

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

DOUGLAS K. UHDE,

Plaintiff,

ORDER

v.

03-C-323-C

MARK K. BITSKY, GARY A. SILKA,
TAMMY L. KROETZ, BRIAN EZMAN
and MATTHEW SHERD,

Defendants.

On November 25, 2003, defendant Brian Ezman filed a motion for summary judgment, long before the March 25, 2004 deadline set at the October 21, 2003 preliminary pretrial conference. Ezman accompanied this motion with a motion to stay discovery until the court rules on summary judgment. Technically the motion to stay is a “discovery” motion, to which plaintiff’s response was due within five days, in this case by December 1, 2003; but as of December 2, the court has received nothing from plaintiff. Because plaintiff may not have realized the five-day deadline applied here, I will not provide a final ruling on Ezman’s motion at this time.

Instead, I will grant a partial stay of discovery while allowing plaintiff promptly to pursue any discovery he might need to answer Ezman’s motion, as provided for by F.R.Civ. Pro. 56(f). Ezman’s summary judgment motion is based on his claim that he wasn’t even

working when the alleged unlawful acts occurred, so he could not be liable either directly or as a co-conspirator. This might turn out to be true, but plaintiff is entitled to attempt to adduce contrary facts to use in opposition to Ezman's summary judgment motion. Plaintiff, however, may not seek or obtain discovery from Ezman on other issues until the summary judgment motion is decided.

Currently, plaintiff's response to Ezman's November 25 motion is due December 25, 2003, which does not leave time for the usual discovery give-and-take. To account for this, I am amending the briefing calendar as follows: Plaintiff may have until January 8, 2004 within which to respond to Ezman's summary judgment motion. Not later than December 12, 2003, plaintiff may serve new discovery requests (or explicitly re-adopt any prior discovery requests) that focus on the issues raised in Ezman's summary judgment motion. Ezman may have no more than 14 days to object to any such requests, and not more than 21 days to provide substantive responses if he does not object. If Ezman wants to retain the benefit of the partial discovery stay and wants to obtain a prompt ruling on his summary judgment motion, then he would be well advised to err on the side of accommodation. On the flipside, if plaintiff does not limit any new discovery requests he might serve to the issues relevant to Ezman's motion, then he will not get timely discovery and he will not be in a position to attempt to refute Ezman's proposed findings of fact.

In order to keep things moving, in this specific situation both sides must submit to the court copies of all discovery requests, objections and responses. If either party wants a court ruling on a discovery dispute, he must file a motion as soon as possible.

Entered this 2nd day of December, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge