

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 13-cv-01139-CMA-NYW

ADEMA TECHNOLOGIES, INC.,
d/b/a GLORIA SOLAR (USA),

Plaintiff,

v.

PATRINA EIFFERT, and
IMAGINIT, INC.,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO STRIKE

This matter is before the Court on Patrina Eiffert and ImaginIt, Inc.'s ("Defendants") Motion to Strike Plaintiff's Summary Judgment Motion. (Doc. # 76.) Because Plaintiff Adema Technologies Inc. ("Adema") timely filed its Motion for Summary Judgment (Doc. # 75), the Court denies this motion.

I. PROCEDURAL HISTORY

On April 29, 2013, Adema filed its Complaint and Jury Demand against Defendants. (Doc. # 1.) On March 19, 2014, this Court denied Defendants' Motion to Dismiss. (Doc. # 52.) On April 10, 2014, Magistrate Judge Boland held a hearing during which he extended the discovery period and dispositive motions deadline to July 30, 2014. (Doc. # 57.) On August 1, 2014, Defendants filed their Answer. (Doc. # 62.) On August 20, 2014, Adema moved to strike Defendants' Answer claiming it was filed

four months after the filing deadline and following the close of discovery. (Doc. # 63, 1.) On September 16, 2014, Judge Boland denied Adema's Motion to Strike (Doc. # 63) and extended the discovery period to October 31, 2014, but did not specifically extend the dispositive motions deadline. (Doc. # 67.) On December 1, 2014, Adema filed a Motion for Summary Judgment. (Doc. # 75.) Defendants never filed a response.

II. ANALYSIS

Defendants argue that the deadline to file summary judgment motions expired on July 30, 2014; therefore, Rule 56 does not apply because a "different time [was] . . . set by the court." Adema contends that because the Magistrate Judge's September 16, 2014 Order did not designate a new dispositive motions deadline, Rule 56 applies and its summary judgment motion was timely because it was filed 30 days after October 31, 2014.

Motions to strike are within the district court's sound discretion. *Sanders v. Cont'l Collection Agency, Ltd*, No. 11-CV-00448-CMA-MJW, 2011 WL 1706911, at *1 (D. Colo. May 5, 2011). Fed. R. Civ. P. 56(b) states that "[u]nless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery."

In this case, discovery closed on October 31, 2014. Neither the Local Rules for the District of Colorado nor any order entered in this case altered the timeline set forth in Rule 56. While the Court did not address an extension of the deadline for dispositive motions in its September 16, 2014 Order, an extension is reasonably implied based on

the Court's recognition of Adema's need for additional time to inquire and evaluate new documents and allegations. In fact, the Court extended the deadline for discovery to October 31, 2014, because Defendants did not file their Answer or serve additional discovery until after the July 30, 2014 deadline. Defendants' argument that the deadline to file summary judgment motions was July 30, 2014, is meritless because to file a summary judgment motion, Adema had to review all the evidence provided by Defendants. Because a motion for summary judgment contends that certain claims have no genuine issue of material fact, it was in all parties' best interest that Adema filed its summary judgment motion after it considered all available information provided by Defendants.

Further, Defendants should have filed a Response to Plaintiff's Motion for Summary Judgment as this Court never granted an extension. Defendants' Motion to Strike Plaintiff's Motion for Summary Judgment was frivolous and unnecessary. Adema's Summary Judgment Motion was timely filed in accordance with Fed. R. Civ. P. 56(b), Defendants have not demonstrated that they would be prejudiced if the Court allows Adema's Motion for Summary Judgment, and it would be a waste of the Court's resources to go to trial on a case that could be decided at summary judgment. Because this case is set to go to trial on May 26, 2015, it is

ORDERED that Defendants file a Response to Plaintiff's Motion for Summary Judgment within 14 days of this Order. Plaintiff shall have 7 days following Defendants' Response to file its Reply. It is

FURTHER ORDERED that Defendants' Motion to Strike Plaintiff's Summary Judgment Motion (Doc. # 76) is DENIED.

DATED: April 15, 2015

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge