

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TONY D. WALKER,

Plaintiff,

v.

Case No. 13-CV-904

**JAMES R. SCHWOCHERT, MARC W. CLEMENTS,
RICHARD W. PHILLIPS, KAREN LARSEN,
and RICK A. RASMUSSEN,**

Defendants.

DECISION AND ORDER

Defendants have filed a motion to strike as untimely plaintiff's response to their motion for summary judgment. On October 3, 2014, I granted plaintiff's motion for an extension of time to file his response, until October 23, 2014, and ordered that I would not grant any further extensions of time. Plaintiff's response and supporting materials were dated October 23, 2014, but were not filed until October 27 and 28, 2014.¹ Defendants contend that I should strike the tardy filings because plaintiff did not seek leave to file his response untimely and has no excuse for missing his filing deadline.

Plaintiff contends that plaintiff's motion to strike is frivolous. According to plaintiff, Silva Lewis Zoraida's affidavit is a fabrication because it contains a false notary signature.

The notary public is William D. "Swiekatoaski" and it appears that it is a misspelling because the correct spelling is "Swiekatowski." However, this does not equate with

¹ Plaintiff's response to defendants' proposed findings of fact, affidavit, and exhibits were filed on October 27, 2014. His supporting brief and proposed findings of fact were filed on October 28, 2014.

fabrication but rather lends itself to an inadvertent error. Plaintiff also asserts that he placed his response documents in the designated mailbox on the due date and, therefore, his response materials were timely under the mailbox rule.

The parties dispute whether plaintiff's response brief was timely filed. However, upon due consideration, I will deny defendants' motion to strike because I prefer to consider defendants' summary judgment motion on the merits.

Plaintiff has filed a motion for sanctions based on Silva Lewis Zoraida's "criminal and unethical forgery" in her affidavit because of the spelling of the notary's name. However, as set forth above, and as acknowledged in defendants' response to plaintiff's motion, Mr. Swiekatowski's name was inadvertently misspelled. Sanctions are not warranted.

THEREFORE, IT IS ORDERED that defendants' motion to strike plaintiff's response (Docket # 36) is **DENIED**.

IT IS FURTHER ORDERED that defendants' summary judgment reply brief is due within fourteen days of the date of this order.

IT IS FURTHER ORDERED that plaintiff's motion for sanctions (Docket # 40) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 3rd day of February, 2015.

s/ Lynn Adelman

LYNN ADELMAN
District Judge