

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AMANDA U. AJULUCHUKU-LEVY,

Plaintiff,

ORDER

- against -

CV 08-1752 (SJF) (AKT)

MICHAEL F. SCHLEIFER CPA and
ACCOUNTING FIRM OF
MICHAEL F. SCHLEIFER, CPA,

Defendants.

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A. KATHLEEN TOMLINSON, Magistrate Judge:

Before the Court is Plaintiff Pro Se's "Motion for Relief" [DE 13]. In sum, Plaintiff (1) objects to any attempt by Defendants to file a motion to dismiss the Complaint, (2) states that she has not yet received a copy of Defendants' Answer to the Complaint or Defendants' counterclaims against her, and (3) objects to any attempt by Defendants to file counterclaims against her.

With respect to the first issue raised by Plaintiff, as I explained during the December 4, 2008 Initial Conference, "the Defendants have a right to engage in good faith motion practice" [DE 15]; *see also* Fed. R. Civ. P. 12(b), (c). To that end, Defendants have since filed a motion to dismiss the Complaint pursuant to Rule 12(b)(6) [DE 19], which motion Plaintiff has opposed [DE 25].

With respect to the second issue raised by Plaintiff, Judge Feuerstein granted Plaintiff's motion to proceed *in forma pauperis* on May 7, 2008 [DE 5] and, pursuant to that Order, the Complaint and Summons were served on Defendants by the United States Marshals Service. According to the Process Receipt and Return [DE 10], Defendants were served with the

Complaint on September 23, 2008 and their answer was due October 14, 2008. Thus, although Plaintiff states in her October 1, 2008 letter [DE 13] that she did not yet receive an Answer to her Complaint, the Defendants' time to serve that responsive pleading had not yet expired. In fact, Defendants filed an Answer to the Complaint on October 1, 2008 [DE 9], which filing was timely.

Finally, with respect to the third issue raised by Plaintiff, the Federal Rules of Civil Procedure specifically permit a party to interpose a counterclaim. *See* Fed. R. Civ. P. 7(a). Accordingly, Defendants have the right to plead, in good faith, a counterclaim(s) against Plaintiff as a part of their Answer to the Complaint. Plaintiff has provided no evidence that Defendants are not acting in good faith, and so the counterclaim stands.

Counsel for Defendants is directed to serve a copy of this Order upon Plaintiff Pro Se forthwith and to file proof of service on ECF.

SO ORDERED.

Dated: Central Islip, New York
September 11, 2009

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge