

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

HOULIHAN'S RESTAURANT, INC.,)
)
 Plaintiff,)
)
 v.)
)
 LARRY SCHRIMPF, et al.,)
)
 Defendants.)
 _____)

Case No. 11-2568-CM

MEMORANDUM AND ORDER

This matter is before the court on defendants' motion to stay (Doc. 8) and to extend the time to file an answer (Doc. 10 & 24). As explained below, the motion to stay shall be DENIED and the motion for an extension of time shall be GRANTED IN PART.

Motion to Stay Case

In July, 2011, plaintiff filed an action against defendants in the District Court of Johnson County, Kansas alleging that two former employees violated confidentiality agreements and misappropriated trade secrets and other confidential information. In October 2011, plaintiff moved to dismiss the state court action without prejudice and filed this action in federal court with additional allegations of copyright violations. Defendants move for a stay in this case pending dismissal of the state case.

A stay maybe appropriate under certain circumstances when the parties are litigating

similar issues in a state court case in order to preserve judicial resources. However, this is not such a case because the state judge granted plaintiff's motion to dismiss on November 8, 2011 and unequivocally expressed his intent that the federal case proceed with discovery and on the merits. (Transcript of proceedings before the Honorable Gerald T. Elliot, Doc. 20-1, p. 33). The state court case has not been formally dismissed because defendants (1) apparently do not agree with the wording of plaintiff's draft order of dismissal and (2) have filed a motion for reconsideration of the court's denial of plaintiff's request for attorney fees. The remaining issues in the state court case do not address the merits of the claims in federal court and a stay simply delays resolution of the federal case. Accordingly, defendants' motion for a stay shall be DENIED.

Motion for an Extension of Time

Defendants move for an extension of time to February 13, 2011 to answer or otherwise respond to plaintiff's amended complaint, arguing that the state court judge "has not ruled on any of the pending [state court] matters and has not yet set a hearing date on those matters." For the reasons stated above concerning defendants' motion for a stay, this court is not persuaded that further delay in the federal case is warranted. Accordingly, the court will extend defendants' deadline to answer to February 13, 2012 but no further extensions shall be granted.

IT IS THEREFORE ORDERED that defendants' motion for a stay (**Doc. 8**) is

DENIED.

IT IS FURTHER ORDERED that defendants' motion for an extension of time (**Doc. 24**) is **GRANTED IN PART** and defendants' deadline to file an answer or otherwise respond to the amended complaint is extended to **February 13, 2012**. No further extensions will be granted. Defendants' motion for an extension of time (**Doc. 10**) is **MOOT**.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 25th day of January 2012.

S/ Karen M. Humphreys

KAREN M. HUMPHREYS
United States Magistrate Judge