

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

OMAR TARAZI,

Plaintiff,

v.

**Case No. 2:10-CV-793
JUDGE EDMUND A. SARGUS, JR.**

**PAMELA G. OSHRY, and
JOHN STEMBERGER,**

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion to Treat Defendant Pamela Geller's Motion to Dismiss as a Motion for Summary Judgment ("motion to convert") (Doc. 25) and on Plaintiff's Motion for Continuance to Respond to Defendant Pamela Geller's Motion to Dismiss ("motion to extend") (Doc. 28). For the reasons that follow, Plaintiff's Motion to Treat Defendant Pamela Geller's Motion to Dismiss as a Motion for Summary Judgment is denied, and Plaintiff's Motion for Extension of Time to File Response to Defendant Pamela Geller's Motion to Dismiss is granted.

I.

Plaintiff, Omar Tarazi, initiated this defamation action against defendants Pamela Geller¹ and John Stemberger on September 3, 2010. On November 12, 2010, Defendant Geller filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). Attached to her motion were twenty-four exhibits, numbering more than three-hundred pages in total. In response, Plaintiff filed a motion to convert, in which he asks the Court to treat the motion to

¹Defendant Pamela G. Oshry is also known as Pamela Geller, which is how the parties refer to her in their filings with this Court. Accordingly, this Order also uses that name when referring to Ms. Oshry.

dismiss as a motion for summary judgment because the exhibits attached to the motion to dismiss include an affidavit by Defendant Geller and other documents not referenced in the complaint. Defendant Geller filed a response in opposition to Plaintiff's motion to convert, and Plaintiff filed a reply. Plaintiff also filed a motion requesting an extension of time for filing a response to the motion to dismiss. Plaintiff asks for the extension because the nature of his response will depend on whether the Court treats Defendant Geller's motion as a motion to dismiss, or as Plaintiff urges, as a motion for summary judgment. In his motion to extend, Plaintiff informs the Court that Defendant Geller does not object to an extension of up to ten days from the current deadline,² whereas Plaintiff requests a twenty-one-day extension from the date on which the Court rules on Plaintiff's motion to convert. The Court now considers the merits of these motions.

II.

“When a court is presented with a Rule 12(b)(6) motion, it may consider the Complaint and any exhibits attached thereto, public records, items appearing in the record of the case and exhibits attached to the defendant's motion to dismiss, so long as they are referred to in the Complaint and are central to the claims contained therein.” *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008). However, Rule 12(d) of the Federal Rules of Civil Procedure requires a court to treat a Rule 12(b)(6) motion as one for summary judgment “[i]f . . . matters outside the pleadings are presented to and not excluded by the court.” Fed. R. Civ. P. 12(d). Such matters outside the pleadings include affidavits: if a party files an affidavit with the court in connection with a Rule 12(b)(6) motion to dismiss, the court must treat the motion as one for summary judgment and “proceed under Rule 56 unless the court decides to exclude the affidavit[.]” *Dayco Corp. V.*

²Pursuant to the Local Rules of Civil Procedure, the deadline for Plaintiff's response, if not extended, is December 3, 2010.

Goodyear Tire & Rubber Co., 523 F.2d 389, 392 (6th Cir. 1975). Nevertheless, in considering a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction, a court may consider evidence outside the pleadings without converting the motion into one for summary judgment.

Nichols v. Muskingum Coll., 318 F.3d 674, 677 (6th Cir. 2003)

In this action, the Court has determined that, in deciding the motion to dismiss, it will exclude from consideration Defendant Geller's affidavit and any other exhibits to which the Complaint does not refer or which are not central to the claims contained therein, except as necessary for determining the Court's subject-matter jurisdiction. Accordingly, the Court declines to treat the motion to dismiss as one for summary judgment.


The Court agrees with Plaintiff, however, that a ten-day extension does not afford Plaintiff adequate time to prepare a proper response, given the copiousness of Defendant Geller's motion. For that reason, the Court finds the twenty-one day extension requested by Plaintiff an appropriate period for preparing and filing his response.

III.

In light of the foregoing, Plaintiff's Motion to Treat Defendant Pamela Geller's Motion to Dismiss as a Summary Judgment Motion (Doc. 25) is **DENIED**, and Plaintiffs' Motion for Continuance to Respond to Pamela Geller's Motion to Dismiss is **GRANTED**. Plaintiff is directed to file his response to Defendant Pamela Geller's Motion to Dismiss by no later than **December 21, 2010**.

IT IS SO ORDERED.

12-1-2010
DATE



EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE