the above-mentioned reasons, the court strikes Mr. Lipari’s pending motion (Doc. 122).

Another portion of the court’s previous order is also relevant. At that time, the court warned Mr. Lipari, stating “[c]onsistent with this ruling, the court cautions Mr. Lipari against filing additional motions. Of course, plaintiff may allow Mr. Hawver or other counsel to represent it . . . Future attempts to resurrect this case could result in the court imposing additional sanctions.” Mr. Lipari’s recent filings (Docs. 122, 125) appear to violate this warning.

Additionally, Mr. Lipari’s “Rule 60(b) Motion” misstates several resolved issues, making his arguments frivolous. Mr. Lipari accuses this court of having “bias against the plaintiff” that “clearly results from the court’s disbelief that the conduct complained of by the plaintiff occurred.” Mr. Lipari challenges the court by noting, “[t]he plaintiff’s Missouri state law antitrust claims will be filed in Independence, Missouri unnecessarily duplicating the present litigation if the present federal claims are not reopened.” Before the court addressed whether the present federal case should be reopened, Mr. Lipari filed a notice that he filed a “concurrent Missouri antitrust action [on] February

25, 2008 in . . . Independence Missouri.” (Doc. 125).

Mr. Lipari’s actions and filings appear to violate Federal Rule of Civil Procedure 11(b). Under Rule 11(c)(1)(B), Mr. Lipari is directed to show cause within twelve days of this order why he has not violated Rule 11(b). **If Mr. Lipari fails to demonstrate that he has not violated Rule 11(b), this court will sanction Mr. Lipari by fine and filing restrictions.**

IT IS THEREFORE ORDERED that Mr. Lipari’s “Rule 60(b) Motion” (Doc. 122) is stricken from the record.

IT IS FURTHER ORDERED that Mr. Lipari is directed to show cause within twelve days of this order why he has not violated Federal Rule of Civil Procedure 11(b).

Dated this 28th day of March 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge