

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

Plaintiff has asked for reconsideration of this court's decision denying its request for an extension of time to respond to defendant's motion to dismiss, transfer or stay. *See* dkt. 16-18. Defendant opposes the motion. *See* dkt. 22-23. Having re-reviewed the file, I am denying plaintiff's request.

It *is* true, as plaintiff points out, that because defendant filed its motion so early (December 14, 2006), plaintiff's attorney did not receive the court's January 3, 2007 pretrial conference order alerting plaintiff as to its presumptive deadline for filing a responsive brief until after the deadline had passed. On the other hand, the court earlier had provided the parties with its standard order advising of the 21/10 briefing schedule attendant to dismissal motions. Further, plaintiff then waited until January 19, 2007 to request relief.

That said, the court still will consider defendant's motion to dismiss on its merits, as opposed to granting it as unopposed. I note that plaintiff since has filed an amended

complaint (dkt. 21) within the deadline allowed by the court in its pretrial conference order. This has prompted a motion to strike by defendant, who sees this as an unfair end run by plaintiff. *See* dkt. 25. Actually, amended complaints are common in response to motions to dismiss; however, the ultimate decision on the various pending substantive motions must be made by the district judge, not me. This order simply confirms my earlier ruling that plaintiff waited too long to attempt to file a brief responding to defendant's December motion to dismiss.

Entered this 1st day of March, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge