

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

STEPHEN WENDELL JONES,

Plaintiff,

v.

SECRETARY M. FRANK, WDOC,
in his official capacity;
WARDEN R. SCHNEITER, WSPF;
G. BOUGHTON, a Security Director;
B. KOOL, a Unit Manager; and
P. HUIBREGTSE, Under Warden,

Defendants.

ORDER

07-C-141-C

Plaintiff Stephen Wendell Jones has moved to strike defendants' answer insofar as defendants affirmatively assert that plaintiff's complaint fails to state a claim upon which relief may be granted. Under Fed. R. Civ. P. 12(f), a court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Plaintiff does not contend that defendants' motion to dismiss is redundant, immaterial, impertinent or scandalous. Instead, he argues that his case is not amenable to disposition on a Rule 12(b)(6) motion.

Striking a defense is a drastic remedy often sought by a movant as a dilatory tactic. Therefore, such motions are viewed with disfavor and are rarely granted. United States v. 416.81 Acres of Land, 514 F.2d 627, 631 (7th Cir. 1975). A court should strike a defense

as legally insufficient only if there is no question of law or fact that might allow the challenged defense to succeed and if it is impossible for the defendant to prove a set of facts in support of the defense that would defeat the complaint. Codest Engineering v. Hyatt International Corp., 954 F. Supp 1224, 1228 (N.D. Ill. 1996). Although this court already has determined that plaintiff's complaint raises a claim that passes muster under Fed. R. Civ. P. 12(b)(6), it is not beyond all possibility for defendants to exercise the defense of failure to state a claim in relation to, for example, the question whether plaintiff has exhausted his administrative remedies as required by 42 U.S.C. § 1997e. As I told plaintiff in an order dated June 8, 2007, if defendants were to file a motion to dismiss raising such a defense, he will be provided an opportunity to respond to it. Striking the motion to dismiss from defendants' answer is unwarranted.

Because plaintiff suggests no valid reason for striking defendants' motion to dismiss, I will exercise my discretion and decline to grant plaintiff's motion to strike.

ORDER

IT IS ORDERED that plaintiff's motion to strike defendants' motion to dismiss is DENIED.

Entered this 28th day of June, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge