

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER MOEDE,)	
)	
Plaintiff and)	
Counterclaim Defendant,)	
)	
v.)	No. 07 C 1726
)	
KEITH POCHTER, et al.,)	
)	
Defendants and Counter)	
and Cross Claimants.)	

MEMORANDUM OPINION AND ORDER

After this Court inherited this action via reassignment to its calendar following the untimely death of its good friend and colleague Honorable James Moran, its preliminary review of the matter disclosed a number of problematic aspects of the litigation, which this Court then addressed (1) in an oral ruling that rejected a motion filed by defense counsel and thereafter (2) in a May 22, 2009 memorandum opinion and order. Those rulings ultimately generated a "Supplemental Summary Judgment Memorandum" from counsel for the remaining defendants--a memorandum that spoke to one of the two then-pending partial summary judgment motions that had been filed by those defendants. But this Court's ensuing effort to address both those motions with the able assistance of Judge Moran's law clerk Lindsey Marcus, now that the motions have risen like cream to the top,¹

¹ Although that old simile has been overtaken by the homogenization of milk, it still conjures up an effective word picture.

has been stymied by the nature of that supplemental memorandum.

It is plain from that submission that it raises some issues that plaintiff Peter Moede ("Moede") has not had the opportunity to meet. Although this Court recognizes that the problem may be the product of Moede's shift to a Third Amended Complaint ("TAC") that omitted the originally asserted prayer for declaratory judgment involving the limited liability company in which the parties were investors, it believes that that the issues can better be dealt with in an orderly fashion by restarting the briefing sequence.²

Accordingly defendants' pending motion for partial summary judgment of no liability (Dkt. No. 49) is denied without prejudice. Defendants are granted leave to refile a like motion with a supporting memorandum on or before August 24, 2009 (because defendants' supplemental memorandum contains no record references (except to the TAC) or any caselaw citations, the new filing is expected to cure those deficiencies). Moede is then granted leave to file a response to that renewed motion on or before September 8, 2009.

Because the parties are already well attuned to the matters in issue (Moede's counsel having been informed of the new matters

² That procedure should not be unduly onerous, because this Court will find no problem if the parties decide to incorporate by reference various designated portions of the earlier filings (rather than their being required to file entirely new self-contained submissions).

by the supplemental submission already referred to), it is not anticipated that any reply will be called for. But to make certain of the situation in that regard, on or before September 14, 2009 defense counsel shall notify Moede's counsel and this Court as to whether they need a reply and, if so, a suggested filing date.³



Milton I. Shadur
Senior United States District Judge

Date: August 10, 2009

³ In the interim this Court expects to rule on defendants' other motion, Dkt. No. 47.