

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

CITIZENS COMMUNITY FEDERAL,

Plaintiff,

v.

SILVER, FREEDMAN & TAFF, L.L.P.,
BARRY P. TAFF, P.C. and NANCY M. STILES, P.C.,

Defendants.

ORDER

12-cv-648-bbc

On April 17, 2014, defendants Silver, Freedman and Taff, L.L.P.; Barry P. Taff, P.C.; and Nancy M. Stiles, P.C. filed two briefs, one on the use of 12 C.F.R. § 563.39 and one on the date of accrual for statute of limitations on the breach of fiduciary duty claim. Plaintiff Citizens Community Federal has filed a letter in which it asks for guidance in responding to defendants' briefs, dkt. #138, and, in addition, a motion to strike defendants' filings, dkt. #139.

With respect to the 12 C.F.R. § 563.39 issue, defendants' brief was not prejudicial to plaintiff because it has prevailed on that issue. Dkt. #140. With respect to the statute of limitations issue, plaintiff says that defendants' brief on the statute of limitations defense was "unsolicited" and "untimely" because it should have been filed on April 14, 2014, the deadline for briefs on 12 C.F.R. § 563.39. Plaintiff has mischaracterized the facts: the court solicited briefs on the subject and did not set a deadline for the filing. Further, there is no unfair prejudice to plaintiff because defendants included a verdict question on the statute

of limitations in its trial materials. With respect to the substance of defendants' brief, I am persuaded that defendants have made an adequate showing that an instruction and verdict question on the statute of limitations are warranted. If plaintiff still has an objection and believes that resolution is necessary before trial, it can raise the before trial begins on April 21, 2014. If its objection is limited to the instruction only, plaintiff may raise it at the instruction conference.

The parties are advised that they are not permitted to raise issues that change the scope of the claims and defenses at trial. If they have not raised the issue before now, either in writing or orally at the final pretrial conference, they have forfeited it.

ORDER

IT IS ORDERED that plaintiff Citizens Community Federal's motion to strike, dkt. #139, is DENIED.

Entered this 18th day of April, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge