

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

HENAN MACHINERY & ELECTRIC
IMPORT AND EXPORT COMPANY, LTD.,

Plaintiff,

v.

WDF INTERNATIONAL TRADING
CO., LLC,

Defendant.

ORDER

06-C-715-C

On December 14, 2006, defendant filed a motion to dismiss, transfer or stay. *See* dkt. 4. On January 16, 2007, defendant submitted a letter to the court observing that plaintiff had not responded to the motion, and asking the court grant the motion as unopposed. This prompted a January 19, 2007 letter from plaintiff (received by this court on January 22, 2007) stating

It is my understanding that a hearing date had not yet been scheduled in order to respond to the motion to dismiss. There was also no indication in the motion that a response was required prior to the hearing.

In order to avoid exactly this sort of *mis*-understanding, I routinely begin telephonic preliminary pretrial conferences in civil cases by warning counsel that they must read the subsequently-issued pretrial conference order front-to-back before tossing it in their case file.

I gave that warning in the instant case, as noted in the written order:

The court . . . advised the parties that their conduct throughout this case is governed by this pretrial conference order and the attachments to it.

Jan. 3, 2007 Prelim. Pretrial Conf. Order, Dkt. 9, at 1.

Section 3 of the pretrial conference order states:

All responses to any dispositive motion must be filed and served within 21 calendar days of service of the motion, which the court presumes is the date the motion is filed with the court. Any reply by the movant must be filed and served within 10 calendar days of service of the response, which the court presumes to be the date the response is filed with the court. A party is not entitled to additional time under Rule 6(e) to file and serve documents related to a dispositive motion. The parties may not modify this schedule without leave of court.

Id. at 2.

Therefore, plaintiff knew or should have known that its response to defendant's dismissal motion was due on or about January 4, 2007. (The court would have given plaintiff some additional briefing time because of the holidays, but none was requested). Counsel failed to comply with clear written procedures that were in her possession and that the court explicitly drew to her attention. This constitutes waiver. As a result, briefing is complete on defendant's motion. Defendant asks the court to grant its motion because it is unopposed, but that's not the court's practice. The court will consider defendant's unopposed motion on its merits.

Plaintiff's attorney closes her January 19, 2007 letter by predicting that she will be filing a motion to withdraw as counsel "because she is unable to proceed with this matter."

There is nothing for the court to do until the motion is filed and counsel provides her grounds. Counsel's prediction will not block the court's consideration of defendant's pending motion.

Entered this 23rd day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge