

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:14-CV-844-FL

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

DOROTHY M. WISE AND EDDIE F.)
WISE,)

Defendants.)

DOROTHY M. WISE and EDDIE F.)
WISE,)

Counter Claimants,)

v.)

TOM VILSACK, *in his official capacity*)
as Secretary for the United States)
Department of Agriculture; MIKE)
HUSKEY, individually and in his)
official capacity; PAULA F.)
NICHOLLS, individually and in her)
official capacity; JUAN GARCIA,)
individually and in his official capacity;)
DEBBIE HOUSTON, individually and)
in her official capacity; CYNTHIA)
KERNODDLE, individually and in her)
official capacity; and AARON)
MARTIN, individually and in his)
official capacity.)

Counter Defendants.)

ORDER

In this action for money judgment and foreclosure, initiated by complaint filed November 19, 2014, on the heels of one defendants brought in 2013, seeking to enjoin foreclosure,¹ there are a plethora of motions now pending on which hearing was set August 19, 2015, to occur September 14, 2015.²

BACKGROUND

Ceaselessly, defendants have sought to delay progress of this case. Defendants filed a motion to stay December 9, 2014, (DE 7), which plaintiff characterized as “part of a pattern of Defendants using litigation to delay foreclosure and the collection of their defaulted 1996-99 farm loans, for which they have voluntarily repaid approximately \$9,000 over the last 15 years and currently owe approximately \$590,000. Resp. p. 1 (DE 8). The court’s denial of that motion was followed by defendants’ request for reconsideration, (DE 10), which was denied, and a separate motion to stay (DE 19). More time, too, was sought to respond to plaintiff’s motion for summary judgment (DE 25). The latter two motions were referred to the magistrate judge for hearing while the court stayed the case of its own initiative. The court notes defendants failed to attend that hearing.

The magistrate judge denied the motion to stay and motion for extension of time, setting a deadline for any response by defendants to the government’s motion. This promptly was followed

¹ That case, Eddie Wise and Dorothy Monroe-Wise v. United States Department of Agriculture, James Davenport, Mike Huskey, Aaron Martin, Juan M. Garcia, Tom Vilsack, Pala F. Nicholls, Debbie Houston, Cynthia I. Kernodde, and Joe Leonard, 4:13-cv-234 (EDNC), assigned to another judge, also was maintained *pro se*. The court dismissed the action by order entered October 24, 2014, noting among other things “Plaintiffs’ litigation theme before this Court has been to delay by any means possible.” (DE 42, p. 7).

² Motions for hearing include: 1) plaintiff’s motion to dismiss counterclaim for failure to state a claim or in the alternative, for summary judgment on counterclaim; 2) plaintiff’s motion for summary judgment on foreclosure and sale; 3) defendants’ asserted response to complaint or in the alternative, motion for summary judgment; 4) defendants’ motion to dismiss or in the alternative, motion for summary judgment sounding as response to plaintiff’s motion; and 4) most recently, defendants’ motion to transfer venue.

by defendants' motion to reset another hearing time and to allow limited discovery (DE 29).

Reference is made to the court's order entered April 21, 2015, for its address of same:

While it is difficult to believe that defendants did not receive notice of hearing, where no mail was returned to the clerk's office, the defendants' correct address was used, and these defendants have a history of employing delaying tactics, the court AMENDS the magistrate's order, (DE 28), and positions the case [on a schedule promoting address of plaintiffs' motion to dismiss, provision of answer, and a discovery proposal].

Apr. 21, 2015 order (DE 30). Defendants' response to complaint that followed included another motion to stay. (DE 32). That request was denied in June 29, 2015, text order wherein the court also denied for reasons given proposed discovery by defendants and lifted stay.

On August 21, 2015, defendants filed motion deemed an emergency one, seeking the court to reschedule hearing to permit a lengthier period of time to prepare, in light of stated desire to conduct discovery, subpoena a witness, and hire an attorney. This motion summarily was denied. Four days later, defendants filed the instant motion, which references persistent medical conditions not previously mentioned, as basis now for delay. In the alternative, defendants seek the court to permit an unidentified lawyer from Texas to appear via telephone or be video conference, because of stated short notice.

COURT'S DISCUSSION

Defendants are experienced litigators. They also have had abundant time to secure counsel compliant also with this court's Local Civil Rules sought here to be skirted. At time the instant motion was filed hearing was nearly three weeks' away, providing ample time for local counsel to be secured and travel arrangement made by Texas based counsel.

Opportunities earlier were promoted for the court's consideration of any necessary discovery, met by defendants' failure to attend hearing and then by their outsized proposal, (DE 33), despite its characterization as a motion for limited discovery, for conduct of voluminous discovery about matters not at issue and/or matters not compliant with this court's orders and the Federal Rules of Civil Procedure.

While not diminishing any health issues, defendants' stance in litigation mitigates against allowance of what sounds as yet one more effort to delay disposition of the case.

CONCLUSION

Motion seeking delay of hearing and permission for an unnamed Texas-based attorney to make special appearance and represent defendants' interests via telephone or by video-conference (DE 55) is DENIED.

SO ORDERED, this the 26th day of August, 2015.



LOUISE W. FLANAGAN
United States District Court Judge