

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ANAKA HUNTER, )

Plaintiff, )

vs. )

Case No: 4:12-CV-0004-ERW

CITY OF SALEM, MISSOURI, )

BOARD OF TRUSTEES, Salem Public )

Library, and GLENDA WOFFORD, )

Individually, and in her official capacity )

As Director of the Salem Public Library, )

Defendants. )

**DEFENDANTS MOTION FOR EXTENSION OF TIME TO RESPOND TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants Board of Trustees, Salem Public Library, and Glenda Wofford, Individually, by and through counsel, Baird, Lightner, Millsap & Harpool, P.C., and pursuant to Federal Rule of Civil Procedure 56(d) moves this Court to allow Defendants to take Plaintiff's Deposition and obtain her discovery responses before responding to Plaintiff's Motion for Summary Judgment, and in support of said motion, state as follows:

1. Defendants propounded on Plaintiff requests for production and interrogatories on October 4, 2012.
2. Despite repeated requests, Defendants have received neither any date on which Plaintiff will be able to attend her deposition nor discovery responses.
3. On February 25, 2013, Plaintiff filed a motion for summary judgment.

4. Under Rule 56(d), If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery;

or

(3) issue any other appropriate order.

F. R. Civ. P. 56(d).

5. “Rule 56(d) should be applied with a spirit of liberality.” Kuehne v. Citimortgage, Inc., 4:10 CV 1902 DDN, 2012 WL 1205754 (E.D. Mo. Apr. 11, 2012).

6. On October 31, 2012, Defense Counsel was informed that there was “no chance” Plaintiff would attend her November 1, 2012, deposition, as previously agreed to by the parties, and that Plaintiff’s Counsel “will work with you to set up an alternative depo date for Ms. Hunter....” Exhibit A.

7. That same date, Defense Counsel requested in a letter to Plaintiff’s Counsel, that he “[p]lease provide the first available dates for your client’s deposition.” Exhibit B. Defense Counsel agreed to take the deposition at a later date on the condition that Defendants would receive sufficient time after the deposition to disclose experts and reports, and that other deadlines would be adjusted accordingly. Exhibit B.

8. On November 1, 2012, Plaintiff’s counsel stated that he was “more than agreeable” to extending time to disclose and file expert reports seven days beyond “the date we are able to coordinate our client’s deposition.” Exhibit G.

9. Defense Counsel never received available dates for Plaintiff's deposition despite repeated requests and Plaintiff's counsel's agreement to coordinate the date. Defense counsel was never told Plaintiff's health stabilized to permit a deposition to be scheduled.
10. During discussions regarding mediation of the case, Defense Counsel also repeatedly requested the deposition and discovery response of Plaintiff. On December 19, 2012, Defense Counsel stated that "[i]t is possible that learning more about your client's claims could cause us to reevaluate our position. Perhaps the previous statements from her don't fully detail all of her complaints. We will only know when she complies with discovery." Exhibit C.
11. In that same email, Defense Counsel stated "We also have repeatedly requested dates for your clients deposition which were advised needed to be rescheduled to accommodate her medical care. We will need to take your experts deposition as soon as your clients deposition can be concluded." Exhibit C.
12. In a separate email dated December 21, 2012, Defendants' Co-counsel again inquired, "any word on deposition dates for your client and discovery responses?" Exhibit D.
13. On February 8, 2013, Defense Counsel again stated to Plaintiff's counsel, "When will I get your clients answers to interrogatories and be able to take her deposition? Why have you not responded to our requests for that discovery from your client? Both would be important in my evaluation of the legal argument you pose in your email. I can mediate April 30 but need your clients discover as soon

as possible so I can advise my client on settlement and be prepared for mediation.” Exhibit E.

14. Counsel went on to state, “[p]erhaps your clients deposition and discovery answers will provide support for your claims. I won’t know till I have them.” Exhibit E.

15. Finally, on Monday, February 25, Defense Counsel reminded Plaintiff’s counsel via email that “We have repeatedly asked for your client’s deposition.” Exhibit F.

16. At no time during any of that correspondence did Plaintiff’s Counsel respond that they did not intend to respond to discovery or produce their client for deposition.

17. Defendant’s counsel believed that both parties were proceeding in good faith toward mediation, and that any dispute regarding depositions or discovery could be worked out in the same amicable manner as previous issues between the parties.

18. The communications between the parties, attached as Exhibits A-G, demonstrate that both parties were aware of genuine issues of material fact, which were the basis of Defendants’ repeated requests for Plaintiff’s deposition and discovery responses in advance of mediation.

WHEREFORE, Defendants pray the Court grant their Motion for Extension of Time to Respond to Plaintiff’s Motion for Summary Judgment, and/or for such other relief as the Court deems proper.

Respectfully submitted,

BAIRD, LIGHTNER, MILLSAP & HARPOOL, P.C.

By:       /s/Matt Cologna        
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of February, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which provided a copy of same to the below listed counsel of record:

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      /s/ Matt Cologna        
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