

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

LATINO FOOD MARKETERS, LLC,

Plaintiff,

v.

OLE MEXICAN FOODS, INC.,

Defendant.

ORDER

03-C-0190-C

Presently before the court are three motions filed by defendant Ole Mexican Foods, Inc. Defendant has moved to alter or amend the November 24, 2003 order denying defendant's motion to dismiss. That motion is DENIED. Defendant's motion is essentially a reiteration of the arguments made in support of its motion to dismiss. The arguments are no more persuasive now than they were then.

Defendant has also applied for permission to file an appeal. That motion is DENIED. There is no reason to believe that an interlocutory appeal would materially advance the ultimate termination of the litigation or that the issue raised in the motion is a novel one. In fact, it is nothing more than a question of proper venue for trial of the case.

Third, defendant has moved for an extension of all deadlines, including the date of trial. In support of this motion, defendant says only that it has devoted all of its resources to the issue involving venue and the status of its motion to dismiss. Apparently, the parties made their own agreement to stay the discovery period until and if the plaintiff prevailed against defendant's motion to dismiss. In making this agreement, the parties acted at their own risk. They should not have been under any apprehension that the court would agree to their self-imposed stay or that it would change the date of trial.

The parties say that the magistrate judge gave them leave to set their own deadline for discovery. That is true, but that does not mean that the magistrate judge agreed to any extension of the trial date. In this district, trial dates are set in consultation with counsel but once they are set, they are intended to remain set.

In this case, however, because the threshold questions involved considerably more time than the parties might have expected at the time of the preliminary pretrial conference, I will GRANT defendant's motion for an extension of time. The trial will begin on April 5, 2004, which will give the parties sixty additional days in which to conduct discovery and prepare for trial. The parties should prepare an amended scheduling order taking the new

trial date into account and file it with the court no later than December 21, 2003.

Entered this 9th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge