

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

RUSSELL J. SWIFT and)	
BOBBI SWIFT,)	
)	
Plaintiffs,)	
)	
v.)	No. 08-3189
)	
BPI ENERGY, INC. and BPI)	
ENERGY HOLDINGS, INC.,)	
)	
Defendants.)	

OPINION

JEANNE E. SCOTT, U.S. District Judge:

This matter is before the Court on Defendants’ Motion to Strike (d/e 18). After Russell Swift was injured at a construction site, Russell and his wife Bobbi Swift filed suit against Defendants BPI Energy, Inc. and BPI Energy Holdings, Inc., alleging claims of negligence and loss of consortium. Plaintiffs’ Original Complaint (d/e 1) (Complaint). Defendants ask the Court to strike Counts I and IV of Plaintiffs’ Complaint pursuant to Federal Rule of Civil Procedure 12(f) as redundant to Counts II, III, V, and VI. For the reasons set forth below, the Motion to Strike is denied.

Defendants were served with the Complaint on September 23, 2008.

Affidavit of Service re: BPI Energy Holdings, Inc. (d/e 6); Affidavit of Service re: BPI Energy, Inc. (d/e 7). They filed a joint Answer to Plaintiffs' Complaint (d/e 11) on October 13, 2008. The pending Motion to Strike was filed on December 2, 2008. When Plaintiffs failed to respond within the time allotted by Local Rule 7.1, the Court extended their response time to January 28, 2009. See Text Order, dated January 15, 2009. The matter is now fully briefed.

In pertinent part, Federal Rule of Civil Procedure 12(f)(2) allows the Court to strike redundant material from a pleading "on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading." In the instant case, Defendants answered the Complaint on October 13, 2008. The subsequently filed Motion to Strike is untimely under the plain language of Rule 12(f). Therefore, the Motion to Strike is denied as untimely.

THEREFORE, for the reasons set forth above, Defendants' Motion to Strike (d/e 18) is DENIED.

IT IS THEREFORE SO ORDERED.

ENTER: March 3, 2009

FOR THE COURT:

s/ Jeanne E. Scott
JEANNE E. SCOTT
UNITED STATES DISTRICT JUDGE