

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE, *et al.*,

Plaintiffs,

vs.

Civil Action 2:07-CV-319
Judge Watson
Magistrate Judge King

DUSTIN PENTZ, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court on Defendant Gregory Simpson's motion for an extension of time to respond to the motion for summary judgment of Intervenor State Farm Fire and Casualty Company ("State Farm") and plaintiffs' motions requesting an extension of time to respond to State Farm's motion for summary judgment and to modify the case scheduling order. *Defendant Gregory Simpson's Motion for Continuance of Response Time to Intervenor State Farm Fire and Casualty Company's Motion for Summary Judgment*, Doc. No. 89 ("Defendant Simpson's Motion"), *Plaintiff's Memorandum in Opposition to the Motion for Summary Judgment of Intervenor State Farm Fire and Casualty Company and Plaintiffs' Motion to Refuse Summary Judgment Pursuant to Fed. R. Civ. P. 56(f)*, Doc. No. 88 ("Plaintiffs' Motion for Continuance") and plaintiffs' *Motion to Modify Case Scheduling Order (Document 82)*, Doc. No. 96 ("Plaintiffs' Motion to Modify Case Schedule").¹

¹Plaintiffs' memorandum in opposition to State Farm's motion for summary judgment includes a motion to either deny State Farm's motion for summary judgment or for a continuance to conduct discovery necessary to respond to that motion. *Plaintiff's Memorandum in Opposition to the Motion for Summary*

On February 25, 2009, intervenor plaintiff State Farm filed a motion for summary judgment on February 25, 2009. Doc. No. 84. Defendant Simpson contends that additional discovery is necessary in order to appropriately respond to this motion. *Defendant Simpson's Motion for Continuance* (citing *Affidavit of H. Ritchey Hollenbaugh*, attached thereto) ("*Hollenbaugh Aff.*").

Plaintiffs filed a response to State Farm's motion for summary judgment, but also seek a continuance in order to conduct "critical discovery" to enable them to more fully address State Farm's motion. *Plaintiffs' Motion for Continuance*, pp. 15-16 (citing *Affidavit of Plaintiff's [sic] Counsel, Eleni A. Drakatos, in Support of Fed. R. Civ. P. 56(f) Motion to Refuse Summary Judgment*, attached as Exhibit 5 thereto) ("*Drakatos Aff.*"). In connection with their contention that they need additional discovery to respond to State Farm's motion for summary judgment, plaintiffs ask that the discovery deadline, previously set at May 31, 2009, be extended to July 31, 2009, and that the dispositive motion deadline, currently set at June 30, 2009, be extended to August 30, 2009. *Plaintiffs' Motion to Modify Case Schedule*. See also *Continued Preliminary Pretrial Order*, Doc. No. 82; *Order Setting Trial Date and Settlement Conference*, Doc. No. 83.

To the extent that Defendant Simpson and plaintiffs seek a

Judgment of Intervenor State Farm Fire and Casualty Company and Plaintiffs' Motion to Refuse Summary Judgment Pursuant to Fed. R. Civ. P. 56(f), Doc. No. 88, p. 1.

Plaintiffs' counsel is reminded that, as a general rule, motions seeking particular relief should be filed separately rather than as a combined filing as was done in this case, Doc. No. 88. The Court will consider only plaintiffs' Rule 56(f) request to conduct additional discovery-not as a basis for denying summary judgment to State Farm- when considering *Plaintiffs' Motion to Modify Case Schedule*, discussed *infra*.

continuance to conduct discovery, neither request satisfies the requirements of Rule 56(f) of the Federal Rules of Civil Procedure. Rule 56(f) establishes the proper procedure where a party concludes that additional discovery is necessary in order to respond to a motion for summary judgment:

When Affidavits Are Unavailable. If a party opposing the motion [for summary judgment] shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:

- (1) deny the motion;
- (2) order a continuance to enable affidavits to be obtained, depositions to be taken or other discovery to be undertaken; or
- (3) issue any other just order.

Fed. R. Civ. P. 56(f).

The United States Court of Appeals for the Sixth Circuit has clearly stated that the affidavit required by the rule must "indicate to the district court [the party's] need for discovery, what material facts it hopes to uncover, and why it has not previously discovered the information." *Cacevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000) (citing *Radich v. Goode*, 866 F.2d 1391, 1393-94 (3d Cir. 1989)). A motion under Rule 56(f) may be properly denied where the requesting party "makes only general and conclusory statements regarding the need for more discovery and does not show how an extension of time would have allowed information related to the truth or falsity of the [document] to be discovered," *Ball v. Union Carbide Corp.*, 385 F.3d 713, 720 (6th Cir. 2004) (citing *Ironside v. Simi Valley Hosp.*, 188 F.3d 350, 354 (6th Cir. 1999)), or where the affidavit "lacks 'any details' or 'specificity.'" *Id.* (quoting

Emmons v. McLaughlin, 874 F.2d 351, 357 (6th Cir. 1989)).

Here, defendant Simpson's counsel represents by way of affidavit that "critical discovery remains outstanding" and "certain discovery . . . must be completed before Simpson will be in a position to adequately oppose" State Farm's motion for summary judgment. *Hollenbaugh Aff.*, ¶¶ 3-4. However, this conclusory affidavit fails to detail what specific discovery is necessary and what material facts defendant Simpson hopes to uncover.

Similarly, in support of *Plaintiffs' Motion for Continuance*, plaintiffs' counsel represents by way of affidavit that they require additional discovery and specifically refers to the depositions of defendants Dustin Pentz and Gregory Simpson. *Drakatos Aff.*, ¶¶ 4-5. However, the affidavit fails to specify what material facts plaintiffs hope to discover from these individuals. In their later motion, plaintiffs represent that they need to depose "at least eight more people" and that "[a]ll remaining witnesses who [sic] Plaintiffs have asked to depose are Dublin City School employees." *Plaintiffs' Motion to Modify Case Schedule*, p. 2. However, plaintiffs' later motion is unsupported by any affidavit specifying the particular material facts that plaintiffs hope to discover and why they have not previously discovered the information. Under these circumstances, the Court is without authority to grant the requested relief. See, e.g., *Cacevic*, 226 F.3d at 488; *Ball*, 385 F.3d at 720.

WHEREUPON, Defendant Gregory Simpson's Motion for Continuance of Response Time to Intervenor State Farm Fire and Casualty Company's Motion for Summary Judgment, Doc. No. 89, Plaintiff's Memorandum in

*Opposition to the Motion for Summary Judgment of Intervenor State Farm Fire and Casualty Company and Plaintiffs' Motion to Refuse Summary Judgment Pursuant to Fed. R. Civ. P. 56(f), Doc. No. 88,*² *and plaintiffs' Motion to Modify Case Scheduling Order (Document 82), Doc. No. 96 are **DENIED.***

June 17, 2009

s/Norah McCann King
Norah McCann King
United States Magistrate Judge

²As noted *supra*, the Court only considered plaintiffs' Rule 56(f) request to conduct additional discovery-- not the merits of any motion for summary judgment.