

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

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BELFOR USA GROUP, INC.,

Plaintiff,

v.

OPINION AND ORDER

13-cv-614-wmc

CHICAGO'S BEST, LLC, RANDALL GRIMES,  
JUDY GRIMES, and DUPACO COMMUNITY  
CREDIT UNION,

Defendants.

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Defendant Dupaco Community Credit Union moves the court for an extension of time to file expert disclosures. (Dkt. #71.) The preliminary pretrial conference order set a deadline for proponent experts of June 30, 2014, and response experts of August 1, 2014. (Dkt. #23 at ¶ 1.) On July 29, 2014, Dupaco filed the present motion, seeking an extension of this second deadline to September 30, 2014. Plaintiff opposes the motion on the basis that Dupaco should have disclosed its experts by the June 30th deadline, because Dupaco intends to call these appraisal experts “as part of its case in chief.” (Pl.’s Opp’n (dkt. #77) 1.) While plaintiff’s interpretation of the pretrial conference order would otherwise have some merit, it is inconsistent with our Magistrate Judge’s direction at the preliminary pretrial conference that an expert opining on issues on which a party does not bear the burden of proof falls within the “response” category. Since Dupaco proposes to call the appraisal experts simply in defense of Belfor’s claims against it, the disclosure deadline was August 1st.

That said, Dupaco only disclosed the *name* of its proposed, retained expert on July 29, and seeks an extension of some sixty days to make the other disclosures required by

Fed. R. Civ. P. 26(a)(2)(B) and this court's preliminary pretrial conference order. Dupaco's last-minute motion for an extension of time wholly fails to demonstrate good cause in seeking a modification of that scheduling order as required by Fed. R. Civ. P. 16(b)(4). In its motion and opening brief, Dupaco simply states that it has "not received a prior extension of the discovery deadline and ha[s] not engaged in dilatory tactics," but that does not constitute good cause for an extension of a long-established deadline. Whether or not Dupaco has acted diligently in seeking and responding to discovery is a separate matter from whether Dupaco acted diligently in retaining experts. On that subject, Dupaco represents no more than that it has now "retained an expert witness whose work is not yet completed and will not be completed . . . until sometime in September." (Dupaco's Br. (dkt. #72) 6.)

In its reply brief -- which the court neither requested nor granted leave for Dupaco to file<sup>1</sup> -- Dupaco attempts an excuse for its delay, explaining that it had an appraisal expert lined up, but the expert had to back out because of a conflict of interest. (Dupaco's Reply (dkt. #78) 2-3.) While Dupaco mentions a "third conversation" with its initially retained expert, its counsel fails to provide *any* timeline for these events, much less represent that the first expert had done any substantive work. From this, the court is left with the likely inference that Dupaco and its experts had done nothing to prepare an appraisal and instead filed for an extension just three days prior to the deadline. In any event, Dupaco offers *no* evidence that it acted diligently in retaining an expert in order to

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<sup>1</sup> Despite the court not requesting a reply brief, and thus not setting a date for such a brief, Dupaco filed a motion for an "extension of time" to file a reply brief. (Dkt. #79.) The court denies this motion as moot, but has considered the reply brief.

comply timely with the deadline imposed by this court and required by Fed. R. Civ. P. 26. *See Alioto v. Town of Lisbon*, 651 F.3d 715, 720 (7th Cir. 2011) (“In making a Rule 16(b) good-cause determination, the primary consideration for district courts is the diligence of the party seeking amendment.”). Moreover, Dupaco was warned “[i]f a party does not follow the requirements of Rule 26(a)(2) by his (or her) deadline to disclose expert witnesses, then this court will not allow that expert witness to present evidence in this case.” (Dkt. #23 at ¶ 6.)

Finally, Dupaco fails to convince the court that this untimely appraisal is worth the delay and inevitable expense that will be imposed in the likely event the plaintiff is then allowed an opportunity to name a rebuttal expert. Indeed, Dupaco’s proposal to submit appraisals on the property ostensibly to prove that plaintiff’s restoration work on the property did not improve the property appears wholly beside the point of plaintiff’s equitable claims. Dupaco has *not* been unjustly enriched because a property for which Dupaco holds a mortgage has been *improved*, but allegedly because liability on Dupaco’s mortgage was wrongfully reduced by use of funds intended for improvements. Perhaps Dupaco has some more balanced theory as to the relevance of the appraisals, but it has wholly failed to articulate it.

Accordingly, Dupaco’s motion for extension will be denied without prejudice. Dupaco may have seven days to move for reconsideration provided it can articulate and provide supporting evidence of: (1) credible good cause for its delay in engaging an expert to actually perform an appraisal; and (2) why an appraisal is likely to be relevant to plaintiff’s equitable claims against Dupaco. Should Dupaco so move, plaintiff may

have an additional seven days to respond and, if appropriate, to seek an award of its costs of responding. While Dupaco missed the deadline with respect to its retained expert disclosures, the court finds the July 29, 2014, disclosure of non-retained experts to be both timely and sufficient on their face to meet the requirements of Rule 26(a)(2)(C). Whether these individuals are unqualified to express the “expert” opinions generally described as plaintiff maintains is an issue for another day.

#### ORDER

IT IS ORDERED that:

- 1) Defendant Dupaco Community Credit Union’s motion for extension of time to disclose experts (dkt. #71) is DENIED;
- 2) Defendant Dupaco may have seven days to move for reconsideration provided it can articulate: (1) credible good cause for its delay in engaging an expert to actually perform an appraisal; and (2) why an appraisal is likely to be relevant to plaintiff’s equitable claims against Dupaco. Should Dupaco so move, plaintiff may have an additional seven days to respond and, if appropriate, to seek an award of its costs of responding; and
- 3) Defendant’s motion for extension of time to file a reply brief (dkt. #79) is DENIED AS MOOT.

Entered this 14th day of August, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge