

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

DALE B. ADAMS

PLAINTIFF

v.

Civil No. 09-3054

TYSON FOODS, INC.

DEFENDANT

O R D E R

Now on this 14th day of January, 2011, comes on for consideration Plaintiff's **Motion to Extend the Discovery Deadline (Doc. 183)** and **Clarification of Motion to Extend the Discovery Deadline (Doc. 184)**. Also before the Court is Defendant's **Motion for Protective Order (Doc. 185)**.

The Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff commenced this action on August 4, 2009.
2. On November 5, 2010 -- more than a year after the suit was initially filed -- the Court was finally able to enter a Final Scheduling Order. That Order set this matter for trial on April 11, 2011, and set a discovery deadline for January 11, 2011.
3. Plaintiff did not serve his first set of discovery requests on Defendant until December 13, 2010 -- twenty-nine (29) days before the discovery deadline of January 11, 2011. Thereafter, Plaintiff propounded a second, third and fourth set of discovery requests on Defendant on December 20, 2010, December 27, 2010, and December 29, 2010, respectively.

4. In his present motions, Plaintiff asks the Court to extend the discovery deadline by thirty (30) days, to February 11, 2011, so that he can receive Defendant's responses to his outstanding discovery requests.

Plaintiff asserts that he "got a very late start on discovery due to a miscommunication," but does not indicate the nature of any such "miscommunication."

In support of that request, Plaintiff also asserts that he has four FOIA complaints which are about to be filed with the U.S. District Court and he needs that information in order to prove his claim; and that he has a mentally disabled family member with a life threatening illness who lives with him and the stress of caring for this individual has caused him to be unable to focus on this lawsuit.

5. Defendant opposes Plaintiff's motion for an extension of the discovery deadline and says that Plaintiff has not stated good cause for an extension.

Notwithstanding its opposition, in its Motion for Protective Order, Defendant states that it intends to respond to the Plaintiff's first set of requests for production and the first 25¹

¹ Pursuant to Rule 33(a)(1) of the Federal Rules of Civil Procedure, unless otherwise stipulated or ordered by the Court, a party may only serve 25 interrogatories on another party. No stipulation or order has been entered in this case allowing the parties more than 25 interrogatories. Thus, regardless of the timeliness of the discovery requests, Defendant is only obligated to respond to Plaintiff's first 25 interrogatories.

interrogatories pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure.

Defendant requests that the Court enter a protective order directing that it is not required to respond to Plaintiff's second, third and fourth sets of discovery requests because they were not timely served.

6. Under the Federal Rules of Civil Procedure, Defendant has thirty (30) days to respond to Plaintiff's discovery requests. Because Plaintiff did not serve his discovery requests in time to allow Defendant at least thirty (30) days to respond to such requests, Plaintiff's discovery requests are untimely under the Rules.

7. It is clear that all of Plaintiff's discovery requests were untimely served. Accordingly, the Court is obliged to determine whether Plaintiff has shown any good cause which would warrant him being excused from compliance with federal discovery rules.

(a) Miscommunication -- While Plaintiff states that he got a late start in the discovery process because of a "miscommunication," he does not reveal the nature of it or explain who might have been responsible for it. Without more, the Court cannot conclude that any "miscommunication" warrants an extension of the discovery period.

(b) FOIA complaints - Plaintiff does not explain how the FOIA complaints relate to this case or how the information he is

seeking in his FOIA requests will help him prove his claims in this case. Moreover, he has not explained why the information he seeks to gain by FOIA requests could not have been acquired through timely discovery under the Federal Rules of Civil Procedure.

Even if it were otherwise appropriate for Plaintiff to seek information for his federal lawsuit via the FOIA request route, obtaining the information by way of separate lawsuits could and probably would take months and would thus further delay the resolution of this dispute. This case is set for a trial to begin on April 11, 2011, and the Court is not willing to stay this lawsuit while Plaintiff pursues his FOIA suits. Accordingly, this contention offers no basis to support an extension of discovery.

(c) Family Situation -- Plaintiff says that the stress of caring for a mentally disabled family member suffering from a life threatening illness has caused him to be unable to focus on this lawsuit. While the Court is not without sympathy for the member of Plaintiff's family, it is not persuaded by this argument.

This pro-se litigant has been as prolific as any before seen by this Court in the filing of pleadings and engagement in legal sparring with both opposing counsel and the Court. Indeed, Plaintiff has filed 53 motions in this case, including three motions to recuse the undersigned and two attempts to appeal this Court's orders to the Eighth Circuit Court of Appeals.

If Plaintiff had applied his considerable energy and talents to proper discovery and preparation of his case, the Court doubts

there would now be a problem or any need for extension of time. Thus, the Court is not persuaded by this contention.

In light of the foregoing, the Court concludes that Plaintiff has not offered any good cause for his failure to serve the requests on time or to otherwise complete discovery.

8. In addition to the foregoing, the Court notes that Defendant has stated that it has provided Plaintiff with all of the relevant documents it has that relate to Plaintiff's claims -- and has agreed to voluntarily respond to Plaintiff's first set of discovery requests.

9. Therefore, the Court finds that Plaintiff's motions should be denied and that Defendant's motion for a protective order is well-taken and should be granted.

IT IS THEREFORE ORDERED that Plaintiff's **Motion to Extend the Discovery Deadline (Doc. 183)** and **Clarification of Motion to Extend the Discovery Deadline (Doc. 184)** are hereby **DENIED**.

IT IS FURTHER ORDERED that Defendant's **Motion for Protective Order (Doc. 185)** is hereby **GRANTED**, as stated, and it is ordered that Defendant is not required to respond to any discovery remaining outstanding other than those discovery requests that Defendant has agreed to respond to as stated herein.

This matter is set for a **JURY TRIAL** to begin in Harrison, Arkansas, on **April 11, 2011**.

IT IS SO ORDERED.

/s/Jimm Larry Hendren
HON. JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE