

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

DUOLINE TECHNOLOGIES, L.P.,

ORDER

Plaintiff,

10-cv-252-bbc

v.

McCLEAN ANDERSON, LLC,

Defendant.

The only claims remaining in this case are defendant McClean Anderson, LLC's counterclaims for breach of contract, quantum meruit and unjust enrichment, to which plaintiff Duoline Technologies, L.P. filed a late answer on April 8, 2011. This case is scheduled for trial on May 23, 2011. Now before the court is plaintiff's motion to strike the trial date and set a deadline by which it may move for summary judgment on defendant's counterclaims. Dkt. #98. Defendant opposes the motion. Because I am not persuaded that striking the trial date would promote efficiency or fairness, I will deny the motion.

I noted in previous orders that there may have been a legitimate misunderstanding about whether defendant's counterclaims had been filed properly and whether plaintiff was required to respond to the counterclaims. (I also noted also that plaintiff should have taken steps to clarify the matter.) Although the misunderstanding was enough to defeat

defendant's motion for default judgment, it is an insufficient reason to strike the trial date and delay adjudication of defendant's claims. As defendant points out, the parties have been conducting discovery related to defendant's counterclaims throughout the pendency of the case. Dkt. #102 at 3-4. Because defendant's counterclaims are intertwined with plaintiff's original claims and defendant's affirmative defenses, the parties should have had ample time at this stage to conduct discovery and prepare to address the issues presented by the counterclaims.

Finally, it is not certain that a summary judgment motion would absolve the need for a trial. Presumably, the parties will continue to dispute whether the machinery supplied to plaintiff by defendant satisfied the parties' contractual arrangement. Any genuine disputes regarding material facts on this issue will have to be presented to a jury eventually. Thus, the case will proceed to trial on May 23, 2011 as scheduled. If plaintiff believes that certain issues of law may be resolved before trial, it may raise these issues by filing motions in limine.

ORDER

IT IS ORDERED that plaintiff Duoline Technologies L.P.'s motion for establishment

of a dispositive motion deadline and motion to strike the trial date, dkt. #98, is DENIED.

Entered this 26th day of April, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge