

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

U.S. APRONS, Inc., A Nebraska Corporation,)	
)	
)	7:08CV5003
Plaintiff,)	
)	
V.)	MEMORANDUM AND ORDER
)	
R-FIVE, Inc.,)	
)	
Defendant.)	

The plaintiff’s complaint was filed on May 1, 2008. Over the eighteen months thereafter, the parties engaged in mediation to resolve the case, and participated in ongoing discovery to prepare for trial. The pretrial conference is scheduled to be held on January 11, 2010 in North Platte, with the trial set for February 16, 2010.

The defendant moved to stay the case for arbitration on November 6, 2009, and moved for summary judgment on November 13, 2009. The plaintiff requests additional time to file its brief in opposition to defendant’s motion to stay for arbitration. Filing No. [91](#). Without commenting on whether an arbitration right ever existed, under the facts presented, the court questions whether the defendant waived any such right by demanding arbitration during the late stages of the litigation process, and by moving for summary judgment after filing a motion to stay for arbitration. See e.g., [Lewallen v. Green Tree Servicing, L.L.C., 487 F.3d 1085, 1090 \(8th Cir. 2007\)](#). See also, [Fed. R. Civ. P. 8\(c\)](#)(listing “arbitration and award” as an affirmative defense).

Accordingly,

IT IS ORDERED:

- 1) The plaintiff's motion to continue, (filing no. [91](#)), is granted, and the plaintiff is given until November 25, 2009 to file its brief in response to defendant's motion to stay for arbitration.
- 2) Any reply brief shall be filed on or before December 1, 2009.

DATED this 20th day of November, 2009.

BY THE COURT:

Richard G. Kopp

United States District Judge