

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARY WELLESLEY,

Plaintiff,

-v-

ORDER
06 CV 3518 (ARR)(LB)

DEBEVOISE & PLIMPTON, LLP and RACHEL DRESSLER,

Defendants.
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Bloom, United States Magistrate Judge:

This matter was referred to me for all pretrial supervision. Defendants' motion for summary judgment is fully briefed and pending before Judge Ross. Plaintiff's response to defendant's motion

“ask[s] this court not to grant summary judgment dismissing this matter. I do not ask this court to rule in my favor, however, without requesting further discovery in this matter or bring this matter to trial. If it were to go to trial it would be very difficult for me to handle, there is no doubt. But at least further discovery. I do not know the rules of this court in this regard but I hope that the rules were written only to keep a sense of order and not to subvert justice. If this court could somehow allow further discovery to: (subparagraphs (a) through(e) omitted).

See Document 37-7, ¶ 28.

At the initial pretrial conference on April 11, 2007, the Court discussed the discovery process. The Court also directed the parties to exchange initial disclosures, including plaintiff's personnel file. See Document 17. At the status conference on May 15, the Court again discussed the discovery process and ordered the parties to complete all discovery by September 17, 2007. The Court's order reflects that plaintiff was instructed to obtain the rules regarding discovery from the Pro Se Office and that plaintiff was informed that she could conduct both

depositions upon oral examination and depositions upon written questions. See Document 29.

On June 14, 2007, plaintiff wrote to the Court regarding a defamation claim that had been dismissed as untimely. See Document 20. Plaintiff's letter states "I was given a copy of a report written by the Secretarial Manager, Maura Relihan, that is a vicious and malicious portrayal of what actually happened and of me when I was fired." Id. at 1. In light of plaintiff's letter, which asked to "reinstigate the defamation claim", id. at 3, I held a conference with the parties on July 18, 2007 and tried to explain to plaintiff why her defamation claim could not be revived. I also tried to persuade plaintiff to negotiate with defendants to try to settle her case. On September 10, 2007, Judge Ross adopted my Report and Recommendation and denied plaintiff leave to amend her complaint. See Document 31. Plaintiff then moved for reconsideration to reinstate her defamation claim. See Document 34. That motion was again denied. See Document 35. I recount the procedural history here to make the point that plaintiff vigorously pursued her case and was not timid to call upon the Court.

Plaintiff wrote to the Court on September 4, 2007 to request a short extension of the discovery deadline to reschedule her deposition. See Document 29. Plaintiff's letter also complains about defendants' responses to her document requests: "In a very specific case I asked the question: Provide a sworn statement by Calton Minor and Patty Walsh as to the incident they allege took place, the date of such incident, and all surrounding circumstances that involved Mary Wellesley." Id. at 2. Plaintiff's letter raises several other issues and states "[m]y intent is to prove that Debevoise employees have lied about me and have made claims against me that are untrue in terms of performance evaluations, etc." Id. at 3. The Court granted the requested extension of the discovery deadline, denied plaintiff's request for "sworn statements" and

addressed the other issues raised by plaintiff's letter.¹ See Document 30.

Plaintiff did not request an extension of time to conduct further discovery after her September 4 letter. Now, facing a fully briefed summary judgment motion, plaintiff asks to reopen discovery. Plaintiff's request is denied. "[W]hatever discovery went undone was the consequence of [plaintiff's] own conduct and was in any event inconsequential." Burlington Coat Factory Warehouse Corp. v. Espirit De Corp., 769 F.2d 919, 925 (2d Cir. 1985).

It was not until the motion for summary judgment was filed that plaintiff raised the need for further discovery. Although the Court would have likely extended the discovery deadline had plaintiff requested it before the motion was fully submitted, she chose to focus her attention on other matters, specifically the dismissed defamation claim. Moreover, the requests that plaintiff lists she would like to now pursue are improper. Plaintiff wants defendants to get statements from its employees regarding certain incidents which she believes would "prove the lies that are being told." See Document 37-7, ¶ 28(a). It is not defendants responsibility to question a witness for plaintiff. Plaintiff was given four months to conduct discovery, but did not conduct any depositions.

"While Fed. R. Civ. P. 56(f) permits a continuance of a motion for summary judgment to permit the nonmovant to conduct discovery, 'Rule 56(f) cannot be relied upon to defeat a summary judgment motion where the result of a continuance to obtain further information would be wholly speculative.'" Khan v. Abercrombie & Fitch, Inc., 01 Civ. 6163 (WHP) (S.D.N.Y. Sept. 17, 2003) 2003 WL 22149527, at *12 (citing Daewoo Intern (Am.) Corp. Creditor Trust v.

¹ The Court specifically stated "plaintiff cannot ask defendants to depose persons on her behalf that she could have deposed herself." Order at n.1.

SSTS Am. Corp., 02 Civ. 9629 (NRB), 2003 WL 21355214, at *2 (S.D.N.Y. June 11, 2003)

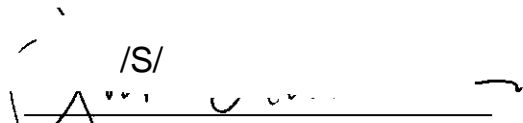
(quotation omitted). In addition, plaintiff has not provided any evidence that further discovery would change the outcome of the summary judgment motion. Here, plaintiff had ample time for discovery and took no steps at the conclusion of discovery to indicate that it was inadequate.

Like the plaintiff in Zerelli-Edelglass v. New York City Transit Authority, 04 CV 549 (NG)(LB) 2007 WL 2261652 (E.D.N.Y. Aug. 2, 2007), plaintiff waited until serving her opposition papers to indicate discovery was inadequate. Id. at *6. This cannot be permitted.

Plaintiff's failure to raise this matter before the close of discovery and failure to demonstrate a strong basis for additional discovery defeats her instant request. Accordingly, plaintiff's request for further discovery as contained in her opposition to defendants' motion is denied.

SO ORDERED.

Dated: February 1, 2008
Brooklyn, New York

/s/

Lois Bloom
United States Magistrate Judge