

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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APACE COMMUNICATIONS, LTD.,  
et al.,

Plaintiffs,

DECISION AND ORDER

07-CV-6151L

v.

JEFFREY BURKE, et al.,

Defendants.

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The parties have been embroiled with each other and before Magistrate Judge Marian W. Payson concerning matters relating to completing fact discovery and depositions by the end of February 2012. Plaintiffs' principal counsel's illness and other matters have apparently delayed proceedings in this long-pending civil action.

Magistrate Judge Payson did grant plaintiffs' request to extend the deadline for completion of discovery by Order filed November 16, 2011 (Dkt. #174). There were several conditions attached to that grant of an extension, and the Magistrate Judge endorsed a specific schedule for some depositions which were to occur during January and February 2012, by endorsed Order filed December 12, 2011 (Dkt. #182).

The matter at hand deals with a motion for summary judgment filed on November 18, 2011 (Dkt. #173) by Cephass Capital Partners and individuals related to that entity. This Court set a schedule for responding to the motion on November 28, 2011 (Dkt. #179). Plaintiffs now move (Dkt. #188) for an extension within which to respond to the motion for summary judgment pending completion of the factual discovery, referenced above. The Cephass defendants opposed that request (Dkt. #189).

The Cephass defendants assert that additional discovery will do little to fully explicate the issues relating to the pending summary judgment motion and that unnecessary costs and expense will be required to deal with the depositions.

Magistrate Judge Payson has dealt with the request to extend discovery, and at this point has denied defendants' requests to limit or preclude such additional fact discovery. This Court has previously extended the time within which to respond to a motion for summary judgment filed by co-defendants Lori Levine and Steven Levine (Dkt. #184). For the same reasons set forth in that Order, I grant plaintiffs' now request (Dkt. #188) for an extension within which to respond to the Cephass defendants' motion for summary judgment.

#### CONCLUSION

Plaintiffs' motion (Dkt. #188) to extend time to respond to the summary judgment motion filed by Cephass Capital Partners, et al., is granted. The Cephass defendants' motion for a protective order (Dkt. #189) is denied. The following schedule is established: Plaintiffs must respond to the summary judgment motion of Lori Levine and Steven Levine (Dkt. #168) and the motion for summary judgment (Dkt. #173) filed by the Cephass Capital Partner, et al., on or before March 30, 2012. Defendants' reply, if any, must be filed by April 16, 2012.

IT IS SO ORDERED.



DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
January 10, 2012.