

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

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JAMES R. SCHULTZ,

Plaintiff,

v.

ERIC JOHNSON, JOHN SEVERSON,  
KENNETH MILBECK and BRADLEY HOOVER,

Defendants.  
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ORDER

10-cv-581-bbc

Plaintiff James Schultz has filed a document that he titles “Motion for Summary Judgment.” Dkt. #44. In the motion, plaintiff argues that defendants’ answer does not comply with Fed. R. Civ. P. 8(b) because it is not sufficiently “detailed.” Although the substance of plaintiff’s argument is not entirely clear, he seems to believe that he is entitled to judgment because defendants did not address each of his allegations in their answer. Instead, they stated generally that they denied “all of the allegations in plaintiff’s complaint.” Dkt. #16.

For their part, defendants do not argue that their answer complies with Rule 8. Instead, they have filed an amended answer in which they respond to each allegation individually. I will construe this as a motion for leave to file an amended answer under Fed.

R. Civ. P. 15. In his reply brief, plaintiff ignores defendants' amended answer and repeats his argument that the first answer was deficient.

Nothing in Rule 8 requires district courts to enter judgment in favor of a plaintiff if the defendants generally deny the plaintiff's allegations in their answer. Even if I assume that defendants' original answer violated Rule 8 and that a court has the authority to strike an answer under those circumstances, this simply would mean that defendants would have to file an amended answer that complies with Rule 8, which is what defendants have done. Cf. Powers v. Snyder, 484 F.3d 929, 933 (7th Cir. 2007) (court should give plaintiff leave to replead if allegations in complaint are vague). Even when a defendant files *no* answer, the general rule is that the court should give the defendant an opportunity to correct the mistake because of the "well established policy favoring a trial on the merits over a default judgment." Sun v. Board of Trustees of University of IL, 473 F.3d 799, 811-12 (7th Cir. 2007). Particularly because plaintiff does not identify any unfair prejudice that he suffered as a result of defendants' original answer, it would not be proper to resolve the case on an alleged procedural misstep. Accordingly, I am giving defendants leave to amend their answer and denying plaintiff's motion for summary judgment.

#### ORDER

IT IS ORDERED that plaintiff James Schultz's motion for summary judgment, dkt. #44, is DENIED, and the motion for leave to amend their answer filed by defendants Eric

Johnson, John Severson, Kenneth Milbeck and Bradley Hoover, dkt. #55, is GRANTED.

Entered this 8th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge