

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-60315-CIV-ROSENBAUM

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

W. ANTHONY HUFF,
DANNY L. PIXLER,
ANTHONY R. RUSSO,
OTHA RAY MCCARTHA, and
CHARLES J. SPINELLI,

Defendants,

SHERI HUFF, ROXANN PIXLER,
MIDWEST MERGER MANAGEMENT, LLC, and
BRENTWOOD CAPITAL CORPORATION,

Relief Defendants.

ORDER

This matter comes before the Court upon Defendant W. Anthony Huff and Relief Defendants Sheri Huff, Roxann Pixler, and Midwest Merger Management, LLC's Renewed Motions to Dismiss the Amended Complaint [D.E. 19, D.E. 20, D.E. 21, D.E. 22]. *See* D.E. 217 at 9, Sec. V.A. The Court has reviewed Defendant and Relief Defendants' various Motions, and is otherwise duly advised in the premises, and now denies Defendant and Relief Defendants' Renewed Motions.

Defendant and Relief Defendants originally filed their various Motions to Dismiss on May 6, 2008. On July 7, 2008, the Honorable William J. Zloch denied all of the Motions to Dismiss,

finding that “the legal issues raised therein are more properly addressed in a Motion for Summary Judgment, when discovery may present the Court with a full record upon which it may address and decide said issues.” D.E. 217 at 2. He subsequently entered an Order for Pre-trial Conference [D.E. 58] on August 20, 2008. In that Order, Judge Zloch specified that the Pre-trial Conference in this case would occur on August 14, 2009, and that all motions for summary judgment and for judgment on the pleadings had to be filed sixty days prior to the pre-trial conference. *See id.* at 1. In his Order Setting Pre-trial Conference [D.E. 90], entered on June 17, 2009, Judge Zloch denied the parties’ Joint Motion for Extension of Trial and Nearly All Pre-trial Deadlines [D.E. 88] to the extent that it requested an extension of the period for filing summary judgment motions, noting that the deadline to file motions for summary judgment had passed. *See* D.E. 90 at 2-4.

On February 4, 2010, the parties filed their Joint Pre-trial Stipulation. In it, Defendant and Relief Defendants indicate that they renew their respective motions to dismiss the Amended Complaint. *See* D.E. 217 at 9. Trial is set to begin on Tuesday, February 16, 2010, and it has been so set since September 17, 2009 [D.E. 167]. Moreover, the Pre-trial Conference in this matter occurred today, February 8, 2010. Sixty days prior to the Pre-trial Conference fell on December 10, 2010. Therefore, even if the Court were inclined to overlook Judge Zloch’s June 17, 2009, Order denying the parties’ Joint Motion for Extension to file their summary judgment motions and motions for judgment on the pleadings, Defendant and Relief Defendants should have sought to renew their motions by, at the very latest, December 10, 2010. They neither did that nor provided any reason for not doing so. Under these circumstances, Defendant and Relief Defendants’

respective motions to dismiss the Amended Complaint are **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 8th day of February, 2010.



ROBIN S. ROSENBAUM
UNITED STATES MAGISTRATE JUDGE

cc: All Counsel and Parties of Record