

3RD DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

DKA CONSTRUCTION LLC vs. SUMMITSMH JV et al.

CASE NUMBER 210902439 Lien/Mortgage Fcls

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CURRENT ASSIGNED JUDGE

LAURA SCOTT

PARTIES

Plaintiff - DKA CONSTRUCTION LLC  
Represented by: BENJAMIN JOHNSON

Defendant - 968 S WASHINGTON LLC  
Represented by: DAVID BRIDGE

Defendant - SUMMITSMH JV  
Represented by: MICHAEL BARNHILL

Defendant - SMH BUILDERS INCORPORATED  
Represented by: DAVID BRIDGE

Defendant - SUMMIT BUILDERS OF UTAH LLC  
Represented by: GARRETT WALKER

Cross Complainant - 968 S WASHINGTON LLC  
Represented by: DAVID BRIDGE

Cross Complainant - SMH BUILDERS INCORPORATED  
Represented by: DAVID BRIDGE

ACCOUNT SUMMARY

Total Revenue Amount Due:	715.00
Amount Paid:	715.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COMPLAINT 10K-MORE

Original Amount Due:	375.00
Amended Amount Due:	375.00
Amount Paid:	375.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: COUNTER 10K-MORE

Original Amount Due:	170.00
Amended Amount Due:	170.00
Amount Paid:	170.00
Amount Credit:	0.00
Balance:	0.00

REVENUE DETAIL - TYPE: CROSSCLAIM 10K-MORE

Original Amount Due:	170.00
Amended Amount Due:	170.00
Amount Paid:	170.00
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

PROCEEDINGS

- 05-05-2021 Filed: Complaint
- 05-05-2021 Case filed by efiler
- 05-05-2021 Judge LAURA SCOTT assigned.
- 05-05-2021 Fee Account created Total Due: 375.00
- 05-05-2021 COMPLAINT 10K-MORE Payment Received: 375.00
- 05-05-2021 Note: discovery tier set to 2
- 05-05-2021 Filed: Return of Electronic Notification
- 05-05-2021 Filed: LIS PENDENS
- 05-05-2021 Filed: Return of Electronic Notification
- 05-10-2021 Filed return: Summons on Return 968 S WASHINGTON, LLC upon GEORGE FREDERICK HAUSER, REGISTERED AGEN for  
Party Served: 968 S WASHINGTON LLC  
Service Type: Personal  
Service Date: May 07, 2021  
Garnishee:
- 05-10-2021 Filed return: Summons on Return SMH BUILDERS, INCORPORATED upon GEORGE HAUSER, REGISTERED AGENT for  
Party Served: SUMMIT BUILDERS OF UTAH LLC  
Service Type: Personal  
Service Date: May 07, 2021  
Garnishee:
- 05-10-2021 Filed return: Summons on Return SUMMIT BUILDERS OF UTAH, L.L.C. upon RORY MEARS, REGISTERED AGENT for  
Party Served: SUMMIT BUILDERS OF UTAH LLC  
Service Type: Personal  
Service Date: May 06, 2021  
Garnishee:
- 05-10-2021 Filed return: Summons on Return SUMMIT/SMH JV upon RORY MEARS, REGISTERED AGENT OF GENERAL for  
Party Served: SUMMITSMH JV  
Service Type: Personal  
Service Date: May 06, 2021  
Garnishee:
- 05-10-2021 Filed: Return of Electronic Notification
- 06-04-2021 Filed: Answer and Counterclaim and Crossclaim Complaint
- 06-04-2021 Note: Certificate of Readiness for Trial due 05/18/2022
- 06-04-2021 Fee Account created Total Due: 170.00
- 06-04-2021 COUNTER 10K-MORE Payment Received: 170.00
- 06-04-2021 Filed: Return of Electronic Notification
- 06-04-2021 Filed: NOTICE OF EVENT DUE DATES
- 06-05-2021 Filed: Return of Electronic Notification

06-16-2021 Filed: Answer  
Answer Party: SUMMIT BUILDERS OF UTAH LLC et al.

06-16-2021 Filed: Return of Electronic Notification

06-18-2021 Filed: Answer - Defendants Answer to Complaint  
Answer Party: SUMMITSMH JV et al.

06-18-2021 Filed: Return of Electronic Notification

06-18-2021 Filed: Certificate of Service (Plaintiffs Initial Disclosures

06-18-2021 Filed: Return of Electronic Notification

06-25-2021 Filed: Reply to Counterclaim and Crossclaim

06-25-2021 Filed: Return of Electronic Notification

07-30-2021 Filed: COS: SMH Builders Incorporated and 968 S Washington, LLCs Rule 26 Initial Disclosures

07-30-2021 Filed: Return of Electronic Notification

07-30-2021 Filed: Answer to Crossclaim  
Answer Party: SUMMIT BUILDERS OF UTAH LLC et al.

07-30-2021 Filed: Crossclaim

07-30-2021 Fee Account created Total Due: 170.00

07-30-2021 CROSSCLAIM 10K-MORE Payment Received: 170.00

07-30-2021 Filed: Return of Electronic Notification

07-30-2021 Filed: Certificate of Service of Defendant Summit/SMH JVs Rule 26 Initial Disclosures

07-30-2021 Filed: Return of Electronic Notification

08-16-2021 Filed: Certificate of Service (Plaintiffs First Set of Discovery Requests)

08-16-2021 Filed: Return of Electronic Notification

08-27-2021 Filed: Notice of Withdrawal

08-27-2021 Filed: Return of Electronic Notification

09-08-2021 Filed: Notice to Appear or Appoint to Summit Builders of Utah, L.L.C.

09-08-2021 Filed: Return of Electronic Notification

09-20-2021 Filed: Appearance of Counsel/Notice of Limited Appearance  
Notice of Appearance of Counsel

09-20-2021 Filed: Return of Electronic Notification

10-01-2021 Filed: Certificate of Service - SMHs Responses to DKAs First Written Discovery

10-01-2021 Filed: Return of Electronic Notification

10-19-2021 Filed: COS: SMHs First Requests for Production to DKA

10-19-2021 Filed: Return of Electronic Notification

11-30-2021 Filed: Certificate of Service (DKA Constructions Responses to SMHs First Request for Production)

11-30-2021 Filed: Return of Electronic Notification

12-15-2021 Filed: Notice of Deposition (George Hauser)

12-15-2021 Filed: Notice of Deposition (Rod Folkman)

12-15-2021 Filed: Return of Electronic Notification

12-15-2021 Filed: Notice of Rule 30(b)(6) Deposition of Summit Builders of Utah, LLC

12-15-2021 Filed: Return of Electronic Notification

12-28-2021 Filed: Answer SMH et al Answer to Crossclaim of Summit  
Answer Party: 968 S WASHINGTON LLC et al.  
Answer Party: SMH BUILDERS INCORPORATED et al.  
Answer Party: SMH BUILDERS INCORPORATED et al.  
Answer Party: 968 S WASHINGTON LLC et al.

12-28-2021 Filed: Return of Electronic Notification

01-03-2022 Filed: Stipulation to Extend Discovery Deadlines

01-03-2022 Filed: Return of Electronic Notification  
02-02-2022 Filed: Amended Notice of Rule 30(b)(6) Deposition of Summit Builders of Utah, LLC  
02-02-2022 Filed: Notice of Rule 30(b)(6) Deposition of Summit/SMH JV  
02-02-2022 Filed: Notice of Rule 30(b)(6) Deposition of SMH Builders Incorporated  
02-02-2022 Filed: Notice of Rule 30(b)(6) Deposition of 968 S Washington, LLC  
02-02-2022 Filed: Return of Electronic Notification  
02-04-2022 Filed: Certificate of Service (Plaintiffs Second, Third and Fourth Sets of Discovery Requests)  
02-04-2022 Filed: Return of Electronic Notification  
02-08-2022 Filed: Amended Notice of Rule 30(b)(6) Deposition of 968 S Washington, LLC  
02-08-2022 Filed: Return of Electronic Notification  
02-11-2022 Filed: Second Stipulation to Extend Discovery Deadlines  
02-11-2022 Filed: Return of Electronic Notification  
02-15-2022 Filed: Notice of Subpoena (Solution Builders)  
02-15-2022 Filed: Return of Electronic Notification  
02-22-2022 Filed: Return of Service - Subpoena to Solution Builders  
02-22-2022 Filed: Return of Electronic Notification  
02-24-2022 Filed: Certificate of Service of Defendant Summit/SMH JVs First Set of Discovery Requests to Plaintiff DKA Construction, LLC  
02-24-2022 Filed: Return of Electronic Notification  
03-03-2022 Filed: Certificate of Service (Summit Builders Initial Disclosures)  
03-03-2022 Filed: Return of Electronic Notification  
03-03-2022 Filed: Certificate of Service (Summit Builders Response to Plaintiffs Second Set of Discovery Requests)  
03-03-2022 Filed: Return of Electronic Notification  
03-09-2022 Filed: Certificate of Service (Plaintiffs First Supplemental Disclosures)  
03-09-2022 Filed: Return of Electronic Notification  
03-11-2022 Filed: Notice of Subpoena  
03-11-2022 Filed: Return of Electronic Notification  
03-11-2022 Filed: Notice of Subpoena (UFCU)  
03-11-2022 Filed: Return of Electronic Notification  
03-14-2022 Filed: Certificate of Service (Plaintiffs Second Supplemental Disclosures)  
03-14-2022 Filed: Return of Electronic Notification  
03-16-2022 Filed: Proof of Service (Subpoena - AVV Construction)  
03-16-2022 Filed: Return of Electronic Notification  
03-19-2022 Filed: Return of Service of Subpoena Duces Tecum to University Federal Credit Union  
03-19-2022 Filed: Return of Electronic Notification  
04-05-2022 Filed: Third Stipulated Statement to Extend the Standard Fact Discovery Deadline  
04-05-2022 Filed: Return of Electronic Notification  
04-06-2022 Filed: Certificate of Service (Plaintiffs Third Supplemental Disclosures)  
04-06-2022 Filed: Return of Electronic Notification  
04-13-2022 Filed: Certificate of Service (Plaintiffs Responses to first Set of Discovery Requests from Defendant)  
04-13-2022 Filed: Return of Electronic Notification  
05-27-2022 Filed: Notice of Withdrawal Notice of Withdrawal - Bradley W. Madsen

05-27-2022 Filed: Return of Electronic Notification  
05-27-2022 Filed: Notice to Appear or Appoint Counsel  
05-27-2022 Filed: Return of Electronic Notification  
06-21-2022 Filed: Appearance of Counsel/Notice of Limited Appearance of David S. Bridge for Defendant SMH Builders Incorporated and 968 S Washington, LLC  
06-21-2022 Filed: Return of Electronic Notification  
07-22-2022 Filed: Motion To Compel Mediation  
Filed by: SMH BUILDERS INCORPORATED et al.  
07-22-2022 Filed: Return of Electronic Notification  
07-26-2022 Filed: Amended Notice of Deposition of George Hauser  
07-26-2022 Filed: Amended Notice of Deposition of Rod Folkman  
07-26-2022 Filed: Amended Notice of Rule 30(b)(6) Deposition of SMH Builders Incorporated  
07-26-2022 Filed: Amended Notice of Rule 30(b)(6) Deposition of Summit/SMH JV  
07-26-2022 Filed: Amended Notice of Rule 30(b)(6) Deposition of 968 S Washington, LLC  
07-26-2022 Filed: Amended notice of Rule 30(b)(6) Deposition of Summit Builders of Utah, LLC  
07-26-2022 Filed: Return of Electronic Notification  
07-28-2022 Filed: Fourth Stipulated Statement to Extend the Standard Fact Discovery Deadline  
07-28-2022 Filed: Return of Electronic Notification  
08-02-2022 Filed: Opposition to Motion to Compel Mediation  
08-02-2022 Filed: Return of Electronic Notification  
08-09-2022 Filed: Request/Notice to Submit for Decision on Motion to Compel Mediation  
08-09-2022 Filed: Reply Memorandum in Support of Motion to Compel Mediation  
08-09-2022 Filed: Return of Electronic Notification  
08-09-2022 Filed: Return of Electronic Notification  
08-10-2022 Ruling Entry - RULING AND ORDER RE MOTION TO COMPEL MED  
Judge: SCOTT, LAURA

Before the court is Defendants' SMH Builders Incorporated and 968 Washington, LLC [Defendants] Motion to Compel Mediation [Motion to Compel], which was filed on July 22, 2022.

Plaintiff filed the Complaint on May 5, 2021. The Defendants filed Answers, Counterclaims, and Crossclaims. A Notice of Event Due Dates was issued on June 4, 2021, which set May 18, 2022 as the deadline for completion expert discovery and ADR (unless exempt). The parties have stipulated to four extensions of the deadlines. Pursuant to the Fourth Stipulated Statement to Extend the Standard Fact Discovery Deadline filed on July 28, 2022, the parties stipulated to extending standard fact discovery to October 22, 2022, with all other deadlines recalculated accordingly.

Pursuant to the Motion to Compel, Defendants ask the Court to order Plaintiff to mediate this case prior to the Rule 30(b)(6) depositions of Defendants. Plaintiff opposes the Motion to Compel on the grounds that [1] it has sought a good faith settlement offer from Defendants but they have refused to make any offer; and [2] it needs to take the depositions in order to gather relevant information for their negotiating position. Consequently, at this juncture, Plaintiff believes mediation would be a waste of time and resources.

After considering the procedural history of the case and the arguments of the parties, the Court DENIES the Motion to Compel without prejudice. Specifically, while the Court will require the parties to engage in good faith mediation prior to setting the case for trial as required by Rule 4-510.05 of the Utah Rules of Judicial Administration, the Court declines to order that mediation take place prior to the scheduled Rule 30(b)(6) depositions for the reasons set forth in Plaintiff's opposition and because the deadline for completion of the ADR requirement per the Notice of Event Due Dates is the deadline for completion of expert discovery.

However, the Court reminds the parties that it has not waived the ADR requirement and is unlikely to do so. Consequently, they must comply with the requirement by the deadline - i.e., the deadline for completion of expert discovery - and no trial date will be set until they have done so.

SO ORDERED.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 210902439 by the method and on the date specified.

- EMAIL: DAVID BRIDGE DBRIDGE@SCALLEYREADING.NET
- EMAIL: MICHAEL BARNHILL MCBARNHILL@MICHAELBEST.COM
- EMAIL: GARRETT WALKER GAWALKER@WALKERLAWPLLC.COM

08/10/22 /s/

ELISSA COLLINS  
 Date: \_\_\_\_\_

Signature

08-10-2022 Filed order: RULING AND ORDER RE MOTION TO COMPEL MEDIATION  
 Judge LAURA SCOTT  
 Signed August 10, 2022

08-11-2022 Filed: Return of Electronic Notification  
09-12-2022 Filed: - Notice of Rule 30(b)(6) Deposition of DKA Construction, LLC  
09-12-2022 Filed: Return of Electronic Notification  
09-13-2022 Filed: - Amended Notice of Rule 30(b)(6) Deposition of DKA Construction, LLC  
09-13-2022 Filed: Return of Electronic Notification  
09-19-2022 Filed: Certificate of Service (Summit Builders Rule 30(b)(6) Witness Designation)  
09-19-2022 Filed: Return of Electronic Notification  
09-21-2022 Filed: Certificate of Service (Plaintiffs Fifth Set of Discovery Requests)  
09-21-2022 Filed: Return of Electronic Notification  
09-22-2022 Filed: Notice of Subpoenas Duces Tecum  
09-22-2022 Filed: Return of Electronic Notification  
09-23-2022 Filed: Return of Service - Subpoena to Drywallers United  
09-23-2022 Filed: Return of Service - Subpoena to Foundation Building Materials  
09-23-2022 Filed: Return of Service - Subpoena to MM Drywall LLC  
09-23-2022 Filed: Return of Electronic Notification  
09-27-2022 Filed: Certificate of Service (Plaintiffs Fourth Supplemental Disclosures)  
09-27-2022 Filed: Return of Electronic Notification  
09-28-2022 Filed: Return of Service (Subpoena: Almar Service Company)  
09-28-2022 Filed: Return of Service (Subpoena: Precision Drywall  
09-28-2022 Filed: Return of Electronic Notification  
09-30-2022 Filed: Return of Service (Subpoena to Champions)  
09-30-2022 Filed: Return of Electronic Notification  
10-06-2022 Filed: Return of Service (Subpoena to LKL Associates)  
10-06-2022 Filed: Return of Electronic Notification  
10-19-2022 Filed: Return of Service (Onyx Subpoena)  
10-19-2022 Filed: Return of Electronic Notification  
10-20-2022 Filed: Certificate of Service (Plaintiffs Fifth Supplemental Disclosures)  
10-20-2022 Filed: Return of Electronic Notification  
10-31-2022 Filed: COS SMHS RESPONSES TO DKAS 5th DISCOVERY  
10-31-2022 Filed: Return of Electronic Notification  
11-02-2022 Filed: Certificate of Service of Defendant Summit/SMH JVs Objections and Responses to Plaintiffs Fifth Set of Discovery Requests  
11-02-2022 Filed: Return of Electronic Notification  
11-08-2022 Filed: Certificate of Service (Plaintiffs Sixth Supplemental Disclosures)  
11-08-2022 Filed: Return of Electronic Notification  
11-14-2022 Filed: Certificate of Service (Rule 26(a)(4)(E) Disclosure of Expert Testimony by Non-Retained Expert Kade Ashley)  
11-14-2022 Filed: Return of Electronic Notification  
11-14-2022 Filed: Certificate of Service (Plaintiffs Expert Witness Disclosure of Michael Cole Griffin)  
11-14-2022 Filed: Return of Electronic Notification  
11-14-2022 Filed: Affidavit of Attorney Fees and Costs Amended Certificate of Service (Rule 26(a)(4)(E) Disclosure of Expert Testimony by Non-Retained Expert Kade Ashley)  
11-14-2022 Filed: Amended Certificate of Service (Plaintiffs Expert Witness Disclosure of Michael Cole Griffin)  
11-14-2022 Filed: Return of Electronic Notification

11-14-2022 Filed: SMH Expert Disclosure (Burden of Proof) COS  
11-14-2022 Filed: Return of Electronic Notification  
11-28-2022 Filed: Certificate of Service (Summit Builders Expert Witness  
Discovery Election)  
11-28-2022 Filed: - Defendants 968 and SMHs Notice of Election of Expert  
Discovery  
11-28-2022 Filed: Return of Electronic Notification  
11-28-2022 Filed: Return of Electronic Notification  
12-08-2022 Filed: - Certificate of Service for Defendant SMHs Supplemental  
Disclosures  
12-08-2022 Filed: Return of Electronic Notification  
12-08-2022 Filed: - Certificate of Service for Defendant SMHs Supplemental  
Answers, Responses and Objections to Plaintiffs Fifth Set of  
Discovery Requests  
12-08-2022 Filed: Return of Electronic Notification  
02-08-2023 Filed: Certificate of Service (Report of Cole Griffin)  
02-08-2023 Filed: Return of Electronic Notification