

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 04-41352
RANDALL JOSEPH HAKE and *
* *
MARY ANN HAKE, *
* CHAPTER 11
*
* HONORABLE KAY WOODS
*
* Debtors. *

ORDER DENYING MOTION FOR SHORTENED NOTICE AND EMERGENCY
HEARING BY BUCKEYE RETIREMENT CO., L.L.C., LTD.

The matter before the Court is Motion for Shortened Notice and Emergency Hearing by Buckeye Retirement Co., L.L.C., Ltd. ("Motion for Shortened Notice"), which was filed by Buckeye Retirement Co., L.L.C., Ltd. ("Buckeye") on April 12, 2006 at 3:37 p.m. The Motion for Shortened Notice requests (1) shortened notice for response to Buckeye's Motion and Memorandum for Leave to Take the Trial Deposition of Christopher R. Hake ("Motion to Take Deposition") and (2) an emergency hearing on that motion. The Motion to Take Deposition was filed on April 6, 2006 at 4:00 p.m.

Hearing on confirmation of the proposed plan of reorganization filed by Debtors Randall J. and Mary Ann Hake ("Debtors") is scheduled for Tuesday, April 25, 2006. Buckeye alleges in the Motion to Take Deposition that it needs to take the trial deposition of Christopher R. Hake in connection with both its objection to confirmation and its objection to the claim of Christopher Hake. Significantly, Buckeye did not file the Motion for Shortened Time until nearly one week after it filed the Motion to Take Deposition. Buckeye does not allege in the Motion for Shortened Time that there are changed circumstances that now require this Court to shorten the

time for Christopher Hake to respond to the Motion to Take Deposition. Shortening the time would entail giving Christopher Hake notice that he has only one day to respond, which, under the circumstances, is patently unfair.

Christopher Hake has obviated the need to shorten time to respond by filing Objection of Christopher R. Hake to Motion of Buckeye Retirement Co., L.L.C. for Leave to Take the Trial Deposition of Christopher R. Hake ("Chris Hake Objection"), which was filed on April 13, 2006 at 2:45 p.m. As a consequence, the portion of Buckeye's Motion to Shorten Time relating to shortening the time in which Christopher Hake had to respond to the Motion to Take Deposition is now moot.

The second part of the Motion to Shorten Time, which requests an emergency hearing on the Motion to Take Deposition, must be viewed in context to the rest of this Chapter 11 case. First, Buckeye has alleged no reason that can be construed as an "emergency." Buckeye's timing regarding its motions does not require this Court to "drop everything" and hold an "emergency hearing." Buckeye asserts that an emergency hearing is necessary because "[t]he objection date for the Amended Plan. . . is April 12, 2006, the deadline for Buckeye's witness and exhibit list is April 17, 2006, and the hearing date for confirmation of the Amended Plan is April 25, 2006." Buckeye also notes that it has an objection to the claim of Christopher Hake that is set for hearing on May 3, 2006 with an "April 19, 2006 . . . deadline for Buckeye to file its witness and exhibit list." (Memorandum attached to Motion to Shorten Time.) Buckeye acknowledges, however, that it has known about these dates since at least March 28, 2006 (and much earlier

for some of the dates). Despite several weeks' notice of these upcoming deadlines, Buckeye filed the motion for an "emergency hearing" less than two weeks before the scheduled hearing on confirmation (and on the same day as one of the deadlines cited in the Motion) and at a time when this Court's court calendar is extremely full - a fact that was made known to Buckeye on March 28, 2006.

Debtors filed their Chapter 11 petition on March 25, 2004. As Buckeye acknowledges, it previously took the deposition of Christopher Hake on August 20, 2004 in connection with *Buckeye Retirement Co., L.L.C. Ltd. v. Randall J. Hake, et al.*, Case No. 2002-CV-1273, Trumbull County Court of Common Pleas (the "State Court Case"). The State Court Case was commenced prior to the petition date by Buckeye against the Debtors and others to recover on an alleged fraudulent transfer claim.

On January 6, 2006, Buckeye issued a subpoena to Christopher Hake to take his deposition on Friday, January 20, 2006. At that time, the hearing on Debtors' amended disclosure statement was scheduled for Wednesday, January 25, 2006. The hearing on the disclosure statement had been scheduled since November 16, 2005, but Buckeye waited more than two months to attempt to depose Christopher Hake. In response to the issuance of the subpoena, on January 12, 2006, Christopher Hake filed Motion of Christopher Hake to Quash Subpoena ("Motion to Quash"). The basis of the Motion to Quash was that Buckeye had previously deposed Mr. Hake, during which Buckeye extensively questioned him about the One Hundred Sixty Thousand Dollar (\$160,000.00) note and mortgage and Christopher Hake's holdings and interests in various businesses. The Court granted the

Motion to Quash on January 17, 2006.

After the hearing on the disclosure statement, on February 14, 2006, Buckeye filed Motion for Rule 2004 Examination and Notice of Christopher R. Hake and Affidavit of Peter T. Barta ("Motion for 2004 Exam"), seeking to take the examination of Christopher Hake pursuant to FED. R. BANKR. P. 2004 on March 15, 2006. Buckeye alleged that it was necessary to examine Mr. Hake because it had not been able to question him on Debtors' amended disclosure statement and plan and because Mr. Hake allegedly had business interests that Buckeye asserted were really under the control of one of the Debtors. On February 22, 2006, Christopher Hake objected to the Motion for 2004 Exam. The Court conducted a hearing on the Motion for 2004 Exam on March 2, 2006 and heard argument of Buckeye that it needed to examine Mr. Hake in connection with the confirmation hearing. On March 7, 2006, this Court issued a seven page Order Denying Motion for Rule 2004 Exam of Christopher Hake ("Denial Order").

The Denial Order set forth the background of the case and held that the affidavit of Peter T. Barta, attached to and in support of the motion, demonstrated that the Rule 2004 examination was for an improper purpose, *i.e.*, to assist in collecting on Buckeye's pre-petition judgment. The Court further held that in light of Buckeye's prior deposition of Mr. Hake and the purpose asserted by Buckeye for the Rule 2004 examination, such examination was burdensome, oppressive and unnecessary.

Subsequent to the denial of the Rule 2004 Examination, on March 24, 2006, Buckeye filed objections to two claims - one scheduled by the Debtors on behalf of Christopher Hake and the other

scheduled by the Debtors for pre-petition fees owed to an attorney (not the attorney representing them in these Chapter 11 proceedings). Buckeye's notice of the claims provided only ten days to respond to the objection even though Buckeye was aware that objections to claims require thirty days' notice to the claimant. This shortened notice period appears to have been done for the purpose of having the hearing on the objection to claims either the day before or the same day as the confirmation hearing scheduled for April 25, 2006. When the Court became aware of the improper notice, it held a telephonic status conference on March 28, 2006, during which Buckeye agreed to re-notice the objections and the hearing date on the objections was set for May 3, 2006. After it became apparent that the hearing on Buckeye's objections to claims could not be held prior to the confirmation hearing, counsel for Buckeye orally raised the issue (again) of taking the deposition of Christopher Hake. At that time, the Court stated that it would not entertain an oral motion on that topic and any such motion would have to be in writing with notice to the appropriate parties.¹ The Court also noted that since this subject had already been before the Court, if Buckeye chose to make a motion to depose Christopher Hake, it needed to state a reason that had not previously been before the Court.

The basis for the Motion to Take Deposition is that Buckeye needs to take the deposition of Christopher Hake in order to prove that the "alleged debt by the Debtors to their son, Chris Hake, is a sham." (Motion to Take Deposition at ¶ 4.) The claim

¹Since Christopher Hake is not a party, neither he nor his counsel participated in the telephonic status conference on March 27, 2006.

in question is based on the note and mortgage that were the subject of the State Court Case. Buckeye made the argument that it needed the deposition testimony of Christopher Hake at the hearing on the disclosure statement. It offered this same argument at the hearing on the Motion for 2004 Exam. There is no need to conduct another hearing on this same subject. The Court can and will rule on the Motion to Take Deposition on the papers as submitted by both parties.

For the foregoing reasons, the requested relief for an emergency hearing is denied.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**