

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GREGORY E. SMITH SR.,

Plaintiff,

v.

CAPITAL CARTAGE, INC.,

Defendant.

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ORDER

09-cv-684-bbc

Plaintiff was granted leave to proceed in this action on December 18, 2009. On February 15, 2010, defendant answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a letter dated March 12, 2010, in which he asks that "the complaints and any supplements not be dismissed in this matter as Capital Cartage Inc., [a]ttorney has requested."

Plaintiff does not need to be concerned: although defendant has raised certain affirmative defenses in its answer, defendant has not actually filed a motion to dismiss. Therefore, plaintiff does not need to reply to the answer. If defendant later files an actual motion to dismiss, then plaintiff will be allowed to respond to that motion. In the meantime, Rules 7(a) and 8(b)(6) of the Federal Rules of Civil Procedure work together to protect plaintiff from defendant's claims in its answer. Because of those rules, this court does not need plaintiff to reply to the answer; instead, the court automatically assumes that plaintiff has denied the factual statements and affirmative defenses raised in that answer.

One additional matter requires court input: plaintiff remarks in his March 12 letter that defendant's attorney has sent a letter to him asking plaintiff to waive the jury trial. Plaintiff's March 12 letter makes it clear that he would like to try his case to a jury as scheduled in the

preliminary pretrial conference order. Therefore this case will remain scheduled for a jury trial on February 22, 2011.

ORDER

IT IS ORDERED that plaintiff's reply to the answer, dkt 16, will be placed in the court's file but will not be considered.

Entered this 22<sup>nd</sup> day of March, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge