
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

D. RAY STRONG, as Liquidating Trustee of the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust,

Plaintiff,

v.

KIRBY D. COCHRAN; JEFF AUSTIN; AUSTIN CAPITAL SOLUTIONS; WILLIAM H. DAVIDSON; DOUGLAS W. CHILD; CHILD, VAN WAGONER & ASSOCIATES, LLC, fka CHILD VAN WAGONER & BRADSHAW, PLLC; ROBERT CLAWSON; HYBRID ADVISOR GROUP; AND JOHN DOES 1-50,

Defendants.

CASE NO. 2:14-cv-00788-TC

**MOTION TO WITHDRAW AS
COUNSEL FOR DEFENDANTS JEFF
AUSTIN AND AUSTIN CAPITAL
SOLUTIONS**

Judge Tena Campbell

Pursuant to DUCivR 83-1.4, the law firm of Perkins Coie LLP and firm lawyers Jodi Knobel Feuerhelm, David F. Olsky and Schuyler Carroll ("Counsel"), hereby move to withdraw as counsel for the following two Defendants (collectively, "Clients"):

Client Names:	Jeff Austin & Austin Capital Solutions
Address:	16246 Santa Barbara Lane
City, State, Zip:	Huntington Beach, Ca. 92649
Telephone Number(s):	(714) 501-8741
E-Mail Address:	jeff@pacificoreconstruction.com

The reasons for withdrawal are as follows:

Counsel has represented three individuals in litigation and arbitrations relating to the bankruptcy case of Castle Arch Real Estate Investment Company (“CAREIC”), as part of a joint representation. The three individuals in the joint representation are William Grundy, Keith Green, and Jeff Austin, each of whom are former CAREIC employees. Plaintiff D. Ray Strong has filed separate litigations against each individual, but each contain similar claims and allegations relating to their roles at CAREIC. *See Strong v. Cochran*, Case No. 14-cv-00788-TC-EJF (D. Utah) (Mr. Austin is defendant; case was compelled to arbitration); *Strong v. Grundy*, Case No. 15-cv-00055-JNP (the “Grundy Litigation”), *Strong v. Green*, Adv. No. 14-02340 (Bankr. D. Utah) (the “Green Litigation”)

Counsel has determined that the Utah Rules of Professional Conduct require their withdrawal from all three of these representations and this litigation, due to an unwaivable conflict of interest created by a recent settlement offer made by Plaintiff D. Ray Strong to one of the jointly-represented clients, Mr. Green. On January 22, 2016, Plaintiff extended a settlement offer to Mr. Green, offering to settle the Green Litigation for no dollars, on condition (among others) that Mr. Green cooperate with the Trustee in providing evidence and testimony: (a) regarding the role of Mr. Austin with respect to “knowledge of the falsity of CAREIC’s solicitation materials,” among other topics; and (b) in other proceedings brought by the Trustee, including this litigation, the Trustee’s arbitration against Mr. Austin and the Grundy Litigation. Such a settlement offer creates a direct conflict of interest among Counsel’s three clients under Rule 1.7(a)(1) and (2), which in Counsel’s professional judgment dictates that Counsel may no longer represent any of these individuals and must withdraw from the representations as required by Rule 1.16(a)(1). Consent under these circumstances is not a viable option because counsel cannot form a reasonable belief that it can competently and diligently represent the clients under these circumstances.

In the event this motion is granted, Clients or new counsel for Clients must file a notice of appearance within twenty-one (21) days after entry of the order, unless otherwise ordered by the court. Pursuant to Utah DUCivR 83-1.4, no corporation, association, partnership, limited liability company or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

This motion is made with the Clients’ consent, which is attached to this motion.

This motion is made without the Clients’ consent and is accompanied by:

certification that Clients have been served with (i) a copy of this motion, (ii) the attached written description of the status of the case, including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and the possibility of sanctions; or

certification that the Clients cannot be located or, for any other reason, cannot be notified of the pendency of the motion and the status of the case.

X The undersigned certifies

X no trial date is set; or

_____ trial is set for _____ and

_____ a certification signed by the substituting attorney is attached, indicating such attorney has been advised of the trial date and will be prepared for trial; or

_____ a certification signed by Counsel is attached indicating that Client is prepared for trial as scheduled and is eligible pursuant to DUCivR 83-1.3 to appear pro se at trial; or

_____ the following specific facts justify withdrawal of counsel without present appearance of substitute counsel or appearance by the individual party:

X The form of an order is attached to this motion and has been submitted in word format by email to the presiding judge in this case.

CERTIFICATION

Counsel hereby certifies that a copy of this Motion for Withdrawal of Counsel has been sent to Clients at the address indicated above.

DATED this 22nd day of March, 2016.

Respectfully submitted,

/s/David F. Olsky

Schuyler Carroll (*pro hac vice*)

David F. Olsky (*pro hac vice*)

PERKINS COIE LLP

30 Rockefeller Plaza, 22nd Floor

New York, NY 10112

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Attorneys for Defendants Jeff Austin and Austin Capital Solutions

STATUS REPORT

The claims against Mr. Austin and Austin Capital Solutions were compelled to arbitration. Plaintiff D. Ray Strong has moved to transfer a case he filed against another individual (Robert Geringer) into this litigation, and has further moved to compel his claims against Mr. Geringer into arbitration. No hearing has been set on Plaintiff's motions with respect to Mr. Geringer.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION FOR WITHDRAWAL OF COUNSEL with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

In addition, I hereby certify that I served the following non-CM/ECF participant(s) by United States First Class Mail, postage prepaid:

Jeff Austin & Austin Capital Solutions
16246 Santa Barbara Lane
Huntington Beach, Ca. 92649

DATED this 22nd day of March, 2016.

Respectfully submitted,

/s/David F. Olsky

Schuyler Carroll (*pro hac vice*)

David F. Olsky (*pro hac vice*)

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Attorneys for Defendants Jeff Austin & Austin Capital Solutions

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Defendants.

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**ORDER ON MOTION TO
WITHDRAW AS COUNSEL FOR
DEFENDANTS JEFF AUSTIN AND
AUSTIN CAPITAL SOLUTIONS**

Judge Tena Campbell

Pursuant to the Motion of Perkins Coie LLP, Jodi Knobel Feuerhelm, David F. Olsky and Schuyler Carroll (“Counsel”) for Withdrawal of Counsel and DUCivR 83-1.4, the Court ORDERS that Counsel may withdraw, and is hereby removed, as counsel for Jeff Austin and Austin Capital Solutions (“Clients”).

With regard to Clients’ continued representation, the Court ORDERS as follows:

_____ (“Substitute Counsel”) has filed a Notice of Substitution of Counsel and is hereby recognized as counsel for Clients in the above-referenced action.

 X For individual parties: Clients or new counsel for Clients must file a Notice of Appearance within twenty-one (21) days after the entry of this order, unless otherwise ordered by the Court. Pursuant to Utah DUCivR 83-1.3, no corporation, association, partnership or other artificial entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

X For entity parties: New counsel shall file a Notice of Appearance on behalf of any corporation, association, partnership or other artificial entity whose attorney has withdrawn. Pursuant to DUCivR 83-1.3, no such entity may appear pro se, but must be represented by an attorney who is admitted to practice in this court.

A party who fails to file a Notice of Substitution of Counsel or Notice of Appearance as set forth above, may be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to dismissal or default judgment.

With regard to scheduling, the Court orders as follows:

_____ All litigation dates pursuant to the controlling scheduling order remain in effect.

_____ A scheduling conference is scheduled for _____, _____ at _____ .m.

 X The action shall be stayed until twenty-one (21) days after entry of this order.

NOTICE TO PARTY

The Court will cause this Order to be sent to Client at the address set forth in the Motion for Withdrawal of Counsel and to all other parties.

DATED this _____ day of _____, _____.

BY THE COURT: