

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

ANTHIMOS GOGOS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13 C 3779
)	
AMS-MECHANICAL SYSTEM, INC.,)	
)	
Defendant.)	

MEMORANDUM ORDER

AMS-Mechanical System, Inc. ("AMS") has filed its Answer and Affirmative Defense ("AD") to the pro se Complaint brought against it by its ex-employee Anthimos Gogos ("Gogos"). This memorandum order is issued sua sponte to address two problematic aspects of that responsive pleading.

To begin with, AMS's counsel have labeled this as a "Defense" (not an AD):

The complaint fails to state a claim upon which relief can be granted.

If counsel is serious about that, the proper procedure is not to have that contention lie dormant -- instead a Fed. R. Civ. P. 12(b)(6) motion must be filed together with a supporting memorandum, and the motion must be noticed up for presentment. Accordingly that "Defense" is stricken without prejudice.

As for the AD, which asserts a possible failure on Gogos' part to mitigate his damages, obviously neither AMS nor its counsel knows that such is the case (the AD's "to the extent" locution tips that off). If discovery were to reveal an actual failure to mitigate damages, an AD on that score may then be advanced -- but for the present the AD is also stricken.



Milton I. Shadur
Senior United States District Judge

Date: May 29, 2014