

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LUIS EDUARDO SAN JUAN,	)	
	)	
Plaintiff,	)	8:10CV133
	)	
V.	)	
	)	
FIRST NATIONAL BANK OF OMAHA,	)	ORDER
	)	
Defendant.	)	
_____	)	

This matter is before the court on Plaintiff’s Motion for Extension of Time to Respond to Defendant’s Motion for Summary Judgment and to Re-open Discovery ([filing 52](#)). The Motion will be granted, but only in part.

Plaintiff’s complaint was filed on April 12, 2010. ([Filing 1.](#)) At the time that suit was filed, Plaintiff was represented by Roderick Hannah of Davie, Florida. Plaintiff continues to be represented by Mr. Hannah. Patrick Flood, of the law firm Hotz, Weaver, Flood, Breitkreutz & Grant, served as Plaintiff’s local counsel.

On May 17, 2011, this court entered an amended order setting the final schedule for progression of this case ([filing 38](#)). The order set September 1, 2011, as the discovery deadline and September 29, 2011, as the deadline for filing motions for summary judgment. (*Id.*) The order set the pretrial conference for December 19, 2011, and the trial for January 24, 2012. (*Id.*)

On September 12, 2011, Mr. Flood filed a notice to take the depositions of three witnesses, namely, Amy Wheeler, Diane Mahagan-Thompson and Jodie Schoemaker. ([Filing 46](#)). The notice stated that the depositions were to take place on September 14, 2011. (*Id.*) Because the discovery deadline had passed, Mr. Flood had made arrangements with defense counsel to take these depositions out of time. ([Filing 55.](#)) However, on or about the day that they were to take place, Mr. Flood cancelled the depositions. (*Id.*)

On September 14, 2011, citing irreconcilable differences with Mr. Hannah, Mr. Flood moved to withdraw as counsel. ([Filing 47.](#)) The court granted Mr. Flood’s request on September 19, 2011, and gave Plaintiff until October 19, 2011, to secure new local counsel. ([Filing 48.](#)) As of today’s

date, Plaintiff has not retained new counsel.

Through the present motion, Plaintiff requests that the court re-open discovery for a period of forty-five days and grant him an additional sixty days to respond to Defendant's Motion for Summary Judgment, which Defendant timely filed on September 29, 2011. (Filings [49](#) & [52](#).) Plaintiff argues that an extension is necessary because Mr. Flood withdrew from the case and, to this point, Mr. Hannah has only performed a secondary role as counsel. Plaintiff also contends that due to Mr. Flood's departure and his cancellation of the previously-mentioned depositions, discovery needs to be re-opened to allow these depositions to be conducted, as well as to allow him to take the deposition of another individual.

The court concludes that a sixty-day extension of Plaintiff's response deadline and the re-opening of discovery is not warranted. Mr. Hannah has been involved in this case since its inception and should be familiar with the aspects of the case. Moreover, the discovery deadline passed prior to Mr. Flood's withdrawal. Therefore, there is no need to re-open discovery by virtue of his departure. Finally, Plaintiff's delay in filing this motion also supports the motion's partial denial. Plaintiff waited nearly a month from the date that Mr. Flood withdrew from the case to request that discovery be re-opened and he waited nearly two-weeks from the date that Defendant filed its Motion for Summary Judgment to ask for an extension of his response deadline. The court is aware of no reason why Plaintiff could not have filed this motion earlier.

Nevertheless, given Plaintiff's October 19, 2011 deadline to secure new local counsel, the court will grant Plaintiff a brief extension of time, until October 25, 2011, to respond to Plaintiff's summary judgment motion. Discovery will not be re-opened. However, Plaintiff will be permitted to conduct the depositions of Amy Wheeler, Diane Mahagan-Thompson and Jodie Schoemaker out of time, as previously agreed-to by defense counsel.

Accordingly,

**IT IS ORDERED:**

1. Plaintiff's Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment and to Re-open Discovery ([filing 52](#)) is granted, in part, as follows:

- a. Plaintiff shall respond to Defendant's Motion for Summary Judgment on or before October 25, 2011.
  - b. Discovery in this case will not be re-opened. However, Plaintiff is permitted to take the depositions of Amy Wheeler, Diane Mahagan-Thompson and Jodie Schoemaker out of time.
2. In all other respects, Plaintiff's Motion is denied.
  3. The pretrial conference and trial will take place as scheduled.

**DATED October 18, 2011.**

**BY THE COURT:**

**S/ F.A. Gossett  
United States Magistrate Judge**