UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

In Re:	**CHAPTER 7**
DAYMARK REALTY ADVISORS, INC.,	**CASE NO. 18-23750-SMG**
DAYMARK PROPERTIES REALTY, INC.,	**CASE NO. 18-23751-SMG**
DAYMARK RESIDENTIAL MANAGEMENT, INC.,	**CASE NO. 18-23752-SMG**
	(substantively consolidated)
Debtors.	
_____/	

MOTION BY CHAD S. PAIVA, AS CHAPTER 7 TRUSTEE, TO STRIKE WILLIAM D. CHAPMAN, ESQ. AS WITNESS

Chad S. Paiva, as Chapter 7 Trustee (the "Trustee") for the substantively consolidated bankruptcy estates of Daymark Realty Advisors, Inc. ("DRA"), Daymark Properties Realty, Inc. ("DPR"), and Daymark Residential Management, Inc. ("DRM") (collectively, the "Debtors"), by and through counsel, files this Motion By Chad S. Paiva, as Chapter 7 Trustee, to Strike William D. Chapman, Esq. as Witness (the "Motion). In support thereof, the Trustee states as follows:

RELEVANT BACKGROUND

1. On December 11, 2019, this Court entered the Order Scheduling Pretrial Conference and Evidentiary Hearing and Setting Related Deadlines [ECF No. 347] (the "Scheduling Order"). The Scheduling Order, among other things, (i) scheduled a pretrial conference for March 5, 2020 at 1:30 P.M., (ii) set December 25, 2019[1] as the deadline for the parties to exchange initial disclosures, and (iii) set March 2, 2020 as the deadline for the parties to exchange pretrial disclosures.

2. On December 26, 2019, the Objecting Creditors and Defendants' Initial Pretrial Disclosures [ECF No. 350] were filed.

[1] December 25, 2019 was recognized as a federal holiday; accordingly, the deadline extended to December 26, 2019.

3. On December 26, 2019, the Trustee filed Chad S. Paiva, Chapter 7 Trustee's, Initial Rule 26 Disclosures of Witnesses and Documents [ECF No. 351].

4. On February 21, 2020, the Trustee filed an expedited motion to extend certain pretrial deadlines set forth in the Scheduling Order [ECF No. 402].

5. On March 2, 2020, the Court entered the Order Granting Chapter 7 Trustee's Expedited Motion to Extend Certain Pretrial Deadlines Set Forth in the Order Scheduling Pretrial Conference and Evidentiary Hearing and Setting Related Deadlines [ECF No. 410], which extended the deadline for the parties to exchange witness information and exchange exhibits to March 4, 2020.

6. On March 4, 2020, the following pretrial disclosures were filed:

a. Objecting Creditors' Pretrial Disclosures [ECF No. 426];

b. Chapter 7 Trustee, Chad S. Paiva's Pretrial Disclosures [ECF No. 427]; and

c. Bernstein Trust Parties' Pretrial Disclosures [ECF No. 428].

7. The Bernstein Trust Parties' Pretrial Disclosures [ECF No. 428] filed by Paula D. Bernstein and Jeffrey Kelble (the "Bernstein Trust Parties") names one witness that was not identified in any initial pretrial disclosure: William D. Chapman, Esq., of the law firm Cadden & Fuller LLP.

ARGUMENT AND RELIEF REQUESTED

8. As stated above, the Scheduling Order set forth certain deadlines the parties to this proceeding were required to follow. Specifically, the deadline for the parties to exchange initial pretrial disclosures, including the identity of persons with knowledge of relevant facts, was December 26, 2019.

9. The Bernstein Parties are currently represented by Robert Charbonneau, Esq. and

the law office of Agentis PLLC (together, "Agentis"), and have been represented by Agentis since March 8, 2019, at which time Agentis filed the Agreed Ex-Parte Motion for Substitution of Counsel [ECF No. 168]. The motion for substitution of counsel was granted by this Court on March 13, 2019. [*See* ECF No. 196].

10. Also on March 8, 2019, the Bernstein Trust Parties, through Agentis, filed the Bernstein Creditors' Objection to Disclosure Statement [ECF No. 179]. Accordingly, as of March 8, 2019, the Bernstein Trust Parties, by virtue of Agentis, were receiving CM/ECF Notification of the pleadings in this proceeding.

11. More importantly, the Bernstein Trust Parties received CM/ECF Notification of the Scheduling Order and the deadlines set for therein; however, the Bernstein Trust Parties failed to file their initial disclosures as required by the Scheduling Order.

12. Notwithstanding their failure to file their initial disclosures, the Bernstein Trust Parties filed Bernstein Trust Parties' Pretrial Disclosures [ECF No. 428] (the "Bernstein Disclosures"), naming William D. Chapman, Esq., of the law firm Cadden & Fuller LLP ("Chapman"), as a witness.

13. Also on March 8, 2019, Agentis filed its Ex-Parte Motion to Appear Pro Hac Vice [ECF No. 180] on behalf of Chapman, which was granted by this Court on March 13, 2019, by virtue of the Order Admitting Attorney Pro Hac Vice [ECF No. 198].

14. Agentis has been receiving electronic notifications of the filings in this proceeding as of March 8, 2019, and therefore, received notice of the Scheduling Order. The Bernstein Trust Parties, through their counsel, were aware of the deadlines set forth in the Scheduling Order. However, the Bernstein Trust Parties did not file their initial disclosures in accordance with the Scheduling Order. Instead, the Bernstein Trust Parties solely filed the

Bernstein Disclosures - a mere 2 weeks before trial - naming Chapman as a witness.

15. The Bernstein Trust Parties' failure to comply with the Scheduling Order's initial disclosures deadline, but then naming Chapman as a witness does not allow the Trustee appropriate time to evaluate the named witness and conduct discovery and depositions related to the witness.

16. Ultimately, it is improper to permit the Bernstein Trust Parties to offer Chapman as a witness in this proceeding, without having provided the Trustee an opportunity to depose Chapman prior to the final evidentiary hearing scheduled in this matter.

17. For the reasons set forth herein, the Trustee requests that this Court strike Chapman as a witness.

WHEREFORE, the Trustee, Chad S. Paiva, respectfully requests the entry of an Order (i) granting the Motion; (ii) striking the witness, William D. Chapman, Esq.; and (iii) awarding any other or further relief that this Court deems just and proper.

Dated this 12th day of March 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion was served via CM/ECF upon all interested parties registered to receive electronic notification on the attached service list on this on the 12th day of March 2020.

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