

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Will this Opinion be Published? No

Bankruptcy Caption: In re Ahmad I. Kleit

Bankruptcy No. 05 B 22481

Adversary Caption: First Equity Card Corp. v. Kleit

Adversary No. 05 A 1982

Date of Issuance: September 28, 2006

Judge: A. Benjamin Goldgar

Appearance of Counsel:

Attorney for plaintiff First Equity Card Corp.: David L. Freidberg, Chicago, IL

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	Chapter 7
)	
AHMAD I. KLEIT,)	No. 05 B 22481
Debtor.)	
<hr style="width:50%; margin-left:0;"/>		
)	
FIRST EQUITY CARD CORP.,)	
)	
Plaintiff,)	
v.)	No. 05 A 1982
)	
AHMAD I. KLEIT,)	
)	
Defendant.)	Judge Goldgar

**ORDER IMPOSING SANCTIONS
FOR VIOLATION OF PRETRIAL ORDER**

This adversary proceeding arises out of creditor First Equity Card Corporation's complaint that debtor Ahmad I. Kleit owes First Equity Card a debt non-dischargeable under section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

The adversary proceeding is currently set for trial on October 11, 2006, at 1:30 p.m., a little less than two weeks from now. The trial date was set on July 24, 2006, when the court entered a final pretrial order in the form it customarily uses. Copies of the final pretrial order were mailed to the parties on July 25, 2006, more than two months ago.

The final pretrial order set specific dates for the filing of pretrial materials. In particular, it required each party to file and exchange a list of witnesses and a list of exhibits no later than 21 days before trial – by September 20, 2006. Final Pretrial Order at ¶¶ 4-5. Copies of the witness and exhibit lists, and copies of the exhibits themselves, were to be tendered to chambers

on the date of filing. *Id.*

The final pretrial order also stated that failure to comply with its terms “*will* result in the imposition of appropriate sanctions.” Final Pretrial Order at ¶ 10 (emphasis in original). It spelled out what those sanctions would be. Failure to file and exchange the list of exhibits would preclude a party from introducing any exhibits into evidence at trial. *Id.* Failure to file and exchange the list of witnesses would preclude a party from presenting any witnesses at trial. *Id.*

The September 20 date for filing the lists of exhibits and witnesses and for submitting the lists and exhibits to chambers came and went just over a week ago. No exhibit lists have been filed. No witness lists have been filed. No materials of any kind have been submitted to chambers. (Presumably no materials have been exchanged, either.) The parties had almost two months advance notice of what they had to file and when they had to file it. Yet as far as the record shows, nothing has been done.

This is unacceptable. The idea behind filing and exchanging of pretrial materials is not just to prevent surprise to the *parties* at trial. The *court* depends on these materials to aid its own trial preparation – judges prepare for trial, too, strange as that may seem – and to prevent surprise to itself. Without the pretrial materials, the court enters the proceeding with only the pleadings (and whatever else can be gleaned from the docket in the case) to provide a sense of what is coming: what the issues are, what the evidence will be, what evidentiary problems might arise, what rulings could be necessary.

The requirements of the final pretrial order are clear. The consequences of failing to meet them are equally clear. Pursuant to Rule 16(f) of the Federal Rules, Fed. R. Civ. P. 16(f) (made applicable by Fed. R. Bankr. P. 7016), and in keeping with this court’s consistent practice,

see *Michael v. Khan (In re Khan)*, 321 B.R. 709, 711 (Bankr. N.D. Ill. 2005); *Schechter v. McAniff (In re McAniff)*, 2004 WL 160493, at *1 (Bankr. N.D. Ill. July 21, 2004); *Hartwick v. Craig (In re Craig)*, 2004 WL 1490427, at *2 (Bankr. N.D. Ill. June 29, 2004), sanctions will be imposed on both parties for their violations of the final pretrial order. Both parties are barred from introducing any exhibits into evidence or calling any witnesses at trial. See *In re Maurice*, 21 F.3d 767, 773 (7th Cir. 1994); *Khan*, 321 B.R. at 711-12.

With neither party able to introduce any evidence at trial, there no longer seems to be much point in having one. First Equity Card would have the burden of proof on its claim of nondischargeability, see *Grogan v. Garner*, 498 U.S. 279, 289-90 (1991); *In re Crosswhite*, 148 F.3d 879, 881 (7th Cir. 1998), and it is clear right now that it cannot meet that burden. Judgment will be therefore entered in favor of debtor Kleit and against First Equity Card on the complaint. The trial date of October 11, 2006, is stricken.^{1/}

A copy of this order will be faxed to counsel for the parties.

Dated: September 28, 2006

A. Benjamin Goldgar
United States Bankruptcy Judge

^{1/} Occasionally, of course, parties do not file pretrial materials because they have reached a settlement and no longer need a trial. On those occasions, however, the parties have the courtesy to notify chambers. Since the parties here have not notified chambers of a settlement, the court is entitled to assume there has been none.