

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
DOCKET NO. BCD-CV-18-26

JOEL D. DAVIS,)
)
 Plaintiff)
)
 v.)
)
 WILLIAM E. LOVELY and A.B.J.)
 GENERAL CONTRACTOR, INC.,)
)
 Defendants)
)
 _____)
)
 WILLIAM E. LOVELY and A.B.J.)
 GENERAL CONTRACTOR, INC.,)
)
 Counter-Plaintiffs,)
)
 v.)
)
 JOEL E. DAVIS,)
)
 Counter-Defendant)

ORDER DENYING PLAINTIFF'S
MOTION FOR EXTENSION OF
TIME TO FILE MOTION FOR
SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Joel Davis ("Davis" or Plaintiff) filed an Amended Complaint against William Lovely ("Lovely") and A.B.J. General Contractor, Inc. ("A.B.J.") claiming breach of contract, breach of duties as a member of a limited liability company, breach of covenant of good faith and fair dealing, unjust enrichment, interference with advantageous business opportunity, intentional misrepresentation, negligent misrepresentation, fraud and seeking declaratory judgment. Lovely and A.B.J. denied the allegations and filed a Counterclaim alleging breach of good faith and fiduciary duties, breach of contract, fraud, contribution, unjust enrichment, and seeking declaratory judgments. In due course, the Court issued a Scheduling Order

setting deadlines, including the deadline for filing dispositive motions. One day before the deadline expired, Davis filed a Motion for an Extension of Time to file a motion for summary judgment. The Court reserved ruling on the Motion. For the reasons discussed below, the Court denies Plaintiff's Motion for an Extension of Time.

PROCEDURAL HISTORY

This is a dispute involving loan and business transactions. Case Management Scheduling Order No. 1 was issued on August 20, 2018. (Mulhern, J.) The Scheduling Order established May 22, 2019, as the deadline for filing dispositive motions. The Scheduling Order set a "Further Scheduling Conference" for February 2019, "prior to the above motion deadline," to establish dates and deadlines for the trial-related phases of the case. The Scheduling Order also advised that: "The parties shall not deviate from any of the deadlines or requirements in this Order or any modifications of this Order unless authorized by the court."

At the Further Scheduling Conference held on February 27, 2019 (Duddy, J.), the Court set the case for a bench trial in October 2019, and a Pretrial Conference in September 2019. Plaintiff's counsel made no mention of plans to file a motion for summary judgment. By Order dated March 26, 2019, the Court granted Plaintiff's motion for a one month extension of the discovery and dispositive motion deadlines. The discovery deadline was extended from April 22, 2019 to May 22, 2019; the deadline for filing dispositive motions was extended from May 22, 2019 to June 21, 2019.

By Order dated May 7, 2019, the Court denied Plaintiff's motion to extend the discovery deadline yet again, on the grounds that extending the discovery deadline would diminish settlement likelihood and delay the trial.

On June 19, 2019, two days before the deadline for filing dispositive motions, Davis filed a “Notice of Intent to File Motion for Summary Judgment.” On June 20, 2019, Davis filed a Motion for Extension of Time to file a motion for summary judgment. The Motion for Extension of Time mentions the withdrawal of opposing counsel,¹ and references an affiant being ill. The Motion for Extension of Time does not, however, lay out or proffer any explanation for why the Motion for Summary Judgment could not be timely filed. On June 21, 2019, the Court explained that it was “reserving ruling on the motion” until after the status of Defendants’ representation was resolved.

After some delay, Lovely began representing himself.² On August 20, 2019, without waiting for the Court to decide the Motion for an Extension of Time, and without waiting for a pre-filing conference pursuant to M.R. Civ. P. 134(b), Davis filed an extensive Motion for Summary Judgment. Despite being captioned a Motion for Summary Judgment, Davis’ Motion is actually a Motion for Partial Summary Judgment, since the Motion seeks summary judgment on only some of Davis’ counts.³ And although only seeking partial summary judgment, Davis’ Motion (with Statements of Material Facts, affidavits, and attachments) is over 1,000 pages long, not counting the Reply.⁴

On November 4, 2019, the Court issued Case Management Scheduling Order No. 2. As to the Deadline for Filing Dispositive Motions, the Court provided as follows:

On June 19, 2019, with only two days left before the deadline for filing dispositive motions, Plaintiff submitted an intent to file motion for summary judgment. The notice left no time for the Court to conduct a Rule 134(b) conference before the deadline, and effectively undermined the purpose of the 14 day notice period.

¹ On June 20, 2019, counsel for Defendants filed a motion to withdraw.

² As a business entity, A.B.J. is not permitted to represent itself, and as a non-attorney, Lovely is unable to represent A.B.J. At the time of this Order, A.B.J. is unrepresented and not participating in the litigation.

³ In other words, whether the Motion were to succeed or not, the case would still need to proceed to trial.

⁴ This, in a case destined for a Bench trial, since no party paid a jury fee.

Plaintiff thereafter filed a lengthy Motion for Summary Judgment, even though this is a Bench trial case. The Motion was also untimely, although Plaintiff timely filed a Motion to Extend the Deadline, which the Court reserved on. Defendants have until **November 25, 2019**, to file their Opposition. Unless otherwise ordered by the court, the court will hear oral argument on dispositive motions. Counsel should be prepared to advise the court on the desired location of oral argument.

By Order dated November 26, 2019, the Court enlarged to December 24, 2019, Lovely's deadline for Defendants to file their Opposition, in order to allow for mediation (which was planned for December 19, 2019). Lovely filed his Opposition on December 24, 2019. By docket entry dated January 2, 2020, the Court noted the mediation was unsuccessful and the case was unresolved.

On January 7, 2020, Plaintiff filed his Reply, which substantially exceeded the page limit. Along with his Reply (and not before), Plaintiff filed a Motion to Allow a Longer Memo. Shortly thereafter, the Court's civil docket was suspended for a matter of months due to the pandemic.

STANDARD

For good cause shown, upon a timely filing of a request for an enlargement of time, the Court in its discretion may enlarge the deadline for taking required action. M.R. Civ. P. 6(b)(1). Where a request for enlargement of time is untimely, the Court in its discretion may enlarge the deadline for taking required action upon a showing of excusable neglect. M.R. Civ. P. 6(b)(2). In either scenario, the trial court has considerable discretion to grant or deny motions for an enlargement of time. *Gregory v. City of Calais*, 2001 ME 82, ¶ 9, 771 A.2d 383.

ANALYSIS

The Motion for Summary Judgment's untimeliness in this case is not rescued by Davis filing a Motion for Extension of Time on the day before the filing deadline expired. Whether

the Motion for an Enlargement of Time is considered timely filed or not, is of no consequence in this analysis.⁵ Davis has provided neither good cause nor excusable neglect for the late filing of his Motion for Summary Judgment.⁶

In the BCD, unless otherwise ordered by the Court, a party proposing to move for summary judgment must file a notice of intent at least fourteen days before filing the proposed motion. M.R. Civ. P. 134(b). The purpose of the rule is to give the Court an opportunity to discuss the proposed motion's parameters, including but not limited to the issues to be addressed and the length of the motion and supporting papers. *Id.* Summary judgment issues are ordinarily raised by counsel and discussed in the Further Scheduling Conference, but no such discussion occurred in this case. Instead, Plaintiff waited until two days before the deadline to file his notice of intent, but by that point there was no time prior to the expiration of the deadline for the Court to convene a Rule 134(b) conference. Plaintiff's Motion for an Enlargement of Time filed one day before the deadline was similarly too late, since it was not filed early enough to accommodate the Rule 134(b) conference.

The Motion for Summary Judgment and supporting papers that Davis ultimately filed are of unusual length, especially for a partial summary judgment in a jury waived case.⁷ Moreover, as will be discussed in a separate order deciding the Motion for Summary

⁵ In Case Management Scheduling Order No. 2, the Court mentioned that the Motion for an Extension of Time was timely, but all the Court meant was that it was filed the day before the dispositive motion deadline. Because the Motion for an Extension of Time was not filed early enough to give the Court the minimum fourteen day notice to set up a M.R. Civ. P. 134(b) conference before the deadline to file dispositive motions, the Motion for an Extension of Time was functionally untimely.

⁶ Plaintiff's reference to the withdrawal of opposing counsel provides no reason why Plaintiff could not have timely filed. Similarly, Plaintiff's reference to the illness of one affiant does not rise to the level of good cause or excusable neglect.

⁷ Indeed, it is unclear why Plaintiff went ahead and filed his Motion for Summary Judgment before the Court decided the Motion for an Extension of Time, especially because the Motion for Summary Judgment was filed *two months* after the deadline had expired, and without obtaining any guidance from the Court by way of a Rule 134(b) conference or even a status conference.

Judgment itself, the Statements of Material Fact fail to comply with certain of the rules governing summary judgment practice, and genuine issues of material fact remain. Motion practice in this case could have been improved by appropriately utilizing the Rule 134(b) process.

Accordingly, the Court denies Plaintiff's Motion for Extension of Time to file a motion for summary judgment.

The Clerk is instructed to enter this Order on the docket for this case, incorporating it by reference pursuant to Maine Rule of Civil Procedure 79(a).

So Ordered.

Dated: July 9, 2020

_____/s_____
Michael A. Duddy
Judge, Business & Consumer Court