

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

CAHABA FORESTS, LLC,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:11-cv-423-WHA
)	(WO)
MARY GEORGE EAST HAY, et al.,)	
)	
Defendants.)	

ORDER

This case is before the court on Plaintiff’s Objections to Orders of the Magistrate Judge (Doc. #113). The objections are directed to Doc. #99, referred to by the Plaintiff as the “Waiver Order,” and Doc. #106, referred to as the “Withdrawal Order.”

Waiver Order

This order of the Magistrate Judge was based on the fact that the Plaintiff has asserted defenses of good faith as to the Counterclaim and moved for summary judgment on the same basis, thereby waiving its claim of attorney-client privilege. The court finds that this determination was neither clearly erroneous nor contrary to law. Therefore, based on the current state of the pleadings, the objection to this order is OVERRULED. Fed. R. Civ. P. 72(a).

Withdrawal Order

This order denied the Plaintiff’s request for an order that, if it withdrew its good faith defense to the Counterclaim, it would not be required to produce attorney-client communications. The order was based on the lack of timeliness for amending the answer to the counterclaim and also on the fact that the Plaintiff had moved for summary judgment on the counterclaim based on

good faith. It is now clear that the Plaintiff was referring not only to its Eighth Defense as set out in its Answer, but also to any reference to good faith in its motion for summary judgment on the counterclaim.

Allowing withdrawal of any defense for the counterclaim would require an amendment to Plaintiff's answer and to any reference to good faith contained in its motion for summary judgment. The court cannot consider the effect of this without addressing the specific amendments. Under all the circumstances, in the interest of justice, the court finds that the good cause standard for allowing amendments after the deadline set out in the scheduling order would be met by allowing the unequivocal withdrawal of any defense based on good faith and any reference to good faith belief contained in a motion for summary judgment. Therefore, if the Plaintiff, on or before November 26, 2012, files a motion to amend, with a proposed amendment to its answer to the counterclaim and a proposed amendment to any references to a good faith defense contained in any summary judgment motion, the court will grant the motion and refer this case back to the Magistrate Judge for reconsideration of her Withdrawal Order in light of the amendments.

DONE and ORDERED this 21st day of November, 2012.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE