

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

COMPASS HOMES, INC.,

Plaintiff,

vs.

Civil Action 2:13-cv-779
Judge Sargus
Magistrate Judge King

HERITAGE CUSTOM HOMES, LLC,
et al.,

Defendants.

OPINION AND ORDER

On October 15, 2014, the Court conferred with counsel by telephone regarding the current discovery completion and dispositive motions filing deadlines.

Discovery was to have been completed by October 1, 2014; motions for summary judgment are due today. *Preliminary Pretrial Order*, ECF 12. Defendants ask that these deadlines be extended by thirty (30) days in order to permit two additional depositions and to compel plaintiff to produce certain documents.¹ Plaintiff opposes the request. The case is scheduled for a settlement conference with the trial judge on February 17, 2015 and for a trial beginning March 30, 2015. *Order Setting Trial Date and Settlement Conference*, ECF 22.

Rule 16(b)(4) of the Federal Rules of Civil Procedure provides that a pretrial schedule may be modified "only for good cause and with the judge's consent." In considering a request to modify a pretrial

¹Plaintiff contends that the documents sought are public documents equally available to defendants and to plaintiffs.

schedule, courts consider a number of factors: when the moving party learned of the issue that is the subject of discovery; the length of the discovery period; whether the moving party was dilatory; and whether the adverse party was responsive to discovery requests.

Dowling v. Cleveland Clinic Found., 593 F.3d 472, 478 (6th Cir. 2010).

"The overarching inquiry in these overlapping factors is whether the moving party was diligent in pursuing discovery." *Id.*

The pretrial schedule authorized eleven (11) months of discovery. *Preliminary Pretrial Order*. Discovery-related motions were to have been filed prior to the discovery completion date. *Id.* The parties agree that defendants did not issue notices of the two depositions now sought by them. Defense counsel represent that they verbally requested the depositions following a deposition taken in September 2014; plaintiff's counsel does not concede that representation. The document production about which defendants now complain was made approximately six (6) months ago. Defendants did not bring these matters to the Court's attention prior to the discovery completion date. Under these circumstances, the Court concludes that defendants have not been diligent in pursuing the requested discovery. Moreover, it does not appear that plaintiff was unreasonably resistant to defendant's discovery requests. Finally, and perhaps most important, the requested extension of the discovery completion and dispositive motions filing dates would undermine the viability of the trial judge's final pretrial schedule in this case.

The Court therefore concludes that defendants have failed to

justify the requested modification of the pretrial schedule.

Should plaintiff file a motion for summary judgment, defendants may file a motion under Rule 56(d) of the Federal Rules of Civil Procedure. In referring to this Rule, however, the Court expresses no opinion as to the likelihood of success of such a motion.

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge

October 15, 2014
Date