

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

BRADLEY EGGEN and MARY EGGEN,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

WESTCONSIN CREDIT UNION,

Defendant.

ORDER

14-cv-873-bbc

In an order dated August 16, 2016, dkt. #97, I denied defendant WESTconsin Credit Union's motion for summary judgment with respect to plaintiffs Bradley Eggen's and Mary Eggen's claim that defendant violated the Driver's Privacy Protection Act. In addition, I directed the parties to show cause why I should not enter judgment in plaintiffs' favor with respect to that claim. In response to that order, the parties asked for a stay while they conducted mediation. Dkt. #98. I granted the request with the following caveat: if the parties did not file a stipulation of dismissal by September 30, 2016, they would need to comply with the directives in the August 16 order. Dkt. #99.

Now the parties are reporting that they attempted mediation, but it was unsuccessful. Plaintiffs ask for a lifting of the stay, not so the parties can comply with the August 16 order, but so that defendant is required to comply with discovery requests related to its financial

health. Dkt. #100. Defendant objects to the request on the ground that it relates solely to the issue of punitive damages. Dkt. #101. Although defendant acknowledges that punitive damages may be awarded under the Driver's Privacy Protection Act, it argues that plaintiffs cannot meet the relevant standard.

Defendant's response has no legal justification in light of the history of this case. First, as noted above, defendant's motion for summary judgment has been decided. Although defendant could have raised an argument about the availability of punitive damages in its motion, it chose not to do so. In this court, a party has one chance to obtain summary judgment. Dkt #19 at 3. Defendant cannot circumvent this rule by disguising a new motion for summary judgment as a discovery objection.

That would be enough to overrule defendant's objection, but there is more. As defendant well knows (but failed to acknowledge in its brief), this issue was already litigated several months ago. In April 2016, after plaintiffs first submitted the discovery requests at issue, defendant filed a motion to stay the requests until after the court resolved its motion for summary judgment. Dkt. #75. Defendant's reasoning was that the discovery would be moot if the court were to dismiss the case on summary judgment. I granted defendant's request for a stay, but with another caveat. If the case was not resolved on summary judgment, defendant would have seven days from the summary judgment decision to comply with plaintiff's written requests and 14 days to comply with plaintiff's request to depose defendant's chief financial officer. Dkt. #83. Because defendant neither sought reconsideration of that decision nor raised the issue of punitive damages in its summary

judgment motion, defendant has no legitimate excuse for failing to comply with plaintiffs' requests now. Defendant should have known better than to raise an objection that it had no right to raise.

Plaintiffs have filed a motion for leave to file a reply brief in support of their motion to lift the stay. Dkt. #104. I am denying the motion as unnecessary because I did not need to consider any of the arguments in the proposed brief.

ORDER

IT IS ORDERED that

1. The motion to lift the stay filed by plaintiffs Bradley Eggen and Mary Eggen, dkt. #100, is GRANTED.

2. Plaintiffs' motion for leave to file a reply brief, dkt. #104, is DENIED as unnecessary.

3. Defendant may have until September 27, 2016, to comply with Request Nos. 22 through 31 of plaintiffs' third request for production of documents. Defendant may have until October 4, 2016, to make Jerlyn Kinderman available to sit for a deposition.

4. The September 30, 2016 deadline for complying with the court's directives in the August 16 order remains in place.

4. Because the parties' latest submissions make it clear that a trial will be needed at least for the purpose of resolving the issue of punitive damages, I will set a telephone conference for September 29, 2016, at 1:00 pm to determine a new trial date. Plaintiffs are

responsible for setting up the call. Before the telephone conference, counsel for both sides should confer so that they can be prepared at the conference to identify one or more trial dates that are convenient for both of them.

Entered this 20th day of September, 2016.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge