

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BERNICE BATTLE and WILLIE
BATTLE,

Plaintiffs,

v.

Case No: 2:15-cv-563-FtM-38CM

AMERICAN HOME MORTGAGE
SERVICING INC.,

Defendant.

ORDER

This matter comes before the Court upon review of Defendant American Home Mortgage Servicing Inc.'s ("Defendant") Motion for Extension of Time of Discovery Deadline (Doc. 63); Plaintiffs Bernice Battle and Willie Battle's ("Plaintiffs") Motion for Leave for Plaintiff to File Corrected Opposition to Defendant's Motion to Dismiss Plaintiff's Third Amended Complaint with Prejudice with Memorandum of Law and Motion to Strike with Prejudice (Doc. 76); and Defendant's Unopposed Motion to Continue All Pending Deadlines, Including Trial, Until Pending Motion to Dismiss is Decided (Doc. 78). Although Defendant states that Plaintiffs oppose Defendant's motion to extend the discovery deadline, Plaintiffs have not responded to the motion, and their time to do so has expired. Doc. 63 at 4-5. Defendant does not oppose Plaintiffs' motion to file an amended response (Doc. 76), and Plaintiffs do not oppose Defendant's motion to extend all remaining deadlines (Doc. 78). Docs. 76 at 2, 78 at 3.

I. Plaintiffs' Motion to File Corrected Opposition to Defendant's Motion to Dismiss (Doc. 76)

On September 12, 2016, Plaintiffs filed a Third Amended Complaint ("Third Amended Complaint"), which United States District Judge Sheri Polster Chappell accepted as filed on December 6, 2016.¹ Docs. 71, 79. On September 26, 2016, Defendant filed a motion to dismiss the Third Amended Complaint, and Plaintiffs responded in opposition to the motion on October 24, 2016.² Docs. 71, 75. Plaintiffs seek to file an amended response to Defendant's motion because Plaintiffs argue that their counsel inadvertently filed an incorrect version of their response on October 24, 2016. Doc. 76 at 2 ¶ 2. Plaintiffs state that Defendant does not oppose this motion, and have attached their amended response to their motion. *Id.* ¶ 4; Doc. 76-1. For good cause shown and because the motion is unopposed, the Court will grant Plaintiffs' motion and direct the Clerk to docket the amended response (Doc. 76-1) as a separate docket entry.

II. Defendant's Motions to Extend the CMSO deadlines (Docs. 63, 78)

On August 5, 2016, Defendant filed a motion to extend the discovery deadline. Doc. 63. The parties had until September 6, 2016 to conduct discovery and October 7, 2016 to file dispositive, *Daubert*, and *Markman* motions. Doc. 48 at 1.

¹ On September 6, 2016, the Court recommended denying Plaintiffs' Opposed Third Amended Motion for Leave to Add Additional Counts to Second Amended Complaint and directing Plaintiffs to file a Third Amended Complaint within seven days of the Order. Doc. 67. Judge Chappell accepted and adopted the Report and Recommendation and accepted the Third Amended Complaint as filed. Doc. 79.

² On October 11, 2016, Plaintiffs asked the Court to extend its deadline to file a response to October 24, 2016, which the Court granted. Docs. 73, 74.

Defendant seeks to extend the discovery deadline for Defendant to thirty (30) days and for Plaintiffs to sixty (60) days after filing of the Second Amended Complaint. Doc. 63 at 3-4. Although Defendant's motion states that Plaintiffs oppose the motion, Plaintiffs have not responded to the motion, and their time to do so has expired. Doc. 63 at 4-5. Plaintiffs' non-response to Defendant's motion (Doc. 63) creates a presumption that the motion is unopposed. *Great Am. Assur. Co. v. Sanchuk, LLC*, No. 8:10-cv-2568-T-33AEP, 2012 WL 195526, at *3 (M.D. Fla. Jan. 23, 2012).

On December 2, 2016, Defendant filed a motion to continue all remaining Case Management and Scheduling Order ("CMSO") deadlines pending the resolution of its motion to dismiss (Doc. 71) because the parties' mediation did not result in settlement and the parties cannot determine the scope of this litigation before the resolution of the motion to dismiss (Doc. 71). Plaintiffs do not oppose the motion. Doc. 78 at 3. Currently, the parties have the remaining deadlines of December 2, 2016 for meeting in person to prepare a joint final pretrial statement and of December 14, 2016 for a joint pretrial statement and for all other motions and trial briefs, a final pretrial conference on January 20, 2017, and a trial term beginning on February 6, 2017. *Id.* at 2.

District courts have broad discretion when managing their cases in order to ensure that the cases move to a timely and orderly conclusion. *Chrysler Int'l Corp. v. Chemaly*, 280 F.3d 1358, 1360 (11th Cir. 2002). Rule 16 requires a showing of good cause for modification of a court's scheduling order. Fed. R. Civ. P. 16(b)(4).

“This good cause standard precludes modification unless the schedule cannot be met despite the diligence of the party seeking the extension.” *Sosa v. Airprint Sys., Inc.*, 133 F. 3d 1417, 1418 (11th Cir. 1998) (internal quotations and citations omitted).

Here, in light of this case’s procedural posture, the Court finds it appropriate to extend the CMSO deadlines. Doc. 71. Defendant’s motion to dismiss (Doc. 71) is pending and is not ripe for review because Plaintiffs seek to file an amended response to the motion to dismiss. Doc. 76. Furthermore, Judge Chappell recently accepted the Third Amended Complaint as filed. Doc. 79. Instead of extending the CMSO deadlines until the resolution of the motion to dismiss as Defendant seeks, however, the Court will extend the discovery deadline to February 28, 2016 and the other CMSO deadlines accordingly.

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiffs’ Motion for Leave for Plaintiff to File Corrected Opposition to Defendant’s Motion to Dismiss Plaintiff’s Third Amended Complaint with Prejudice with Memorandum of Law and Motion to Strike with Prejudice (Doc. 76) is **GRANTED**.

2. The Clerk of Court is directed to docket Plaintiffs’ Amended Response (Doc. 76-1) as a separate entry in the CM/ECF system.

3. Defendant’s Motion for Extension of Time of Discovery Deadline (Doc. 63) is **GRANTED in part**.

3. Defendant's Unopposed Motion to Continue All Pending Deadlines, Including Trial, Until Pending Motion to Dismiss is Decided (Doc. 78) is **GRANTED in part.**

4. An amended case management and scheduling order will be issued under separate cover.

DONE and ORDERED in Fort Myers, Florida on this 7th day of December, 2016.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record