

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 06-21748-CIV-MARTINEZ/BANDSTRA

MARK J. GAINOR and ELYSE GAINOR,

Plaintiffs,

v.

SIDLEY AUSTIN LLP, a Delaware limited liability partnership, f/k/a SIDLEY AUSTIN BROWN & WOOD, f/k/a BROWN & WOOD, R.J. RUBLE, an individual, ARTHUR ANDERSEN, LLP an Illinois limited liability partnership, MICHAEL S. MARX, an individual, P. ANTHONY NISSLEY, an individual, MERRILL LYNCH & CO., INC., a Delaware corporation, and MARK C. KLOPFENSTEIN, an individual,

Defendants.

**DEFENDANT MERRILL LYNCH & CO., INC.'S
THIRD UNOPPOSED MOTION FOR ENLARGEMENT OF TIME
TO RESPOND TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant Merrill Lynch & Co., Inc. ("Merrill Lynch") moves the Court, pursuant to Fed. R. Civ. P. 6(b), for an enlargement of time through and including May 29, 2007, to respond to Plaintiffs' Amended Complaint. Plaintiffs do not oppose this Motion. As grounds for this Motion, Merrill Lynch states:

1. On March 23, 2007, Plaintiffs first served their Amended Complaint upon Merrill Lynch.¹

¹ Merrill Lynch was not named as a defendant in the original complaint. The Amended Complaint added Merrill Lynch as a party to the instant matter.

CASE NO. 06-21748-CIV-MARTINEZ/BANDSTRA

2. FED. R. CIV. P. 12 states that a defendant shall serve a response within 20 days after being served with the summons and complaint. Merrill Lynch's response to the Amended Complaint was therefore due on April 12, 2007.

3. On April 12, 2007, Merrill Lynch moved for an enlargement of time to respond to Plaintiffs' Amended Complaint. This Court granted the enlargement of time on April 16, 2007.

4. Due to the nature of the claims made in the Amended Complaint and the lengthy process involved in reviewing the allegations and the relevant documents and information and formulating its response, Merrill Lynch moved for a second enlargement of time on May 11, 2007. This Court granted the enlargement of time on May 15, 2007.

5. Since seeking the last extension, Merrill Lynch's counsel has been and continues to be in trial in a separate matter.

6. Merrill Lynch submits that under these circumstances, the requested enlargement of time will not delay the case, nor prejudice Plaintiffs.

7. Counsel for Merrill Lynch has conferred with Plaintiffs' counsel. Plaintiffs' counsel has graciously agreed to the enlargement of time, through and including May 29, 2007, for Merrill Lynch to respond to Plaintiffs' Amended Complaint.

8. For these reasons, and based on the analysis set forth below, Merrill Lynch respectfully asks the Court to grant the requested enlargement of time.

Memorandum of Law

This Court has "wide discretion" under Fed. R. Civ. P. 6(b)(1) to grant the requested extension of time. *See, e.g., U.S. v. Real Prop. Located at 414 Riverside Road*, 1994

CASE NO. 06-21748-CIV-MARTINEZ/BANDSTRA

U.S. App. Lexis 920, n.4 (9th Cir. 1994); *Jackson v. Domino's Pizza Corp.*, 1991 U.S. Dist. Lexis 15932, *6 (N.D. Cal. 1991) (holding that court has "broad discretion"). The Court enjoys such discretion because the time for serving a response to Plaintiffs' Amended Complaint has not passed. As a result, this request for an enlargement of time is made on a timely basis. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 895, n.5 (1990); *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126 (11th Cir. 1994); *Ritter v. Smith*, 811 F.2d 1398 (11th Cir.), *cert. denied*, 483 U.S. 1010 (1987). Courts have recognized that a timely requested extension, such as the one requested here, is "readily available." *Motsinger v. Flynt*, 119 F.R.D. 373, 378 (M.D. N.C. 1988); *accord Sherrod v. Piedmont Aviation, Inc.*, 516 F.Supp. 39, 41 (E.D. Tenn 1978) (noting that plaintiff could have "obtained readily an enlargement," had he made a timely request).

With this Motion, undersigned counsel has provided the Court with a proposed order granting the requested enlargement of time.

WHEREFORE, Merrill Lynch respectfully requests that this Court enter an Order granting this Second Unopposed Motion for Enlargement of Time to Respond to Plaintiff's Amended Complaint through and including May 29, 2007.

Respectfully submitted,

/s/Coren H. Stern
Bennett Falk
Florida Bar No. 208884
Coren H. Stern
Florida Bar No. 0644218
Bressler, Amery & Ross, P.C.
Huntington Centre II
2801 S.W. 149th Avenue, Suite 300
Miramar, FL 33027
Telephone: (954) 499-7979
Facsimile: (954) 499-7969
Attorneys for Merrill Lynch & Co., Inc.

CASE NO. 06-21748-CIV-MARTINEZ/BANDSTRA

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served this 22nd day of May, 2007 to all parties on the attached service list via the Court's CM/ECF system or if such person(s) is not subscribed to the same, via U.S. Mail.

/s/Coren H. Stern

CASE NO. 06-21748-CIV-MARTINEZ/BANDSTRA

SERVICE LIST

Richard Benjamin Wilkes, Esq.
Richard W. Candelora, Esq.
Richard Benjamin Wilkes, P.A.
600 South Magnolia venue
Suite 200
Tampa, Florida 33606
rwilkes@rbwilkes.com
Attorneys for Plaintiffs

Stephen J. Anderson, Esq.
Anderson Dailey LLP
2002 Summit Boulevard, Suite 1250
Atlanta, Georgia 30319
Attorneys for Mark C. Klopfenstein

Jonathan E. Altman, Esq.
Aaron M. May, Esq.
Gabriel P. Sanchez, Esq.
Munger, Tolles & Olson, LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
jonathan.altman@mto.com
aaron.may@mto.com
gabriel.sanchez@mto.com
Attorneys for Sidley Austin LLP

Stuart E. Abrams, Esq.
Frankel & Abrams
230 Park Avenue, Suite 3330
New York, New York 10169
sabrams@frankelabrams.com

P. Anthony Nissley
350 Melrose Avenue
Kenilworth, Illinois 60643

Richard A. Morgan, Esq.
Buchanan Ingersoll & Rooney, P.C.
Bank of America Tower, 34th Floor
100 S.E. Second Street
Miami, Florida 33131
Attorneys for Mark C. Klopfenstein

Katherine W. Ezell, Esq.
Podhurst Orseck, P.A.
25 W. Flagler Street, Suite 800
Miami, Florida 33130
kezell@podhurst.com

Douglas E. Whitney, Esq.
McDermott Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096
dwhitney@mwe.com
Attorneys for Arthur Anderson, LLP

R.J. Ruble
1517 Avalon Square
Glen Cover, New York 11542
and
R.J. Ruble
62 Duck Pond Road
Glen Voce, New York 11542

Michael S. Marx
110 Townbridge Road
Atlanta, Georgia 30350