

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

LEONARD COLLINS,

Plaintiff,

v.

GARY McCAUGHTRY,
DICK POLINSKE, and
MOLLY OLSON,

Defendants.

ORDER

04-C-147-C

Plaintiff was granted leave to proceed in this action on April 22, 2004. On June 1, 2004, defendants answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a document titled "Plaintiff's Answer to Defendants' Affirmative Defenses," in which he argues that defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to

defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer, unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to the answer will be placed in the court's file but will not be considered.

Entered this 11th day of June, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge