

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

WHITNEY INFORMATION NETWORK, INC., a
Colorado corporation,

Plaintiff,

-vs-

Case No. 2:04-cv-47-FtM-34SPC

XCENTRIC VENTURES, LLC., an Arizona limited
liability company; BADBUSINESSBUREAU.ORG,
an Arizona limited liability company and ED
MAGEDSON, an individual,

Defendants.

ORDER

_____ This matter comes before the Court on the Plaintiff Whitney Information Network's Inc.'s Motion to Strike or in the Alternative, Motion for Protective Order Regarding Untimely Served Discovery Requests (Doc. #151) filed on October 18, 2007. The Defendant filed its Response (Doc. # 160) on November 3, 2007.

On September 26, 2007, the Defendants served the Plaintiff with its second set of interrogatories, requests for admissions, and requests for production of documents. According to the Case Management and Scheduling Order, the discovery deadline expired on October 1, 2007. The Plaintiff argues the discovery requests should be stricken because it was filed in an untimely manner. The Defendant responds the real discovery the Plaintiff is trying to strike was propounded in May of 2007, which was the first set and not the second set of discovery referred to in the instant Motion. The Defendant further argues that no ruling should be made on the discovery issue until the Court rules on its Summary Judgment Motion (Doc.# 115) based upon the Communications Decency

Act 47 U.S.C. § 230(c)(1). The Defendants arguments lack merit. The instant Motion is to strike the discovery propounded on September 26, 2007, and not May of 2007. Further, the Court will not stay the case pending a decision on the Motion for Summary Judgment. This litigation has been pending since 2004 and the case must be moved forward.

Pursuant to the Amended Case Management and Scheduling Order (CMSO) (Doc. # 104), discovery requests must be served in a manner that allows for a response time under the rules. (Doc. # 104, I(D)). In this instance, the discovery was propounded on September 26, 2007, a mere three days before the expiration of the discovery deadline on October 1, 2007. Under the Federal Rules, “[t]he party upon whom the request [for production] is served shall serve a written response within 30 days after the service of the request.” Fed. R. Civ. P. 34(b). Likewise a party upon whom interrogatories have been served has thirty (30) days to respond either by filing answers or objections to the propounded interrogatories. Fed. R. Civ. P. 33(b). Here, the Defendants did not give the Plaintiff’s sufficient time to answer the discovery in accord with the CMSO and the Federal Rules.

Furthermore, the original CMSO (Doc. # 42) issued on March 17, 2005, set the discovery deadline for November 1, 2005. That deadline was extended to October 1, 2007, an extension of almost two years. The Parties have had sufficient time to propound discovery and serve responses in this case. Thus, the Motion to Strike as Untimely the Defendant’s Discovery served on September 27, 2007 is due to be granted.

Accordingly, it is now

ORDERED:

The Plaintiff Whitney Information Network’s Inc.’s Motion to Strike or in the Alternatiive, Motion for Protective Order Regarding Untimely Served Discovery Requests (Doc. #151) is

GRANTED. The Defendant's discovery request propounded on September 26, 2007, is hereby stricken and the Plaintiff will not be required to respond to those specific discovery requests.

DONE AND ORDERED at Fort Myers, Florida, this 6th day of November, 2007.


SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record