

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 09-cv-02126-MSK-MJW

ISELO HOLDINGS, LLC,

Plaintiff,

v.

INNOVATIVE TELESERVICES;
OUTSOURCING UNLIMITED, LLC, d/b/a AUTOMATED RESEARCH & MARKETING;
and
WILLIAM COONAN,

Defendants.

**OPINION AND ORDER CONSTRUING MOTION FOR TEMPORARY
RESTRAINING ORDER AS A MOTION TO STAY,
DENYING AS MOOT MOTION TO APPEAR BY PHONE,
DENYING MOTION FOR EXTENSION OF TIME, AND
DENYING AS MOOT MOTION TO STRIKE**

THIS MATTER comes before the Court pursuant to Defendants' Motion for Temporary Restraining Order (**#29**) and Defendants' Motion for Leave to Appear by Telephone (**#30**) at the hearing on the motion. Also pending before the Court are Plaintiff's Motion for Extension of Time to Respond to Defendants' Motion to Dismiss or, in the Alternative, to Strike Defendants' Motion to Dismiss as Moot (**#28**); and Plaintiff's Motion to Strike Defendants' Answer (**#9**).

Defendants seek a Temporary Restraining Order against Plaintiff enjoining it from "further filing and briefing any and all docket entries which do not respond to Defendants Pending Motion to Dismiss." Defendants maintain that the Motion to Dismiss (**#17**), which challenges subject matter jurisdiction, personal jurisdiction, and venue, will dispose of the entire

case, and, therefore, Defendants should not be subjected to any additional costs associated with further action in this case. Such an argument, however, is not properly made pursuant to Fed. R. Civ. P. 65(b). Defendants are essentially seeking to stay all proceedings pending resolution of their Motion to Dismiss and, therefore, the Court shall construe Defendants' Motion as a motion to stay. Given this interpretation, Defendants' Motion to Appear by Telephone at the TRO Hearing is moot and shall be denied as such.

As Defendants' arguments relate to resolution of their Motion to Dismiss, it is reasonable to address Plaintiff's Motion for an Extension of Time or to Strike (#28) at this juncture. The Plaintiffs seek an extension of time to respond or to strike the Motion to Dismiss on the grounds that it is now moot because an amended complaint has been filed. However, the Motion to Dismiss is based on subject matter jurisdiction, personal jurisdiction, and venue, which remain extant regardless of the filing of the Amended Complaint. No good cause has been shown for an extension of time to respond.

Plaintiff has also filed a motion to strike Defendants' Answer to the original Complaint (#9). The grounds for the motion are that it was filed by an individual non-attorney on behalf of an entity and was untimely filed. Plaintiff's filing of an amended complaint moots these issues.

IT IS THEREFORE ORDERED that

- (1) Defendants' Motion for Temporary Restraining Order (#29) is **CONSTRUED** as a Motion to Stay. Plaintiff shall file a response in accordance with the Local Rules.
- (2) Defendants' Unopposed Motion for Leave to Appear by Telephone (#30) is **DENIED AS MOOT**.

(3) Plaintiff's Motion for Extension of Time to Respond to Defendants' Motion to Dismiss (#28) is **DENIED**.

(4) Plaintiff's Motion to Strike Defendants' Answer (#9) is **DENIED AS MOOT**.

Dated this 20th day of November, 2009

BY THE COURT:



Marcia S. Krieger
United States District Judge