

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

IN RE: FIDDLER'S CREEK, LLC

FIDDLER'S CREEK, LLC,

Plaintiff,

v.

Case No: 2:14-cv-379-FtM-29CM

NAPLES LENDING GROUP LC
and DANIEL CARTER,

Defendants.

ORDER

Before the Court is Plaintiff's Motion for Leave to File Response in Excess of Twenty Pages (Doc. 106), filed on June 24, 2015; Plaintiff's Motion to Seal Pursuant to Order (Doc. 122), filed on June 26, 2015; and Defendants' Motion to File Reply (Doc. 126), filed on July 2, 2015. Each motion relates to Plaintiff's Response to Defendants' motion to file amended answers, which remains pending. *See* Doc. 101. For the reasons that follow, the motions will be granted.

Middle District of Florida Local Rule 3.01(b) provides that responses may not exceed twenty (20) pages in length. Here, Plaintiff seeks leave of Court to file a response in opposition to Defendant's Motion for Leave to File Amended Answer and Affirmative Defenses and Add Counterclaims and Third Parties (Doc. 101), which it estimated would be between twenty eight (28) and thirty (30) pages in length. Plaintiff asserts that the additional pages are necessary in order to adequately

address the prejudice and futility of the proposed amendment. Doc. 106 at 2. The Local Rule 3.01(g) certification states that Defendants object to Plaintiff's response exceeding the page limitation. Doc. 106 at 2. The time for filing a response in opposition to Plaintiff's motion to file excess pages has expired, and no response has been filed. Accordingly, the Court may treat the motion as unopposed. *Obremski v. Springleaf Fin. Servs., Inc.*, No. 8:12-cv-1594-T-33AEP, 2012 WL 3264521, at *2 (M.D. Fla. Aug. 10, 2012) (noting a party's failure to respond within the time limits established by Local Rule 3.01(b), and stating "[f]ailure to respond to a motion creates an assumption that the motion is unopposed."). Moreover, on June 26, 2015, while the motion to exceed the page limitation remained pending, Plaintiff filed its Response in Opposition to Defendants' Motion for Leave to File Amended Answer and Affirmative Defenses and Add Counter Claims and Third Parties (Doc. 120). The Response totaled thirty one (31) pages, including a signature page. Defendants failed to move to strike the document for exceeding the page limitation.

Instead of moving to strike Plaintiff's Response for exceeding the page limitation, without leave of Court, on July 2, 2015, Defendants filed a Motion to File Reply. Doc. 126. Defendants note that they did not consent to Plaintiff filing a response in excess of twenty (20) pages and that Plaintiff's motion for leave to exceed the page limit remained pending at the time it filed its Response. Defendants take issue with the formatting of Plaintiff's Response, but also assert that a reply brief is warranted to address new issues not raised in Defendants' motion to amend and to provide citations responsive to Plaintiff's summary judgment arguments. Doc. 126

at 2. Defendants contend that they will be greatly prejudiced if the Court ruled on their motion to amend without the benefit of a reply brief in light of Plaintiff's "lengthy, fact intensive arguments." *Id.* The Local Rule 3.01(g) certification states that Plaintiff opposes Defendants' filing of a reply. *Id.*

"The purpose of a reply brief is to rebut any new law or facts contained in the opposition's response to a request for relief before the Court," *Tardif v. People for Ethical Treatment of Animals*, No. 2:09-cv-537-FtM-29SPC, 2011 WL 2729145, at *2 (M.D. Fla. July 13, 2011). "While parties may ask for leave to file a reply, they must show good cause." *McDonald v. United States*, No. 3:13-cv-168-J-37MCR, 2013 WL 3901871, at *1 n.3 (M.D. Fla. July 29, 2013). Moreover, the Court will not grant leave to file a reply brief unless the reply will benefit the Court's resolution of the pending motion. *See Schumann v. Collier Anesthesia, P.A.*, No. 2:12-cv-347-FtM-29CM, 2014 WL 1230644, at *4 n.3 (M.D. Fla. Mar. 25, 2014) (denying leave to file a reply brief where such brief would not aid the Court's resolution of the underlying motion). Here, the Court finds good cause and believes a reply would aid its resolution of the underlying motion; therefore, the Court will permit Defendants to file a reply.

Furthermore, Plaintiff's thirty one-page Response also is the subject of Plaintiff's Motion to Seal Pursuant to Order (Doc. 122), to which Defendants reportedly have no objection. In the motion to seal, Plaintiff explains that certain information is subject to an agreed confidentiality order entered in United States Bankruptcy Court, which remains in full effect. In light of that confidentiality order,

Plaintiff's Response was filed in the public docket with certain information redacted. *See* Doc. 120. Now, Plaintiff seeks to file an unredacted copy of the same Response—all thirty one pages—under seal. The Local Rule 3.01(g) certification in the motion to seal states that Defendants do not oppose Plaintiff's filing the unredacted Response under seal. Thus, Defendants again were presented with an opportunity to oppose the excess pages and not only failed to file an opposition, but instead agreed to the document's filing.

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiff's Motion for Leave to File Response in Excess of Twenty Pages (Doc. 106) is **GRANTED** *nunc pro tunc*. The Court will accept Plaintiff's Response in Opposition to Defendants' Motion for Leave to File Amended Answer and Affirmative Defenses and Add Counter Claims and Third Parties (Doc. 120) as filed.

2. Plaintiff's Motion to Seal Pursuant to Order (Doc. 122) is **GRANTED**. Plaintiff may file an unredacted copy of its Response, filed in the public docket as Doc. 120, under seal with the Clerk of Court.

3. Defendants' Motion to File Reply (Doc. 126) is **GRANTED**. On or before **July 27, 2015**, Defendants are permitted to jointly file a reply, not to exceed **ten (10) pages** in length, to Plaintiff's Response in Opposition to Defendants' Motion for Leave to File Amended Answer and Affirmative Defenses and Add Counter Claims and Third Parties (Doc. 120).

DONE and **ORDERED** in Fort Myers, Florida on this 21st day of July, 2015.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record