

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MERRY KELLY,

Plaintiff,

v.

Case No: 2:15-cv-498-FtM-29CM

LVNV FUNDING , LLC and
RESURGENT CAPITAL
SERVICES L.P.,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Unopposed Motion to Stay Or, In the Alternative, Motion for Extension of Time to File Response to Defendant's Motion to Dismiss (Doc. 15) filed on October 13, 2015, Plaintiff's Motion for Leave to File Reply to Defendants' Response in Opposition to Motion for Remand (Doc. 16) filed on October 13, 2015, and Plaintiff's Motion for Leave to File Reply to Defendants' Response in Opposition to Rule 11 Motion (Doc. 17) filed on October 13, 2015. Upon review of these motions and the court file, the court finds that the motions are due to be granted.

This matter originally was filed in the County Court of the Twentieth Judicial Circuit, Hendry County, Florida. On August 17, 2015, Defendants filed a notice of removal to this Court. Doc. 1. On September 16, 2015, Plaintiff filed her Motion to Remand and Incorporated Memorandum of Law and Rule 11 Motion for Sanctions. Docs. 9, 10. On September 30, 2015, Defendants filed a Motion to Dismiss. Doc. 11.

Pursuant to Local Rule 3.01(b), Plaintiff's response to Defendants' Motion to Dismiss was due on October 14, 2015. Plaintiff requests a stay of these proceedings or, alternatively, an extension of time to file a response to Defendant's Motion to Dismiss (Doc. 11) pending a ruling on Plaintiff's Motion to Remand (Doc. 9).

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). This is best accomplished by the "exercise of judgment, which must weigh competing interests and maintain an even balance." *Id.* at 255. Plaintiff states that a stay is appropriate because "it would conserve the resources of all parties, including the Court." Doc. 15 at 2. For instance, should this Court grant Plaintiff's Motion to Remand, Defendant's Motion to Dismiss will be rendered moot, and therefore no response will be required. Defendant does not oppose the Motion to Stay. Doc. 15 at 2.

The Court also agrees and finds good cause to stay these proceedings until the earlier of sixty (60) days from the date of this Order or until the Court rules on Plaintiff's Motion to Remand (Doc. 9). If the Court has not ruled on the Motion to Remand (Doc. 9) within sixty (60) days, Plaintiff shall have fourteen (14) days from said date to file a response to Defendants' Motion to Dismiss (Doc. 11) or, alternatively, Plaintiff may request a further stay of this case. If the Court denies the Motion to Remand, Plaintiff shall have fourteen (14) days from such date of such order to file a response to Defendants' Motion to Dismiss (Doc. 11).

Plaintiff also seeks leave to file replies to Defendants' Response in Opposition to Plaintiff's Motion to Remand and Incorporated Memorandum of Law (Doc. 12) and Defendants' Response in Opposition to Plaintiff's Rule 11 Motion for Sanctions (Doc. 13). Docs. 16, 17. According to Plaintiff's 3.01(g) certification, Defendants oppose both motions. Doc. 16 at 2, Doc 17 at 2. No response in opposition has been filed, and the time has expired to do so. Failure to file a response creates a presumption that the motion is unopposed. *Great American Assur. Co. v. Sanchuk, LLC*, 2012 WL 195526 *3 (M.D. Fla. 2012) (citation omitted). For the reasons set forth below, Plaintiff's motions are granted.

Pursuant to Middle District of Florida Local Rule 3.01(c), "[n]o party shall file any reply or further memorandum directed to the motion or response . . . unless the Court grants leave." Plaintiff seeks leave to file a reply to Defendants' responses to address a number of cases in which Defendants rely. "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).

Upon due consideration, the Court finds that brief replies would benefit the Court's review of the pending Motion to Remand and Rule 11 Motion for Sanctions; and Plaintiff has shown good cause for their filing. On or before November 2, 2015,

Plaintiff may file a reply of no more than five pages to Defendants' Response in Opposition to Plaintiff's Motion to Remand and Incorporated Memorandum of Law (Doc. 12), and a separate reply of no more than five pages to Defendants' Response in Opposition to Plaintiff's Rule 11 Motion for Sanctions (Doc. 13).

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiff's Unopposed Motion to Stay Or, In the Alternative, Motion for Extension of Time to File Response to Defendant's Motion to Dismiss (Doc. 15) is **GRANTED**.

2. This matter is **STAYED** for the earlier of sixty (60) days, December 28, 2015, or until the Court rules on the Motion to Remand (Doc. 9).

A. If the Court has not ruled on the Motion to Remand (Doc. 9) by December 28, 2015, Plaintiff shall have up to and including January 12, 2016 to file a response to Defendants' Motion to Dismiss (Doc. 11) or, alternatively, Plaintiff may request a further stay of this case.

B. If the Court denies the Motion to Remand (Doc. 9), Plaintiff shall have fourteen (14) days from the date of such order to file a response to Defendants' Motion to Dismiss (Doc. 11).

3. Plaintiff's Motion for Leave to File Reply to Defendants' Response in Opposition to Motion for Remand (Doc. 16) is **GRANTED**. On or before November 2, 2015, Plaintiff may file a reply of no more than five pages.

4. Plaintiff's Motion for Leave to File Reply to Defendants' Response in Opposition to Rule 11 Motion (Doc. 17) is **GRANTED**. On or before November 2, 2015, Plaintiff may file a reply of no more than five pages.

DONE and **ORDERED** in Fort Myers, Florida on this 26th day of October, 2015.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record