

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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EUGENE L. CHERRY,

Plaintiff,

v.

GERALD BERGE, CINDY SAWINSKI,  
JOLENE MILLER, JOLINDA WATERMAN,

Defendants.

ORDER

02-C-544-C

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EUGENE L. CHERRY,

Plaintiff,

v.

JON LITSCHER, GERALD BERGE,  
JIM PARISI, TIMOTHY MASON,  
PAM BARTELS, KATHRYN McQUILLAN,  
JOHN SHARPE, and YASMIN YUSUF-SAFAVI,

Defendants.

02-C-394-C

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After these cases were consolidated by order dated February 13, 2003, plaintiff filed supplemental proposed findings of fact and evidentiary materials in support of a motion for

summary judgment he submitted for filing in case no. 02-C-394-C on December 23, 2002, and he requested that the defendants be required to respond to his motion by February 24, 2003. When defendants failed to respond to the motion by the 24th, plaintiff moved for judgment on the pleadings, arguing that because defendants had failed to oppose his motion, he was entitled to judgment without further ado. I construe plaintiff's motion for judgment on the pleadings as a motion for entry of judgment in his favor as a sanction for defendants' failure to oppose his motion for summary judgment by February 24, 2003. The motion will be denied.

Despite the fact that plaintiff filed his original motion for summary judgment in this court on December 23, 2002, he did not serve the motion on counsel for the defendants until sometime in January 2003. On February 3, 2003, I set a schedule for briefing the motion. Subsequently, on February 13, 2003, when I granted defendants' motion to consolidate case no. 02-C-394-C with case no. 02-C-544-C, I also granted plaintiff's motion to withdraw his motion for voluntary dismissal of defendant Yusuf-Safavi, who had not yet been served with plaintiff's complaint. In the same order, I advised the parties that I was rescinding the schedule for briefing plaintiff's motion for summary judgment. The decision to rescind the schedule was based on two factors. First, it was clear that plaintiff would have to supplement his motion in order to address all of the issues in the consolidated cases. Second, briefing on the motion was premature, given the fact that I was granting plaintiff

leave to withdraw his motion for voluntary dismissal of defendant Yusuf-Safavi. It is not appropriate to schedule briefing on a motion for summary judgment until all of the defendants in an action have been served with the complaint and have had an opportunity to answer and undertake at least minimal discovery. According to the court's records, Yusuf-Safavi was served with plaintiff's complaint on February 18, 2003.

At a preliminary pretrial conference held in this case on January 23, 2003, the magistrate judge set April 28, 2003 as the deadline for filing dispositive motions. It is likely that defendants will file cross motions for summary judgment on or near that date. It will be considerably more efficient for the parties and the court to delay setting a new schedule for briefing plaintiff's motion until defendants file their cross motions. If defendants do not move for summary judgment by April 28, 2003, I will set briefing on plaintiff's motion at that time.

#### ORDER

IT IS ORDERED that plaintiff's motion for judgment in his favor as a sanction for

defendants' failure to oppose his motion for summary judgment by February 24, 2003 is DENIED.

Entered this 27th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge