
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,
an Illinois non-profit corporation, and
Danny Lee Shelton, individually,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No.: 07-40098-FDS

**DEFENDANTS' MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO EXTEND ALL DEADLINES FOR DISCOVERY**

INTRODUCTION

Pursuant to Fed. R. Civ. P. 6(b)(1)(A) and 16(b)(4), the Defendants seek an extension of all discovery deadlines and deadlines for dispositive motions by 90 days. Due to delays in the production of documents to the Defendants by the Plaintiffs, MidCountry Bank, Gray Hunter Stenn LLP, and Remnant Publications, Inc., and due to the pending motion for a protective order to limit the scope of discovery, discovery has been inordinately delayed. The Defendants cannot serve effective requests for discovery or conduct effective depositions until they receive the documents they have already requested, and until the pending motions filed in May and June are decided upon.

FACTS

The parties served their initial disclosures about August 3, 2007. The Defendants produced thousands of documents to the Plaintiffs as part of their initial disclosures, leaving but

little or nothing more to produce in response to the Plaintiffs' Requests to Produce. (Affidavit of Robert Pickle (hereafter "Pickle Aff.") ¶ 1). In contrast, the Plaintiffs did not produce any Rule 26(a)(1) documents until the end of March 2008 after being compelled by an electronic order of this Court dated March 10, 2008. The documents the Plaintiffs finally produced, while demonstrating that the range of publicly discussed topics relevant to the instant case is extremely broad, were non-substantive in proving critical elements of the Plaintiffs' claims. (Doc. 81 ¶¶ 15, 1–14, Tables 1–3).

Defendant Pickle served Requests to Produce upon the Plaintiffs on November 29 and December 7, 2007. The Plaintiffs effectively halted discovery by filing a Motion for a Protective Order on December 18, 2007, which was not resolved until April 17, 2008. (Doc. 40; Doc. 60). Since the Plaintiffs still failed to produce documents responsive to Defendant Pickle's Requests to Produce, Defendant Pickle then filed a Motion to Compel on May 15, 2008, which is still pending. (Doc. 61).

After Defendant Pickle filed his Motion to Compel on May 15, 2008, the Plaintiffs from June 13 through June 27, 2008, belatedly produced documents allegedly responsive to Defendant Pickle's Requests to Produce, without an index. (Pickle Aff. ¶ 2).

The Plaintiffs filed a new Motion for a Protective Order on June 25, 2008, effectively halting discovery yet again. This new Motion for a Protective Order is also still pending, and has been used as a basis for opposition to a motion to amend order in the District of Minnesota, a motion to quash in the Southern District of Illinois, and an appeal in the Western District of Michigan. (Doc. 76-3 p. 27, p. 49 at ¶ 9; Pickle Aff. Ex. B at pp. 5–6). The Plaintiffs just today used their pending Motion for a Protective Order as a basis for opposing the Defendants' seeking leave from the Court to issue two subpoenas *duces tecum*. (Doc. 97 pp. 4, 6–9).

The motions pending before this Court have prevented the following documents from

being produced to the Defendants:

- Documents pertaining to the vast majority of the requests and topics of Defendant Pickle's Requests to Produce. (Pickle Aff. ¶¶ 2–4.cf).
- Documents responsive to the Defendants' subpoena *duces tecum* served upon Ann Duenow of MidCountry Bank on January 16, 2008. (Doc. 63-29 ¶ 81; Pickle Aff. Ex. C).
- Documents responsive to the Defendants' subpoena *duces tecum* served upon Alan Lovejoy of Grey Hunter Stenn LLP of Marion, Illinois, on March 17, 2008. (Doc. 81-5 p. 2 at ¶ 2; Doc. 81-6 p. 2).
- Documents responsive to the Defendants' subpoena *duces tecum* served upon Daniel Hall of Remnant Publications, Inc. of Coldwater, Michigan, on March 31, 2008. (Doc. 81-2 p. 133 at ¶ 2).

Remnant Publications, Inc. (hereafter "Remnant") has appealed from Magistrate Judge Carmody order to produce documents to the Defendants, and this appeal may be decided upon by the end of this week. (Pickle Aff. ¶ 7). However, the wording of Remnant's counsel's letter of August 8, 2008, suggests that Remnant may file additional appeals, which could result in yet more delays. (Doc. 96-11 p. 72).

ARGUMENT

Fed. R. Civ. P. 16(b)(4) allows for the modification of a scheduling order "for good cause and with the judge's consent." Fed. R. Civ. P. 6(b)(1) states in relevant part that:

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires

The deadline for serving written discovery was extended by the motion of June 10, 2008, 90 days from June 11, 2008, and thus the new deadline is September 9, 2008. Hence this motion is filed

before the original time or its extension expires.

In order to intelligently serve Requests to Admit or Interrogatories, or additional Requests to Produce upon the Plaintiffs, the Defendants and the experts they have retained need to receive and analyze the documents they have already requested and subpoenaed. Further, the Defendants are unable to effectively conduct depositions unless they receive the documents they have requested.

The Defendants contend that the inordinate delays in production caused by the delay tactics of the Plaintiffs and their allies constitute good cause for a further extension of 90 days for all discovery deadlines and dispositive motions.

In the discovery conferences of June 4–5, 2008, Plaintiffs’ counsel agreed to stipulate to an extension of 90 days of all deadlines for discovery in order to give the Defendants opportunity to analyze the documents they had already requested before making additional discovery requests. (Doc. 73-4 p. 4 at ¶ 2). Now that that additional 90 days is about up and another extension of 90 days is necessary, Plaintiffs’ counsel has represented that he opposes an additional extension. (Pickle Aff. Ex. D).

While this at first glance appears to be a reversal of position on the part of Plaintiffs’ counsel, the Defendants believe that appearance to be illusory. First of all, the Defendants made it quite clear in the discovery conference of June 4–5, 2008, that they wanted a 90-day extension of the June 11, 2008, deadline for serving written discovery requests. (Pickle Aff. ¶ 8). Plaintiffs’ counsel agreed to an extension of the June 11 deadline. But on June 6, 2008, Plaintiffs’ counsel informed Defendant Pickle by phone that an extension of the June 11 deadline was left out of the proposed stipulation he had drafted. (*Id.*).

Not having received the proposed stipulation by June 10, the Defendants filed their motion to extend the time. The Court will note that in the Plaintiffs’ memorandum *in support of*

that motion, Plaintiffs' counsel refers to his 5:30 pm EDT demand that the Defendants withdraw their motion. (Pickle Aff. ¶ 9, Ex. E p. 2). The Court will also note that Plaintiffs' counsel complained that the Defendants had not withdrawn their motion to extend the time on June 13 in order to submit a stipulation that still did not contain an extension of the June 11, 2008, deadline. (Doc. 72 p. 5; Doc. 73-4 p. 5). But to withdraw the motion late in the day on June 11 or later would have made it impossible to move the Court to extend the time pursuant to Fed. R. Civ. P. 6(b)(1), by stipulation or not.

Thus the Defendants conclude that the Plaintiffs all along have wanted the deadline for written discovery to pass before the Defendants had opportunity to obtain the documents they have already requested.

CONCLUSION

The Defendants have thus far received very little from the Plaintiffs in the way of documents essential to the Defendants' defense against the Plaintiff's allegations. The Plaintiffs' pending motion for a protective order to limit the scope of discovery has in effect shut down discovery, preventing the Defendants from obtaining documents from the Plaintiffs as well as from third parties such as MidCountry Bank, Gray Hunter Stenn LLP, and Remnant Publications, Inc.

Wherefore, in the interest of justice, the Defendants pray the Honorable Court for an extension of 90 days of all deadlines for discovery and dispositive motions in order to complete their discovery in preparation of their defense against all claims.

Respectfully submitted,

Dated: September 8, 2008

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