

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

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CROELL REDI-MIX, INC.,

Plaintiff,

v.

JACK A. ELDER,

Defendant.

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ORDER

05-C-0294-C

In an order entered on March 15, 2006, I noted that plaintiff Croell Redi-Mix, Inc. had not given defendant Jack A. Elder an opportunity to retract the allegedly libelous statements he made about plaintiff that were published in the La Crosse Tribune on March 25, 2005. Under Wis. Stat. § 895.05(2), any party claiming to have been defamed in a newspaper, magazine or periodical must give “those alleged to be responsible or liable for the publication” a reasonable opportunity to retract the allegedly defamatory statement before the wronged party may initiate a law suit. I directed plaintiff to show cause why this suit should not be dismissed for failure to comply with § 895.05(2). Plaintiff filed a response, admitting that it had failed to comply with the statute, conceding that the suit must be dismissed because of this failure and asking the court to make the dismissal without

prejudice.

I gave defendant Elder an opportunity to state his position on plaintiff's request for dismissal without prejudice. Defendant responded but did not make his position clear, no doubt because the law is unclear on the issue. He does assert that plaintiff's failure to provide timely notice prevents him from making any kind of meaningful retraction and that because he has no ability to retract the statements published in the newspaper, the notice fails of its essential purpose.

It appears that the best course of action is to grant plaintiff's request for dismissal without prejudice. If plaintiff chooses to initiate a new suit after having given defendant an opportunity to retract his statement, defendant will have an opportunity to litigate the effect of plaintiff's delay in seeking a retraction. Any ruling on that issue at this time would be nothing more than advisory.

A final word. Plaintiff is entitled to bring any lawsuit it wishes in this court or in any other court. Because I am dismissing this case without prejudice, plaintiff is free to file the same suit in this court. Before it does so, however, it should give serious thought to the wisdom of that course of action, the costs and benefits to itself and the ends that can be achieved through litigation.

ORDER

IT IS ORDERED that this case is dismissed without prejudice.

Entered this 17th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge