

United States District Court
Southern District of Texas

ENTERED

June 27, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHELS CORPORATION,

Plaintiff,

VS.

EMS USA, INC.,

Defendant.

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CIVIL ACTION NO. 4:16-CV-02340

OPINION AND ORDER

Pending before the Court in the above-referenced cause is Defendant EMS USA, Inc.’s (“EMS”) Motion for Continuance of Plaintiff’s Motion for Summary Judgment Submission and Motion to Compel Mediation (“Motion” or “Motion for Continuance”). Doc. 15. Having considered the Motion, Response, record, and relevant law, the Court denies Defendant’s Motion for Continuance as moot and denies Defendant’s Motion to Compel Mediation.

I. Background

Plaintiff Michels Corporation (“Michels”) filed this lawsuit on August 4, 2016, asserting claims for breach of contract and failure to comply with the Texas Prompt Payment Act against Defendant EMS. Doc. 1. Plaintiff filed its Motion for Summary Judgment on December 19, 2016. Doc. 10. Defendant’s response was due January 9, 2017. Because the parties were scheduled for mediation on January 10, however, on January 4 EMS filed its Unopposed Motion for Leave to File Late Response (“Unopposed Motion”), in which the parties agreed to extend the response deadline to January 13, 2017. Doc. 11. In its Unopposed Motion, EMS represented that the parties had agreed that “if as a result of mediation the resolution of this dispute appears likely, EMS’s response deadline will be extended indefinitely so as to give the parties time to finalize settlement discussions and formalize any such settlement of this dispute.” *Id.* at 2. The

Court granted the Unopposed Motion on January 12, 2017. Doc. 13.

On the January 13 response deadline, EMS presented the Court with the present Motion for Continuance rather than the expected response, arguing that “[a]lthough a final resolution of the Related Lawsuits was not reached at the mediation, the parties have agreed to continue their discussions in an earnest attempt to resolve their respective claims.” Doc. 15 at 3. On that basis, EMS urged the Court to extend the deadline for an additional thirty days “so as to give the parties in the Related Lawsuits time to continue their settlement discussions.” *Id.*

On April 6, 2017, Magistrate Judge Stacy held a scheduling conference in the present case. In her Scheduling Order, Judge Stacy ordered EMS to respond to Michels’ pending Motion for Summary Judgement on or before May 31, 2017. Doc. 20. EMS’s Motion for Continuance thus became moot.

However, in its Motion, EMS asks the Court to alternatively order EMS and Michels to mediation. Doc. 15 at 4. EMS provides the Court with no argument or authority for this request. *Id.* Michels opposes the request, arguing that it is “baseless” and EMS is merely using its pending Motion for Continuance as a dilatory tactic. Doc. 18 at 2. The Court agrees.

II. Conclusion

For the foregoing reasons, it is hereby

ORDERED that Defendant’s Motion for Continuance, Doc. 15, is **DENIED**.

SIGNED at Houston, Texas, this 26th day of June, 2017.


MELINDA HARMON
UNITED STATES DISTRICT JUDGE