

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Samuel J. Bourne

v.

Civil No. 10-cv-393-LM

John R. Arruda, Jr., et al.

O R D E R

Currently before the court are defendant John R. Arruda's motion to dismiss (doc. no. 4); and his motion to stay proceedings and continue a preliminary pretrial conference currently scheduled for November 15, 2010 (doc. no. 9). Also before the court are plaintiff Samuel J. Bourne's motion for leave to file a surreply to the motion to dismiss (doc. no. 12) and motion for leave to file a reply memorandum (doc. no. 19) in support of his underlying discovery motion.

A. Motions to Dismiss and for Leave to File Surreply

Arruda filed his motion to dismiss before the court granted Bourne leave to file an amended complaint. Thus, the motion to dismiss concerns a pleading that has been supplanted. The motion to dismiss (doc. no. 4) is denied without prejudice to Arruda's refiling it in response to the amended complaint. The motion for leave to file a surreply (doc. no. 12) is similarly

denied without prejudice to renew, as necessary, if Arruda files a motion to dismiss the amended complaint.

B. Motion for Stay and to Continue Pretrial Conference

Arruda has moved for a stay and to continue the preliminary pretrial conference scheduled for November 15, 2010, on the ground that the interests of proper case management warrant a stay and a continuance. Arruda cites specifically the pendency of the motion to dismiss and Bourne's history of prolific filings in other cases.

The motion for a stay and continuance (doc. no. 9) is granted, in part, to the extent that it seeks to continue the November 15, 2010, pretrial conference. That conference shall be continued until a date to be set after all defendants have responded to the amended complaint. Arruda's motion for a stay and continuance (doc. no. 9) is thus granted in part, and denied in all other respects.

C. Motion for Leave to File Reply Memorandum

Bourne filed a motion for leave to file a reply memorandum (doc. no. 19), in support of his motion to preserve discovery, on November 2, 2010. This court denied the underlying discovery

motion (doc. no. 11) in an Order issued the same date, November 2, 2010. Therefore, the motion for leave to file the reply memorandum (doc. no. 19) is denied as moot at this time.

Conclusion

Arruda's motion to dismiss (doc. no. 4) and Bourne's motion to file a surreply (doc. no. 12) are DENIED without prejudice. Arruda's motion for a stay and a continuance (doc. no. 9) is GRANTED IN PART, as to the continuance, and is DENIED in all other respects. The pretrial conference is hereby CONTINUED until a date to be set after all defendants have responded to the amended complaint. Bourne's motion for leave to file a reply memorandum (doc. no. 19) is DENIED as moot.

SO ORDERED.



Landya B. McCafferty
United States Magistrate Judge

Date: November 10, 2010

cc: Samuel J. Bourne, pro se
Brian J.S. Cullen, Esquire

LBM:nmd