

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG,
FACEBOOK, INC.,

Defendants.

**DECISION
and
ORDER**

10-CV-569A(F)

APPEARANCES:

PAUL A. ARGENTIERI, ESQ.
Attorney for Plaintiff
188 Main Street
Hornell, New York 14843

BOLAND LEGAL, LLC
Attorney for Plaintiff
DEAN M. BOLAND, of Counsel
18123 Sloane Avenue
Lakewood, Ohio 44107

GIBSON, DUNN & CRUTCHER, LLP
Attorneys for Defendants
ORIN S. SNYDER,
ALEXANDER H. SOUTHWELL,
THOMAS H. DUPREE, JR., of Counsel
200 Park Avenue, 47th Floor
New York, New York 10166-0193

HARRIS BEACH LLP
Attorneys for Defendants
TERRANCE P. FLYNN, of Counsel
Larkin at Exchange
726 Exchange Street, Suite 1000
Buffalo, New York 14210

By papers filed November 16, 2012, (Doc. No. 596 - 597), Plaintiff requests a 30-day extension of time within which to file Plaintiff's response to Defendants' motion for judgment on the pleadings (Doc. No. 320) based on a time bar under the applicable statute of limitations and laches ("Defendants' motion") ("Plaintiff's request"). Plaintiff's

response was due November 19, 2012 (Doc. No. 566, 572). By letter filed November 19, 2012 (Doc. No. 602), Defendants oppose Plaintiff's request. By letter to the court received on November 20, 2012 (Doc. No. 606), Plaintiff requests the court hold Defendants' motion in abeyance avoiding Plaintiff's need to file a response.

The asserted ground for Plaintiff's request is that such response may constitute a violation of Plaintiff's conditions of release, particularly the general condition that Plaintiff avoid criminal conduct, in connection with a recently filed criminal complaint against Plaintiff charging wire fraud and mail fraud based on Plaintiff's suit in the instant action seeking a one-half interest in Defendant Facebook arising from a purported contract.

At its base, Defendants' motion turns on Plaintiff's alleged failure to timely sue to enforce the purported contract. As such, even assuming the underlying contract at issue is fraudulent, as Defendants strenuously maintain, such fact is irrelevant to whether Plaintiff's suit was time-barred when filed or whether Plaintiff was guilty of laches given that Plaintiff's purported fraud goes to the merits of the case, a consideration unrelated to its timeliness. Thus, Plaintiff's asserted fear in support of Plaintiff's request that filing a response to Defendants' motion may prejudice Plaintiff's defense to the pending criminal charges against Plaintiff or Plaintiff's ability to remain compliant with his release conditions appears speculative at best. Nor does Plaintiff explain how the 30-day extension requested by Plaintiff will allow Plaintiff to avoid the undesirable consequences in the criminal proceeding he fears. Indeed, such request is at odds with Plaintiff's assertion that filing a response will jeopardize his defense in his criminal case.

Moreover, as the authorities cited by Defendants indicate, it is not atypical that parallel civil actions and criminal proceedings, at least in federal courts, involving the same subject matter be prosecuted simultaneously. Plaintiff, in his reply, states his desire to litigate both proceedings in parallel. Significantly, Plaintiff fails to cite to any controlling authority that requiring Plaintiff to file a response in accordance with a court established schedule violates Plaintiff's constitutional rights or applicable rules of the Federal Rules of Civil Procedure. Finally, given Plaintiff's publically stated insistence that the purported contract at issue is in fact authentic, it is difficult to understand why Plaintiff should hesitate to file a response to Defendants' motion.

As Defendants note, (Doc. No. 602 at 2) Plaintiff is, of course, free to discontinue the instant action in accordance with Fed.R.Civ.P. 41(a). To the extent Plaintiff desires to continue the instant action, Plaintiff is required to conduct the proceedings in accordance with applicable rules including scheduling orders relating to current motions such as Defendants' motion. Ultimately, the choice, including any decision not to file a response to Defendants' motion, is Plaintiff's. Plaintiff is advised that regardless of whether Plaintiff files a response, the court will proceed to consider the merits of Defendants' motion along with Defendants' other pending motion to dismiss based on fraud (Doc. No. 318). Notwithstanding the foregoing, the court finds Plaintiff should be given an additional 5 days to file his response to Defendants' motion.

Defendants' request, that the court inquire whether Plaintiff's other counsel of record, Dean Boland, intends to remain involved in the case, should the court grant Boland's pending motion to withdraw (Doc. No. 579), and that Mr. Paul A. Argentieri, Plaintiff's remaining counsel of record, intends to pursue the case without delay, is

premature. The court will address these matters when it considers Mr. Boland's motion to withdraw presently scheduled for a hearing on November 27, 2012.

CONCLUSION

Plaintiff's request (Doc. No. 596) is GRANTED in part and DENIED in part. Plaintiff's response, if any, shall be filed not later than **November 25, 2012**; any reply shall be filed not later than **December 3, 2012**.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: November 20, 2012
Buffalo, New York