

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

MADISON BOARDWALK, LLC,

Plaintiff,

v.

OMEGA COMMERCIAL FINANCE CORP.,
JON S. CUMMINGS, IV and
VON C. CUMMINGS,

Defendants.

ORDER

13-cv-288-bbc

In this civil action, the parties are proceeding to trial on September 29, 2014. Pursuant to the scheduling order in this case, plaintiff Madison Boardwalk LLC disclosed its expert witnesses on January 21, 2014. Dkt. #38. The parties stipulated that expert reports were not required. However, under Fed. R. Civ. P. 26(a)(2)(C), when parties do not file expert reports they must still disclose the subject matter of the expert's expected testimony, as well as a summary of the facts and opinions to which that expert will testify. Defendant Omega Commercial Finance Corp. has moved to strike plaintiff's experts on the basis that plaintiff "entirely failed to provide 'a summary of the facts and opinions to which the witness is expected to testify.'" Dft.'s Br., dkt. #70, at 2 (quoting Fed. R. Civ. P. 26(a)(2)(C)).

I am denying this motion for two reasons: (1) defendant Omega forfeited this argument by waiting more than seven months and until the eve of trial to assert it and (2)

a review of plaintiff's January 21 disclosure reveals that it made a good faith effort to provide the information required by Fed. R. Civ. P. 26. Further, at defendant's request, plaintiff supplemented this information with significant additional details between August 1, 2014 and August 7, 2014. Defendant has also deposed all three of plaintiff's experts. Defendant gives no specifics on what information it believes is missing from plaintiff's disclosures or why it believes it has not yet received the information it needs to prepare a defense. Defendant also provides no excuse for why it waited so long to bring this motion.

This is the second frivolous motion defendant Omega has filed in recent weeks. If it continues to file frivolous motions, it may be subject to sanctions from the court.

ORDER

IT IS ORDERED that defendant Omega Commercial Financial Corp.'s motion to strike plaintiff's experts, dkt. #70, is DENIED.

Entered this 4th day of September, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge