

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

OGOSPORT LLC,

Plaintiff,

v.

Case No. 10-C-0155

MARANDA ENTERPRISES LLC,

Defendant.

ORDER DENYING AS MOOT THE JOINT MOTION FOR PROTECTIVE ORDER
(DOC. # 32) AND DEFENDANT'S MOTION TO DISMISS (DOC. # 24), GRANTING
DEFENDANT'S MOTION TO CONVERT THE MOTION TO DISMISS INTO A MOTION
FOR SUMMARY JUDGMENT (DOC. # 55), AND OTHER RELIEF

As an initial matter, the court observes that the parties filed a joint motion for protective order August 13, 2010. See Doc. # 32. The parties sought to file certain discovery documents under seal as they contained sensitive proprietary and financial information. On October 7, 2010, the court issued a ruling from the bench instructing the parties that their joint motion for protective order would be granted upon the submission of a proposed order consistent with its instructions to litigants. See Doc. # 48. Inasmuch as no such submission has been received in the intervening four months, the court assumes that there is no further need for a protective order.

Next, on August 8, 2010, defendant Maranda Enterprises LLC filed a Motion to Dismiss the Plaintiff's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). See Doc. # 24. Subsequently, on February 4, 2011, defendant filed a motion to convert the motion to dismiss into a motion for summary judgment so that matters outside of the pleadings may be considered in determining whether the amended complaint should be dismissed. Defendant has submitted a brief in support of summary judgment, a

declaration with various exhibits, and proposed findings of fact for consideration. If the court considers those matters which are outside of the pleadings, it must treat the motion as one for summary judgment under Rule 56. See Fed. R. Civ. P. 12(d). Therefore,

IT IS ORDERED that the parties' joint motion for protective order (Doc. # 32) is denied as moot.

IT IS FURTHER ORDERED that defendant's motion to convert its motion to dismiss into a motion for summary judgment (Doc. # 55) is granted, and that the defendant is deemed to have filed for summary judgment and dismissal of the amended complaint upon the entry of this order.

IT IS FURTHER ORDERED that defendant's motion to dismiss (Doc. # 24) is dismissed as moot.

IT IS FURTHER ORDERED that plaintiff's response to the summary judgment motion and that any supporting materials be filed on or before March 10, 2011, and that any reply by the defendant and any supporting materials be filed within 14 days of service, all in accordance with Civil Local Rule 56.

Dated at Milwaukee, Wisconsin, this 8th day of February, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE