

**IN THE UNITED STATES COURT
DISTRICT OF KANSAS**

SAMUEL K. LIPARI,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 2:07-cv-02146-CM
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
<i>Defendants.</i>)	

MOTION FOR TIME TO EXTEND DISCOVERY

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and respectfully makes the following request to extend the case management order deadline for discovery until 10/1/2008 and to reset the subsequent pretrial events and date of trial accordingly. The plaintiff provides the following reasons why an extension would benefit the parties and the court:

STATEMENT OF FACTS

1. The parties have an unresolved dispute before the court over whether a claim for breach of contract under Missouri State law inherently includes violation of a duty of good faith and fair dealing.
2. The parties also have an unresolved dispute before the court over whether a claims for tortuous interference with a business expectancy requires proof of the element of bad faith motive under Missouri State law.
3. The defendants consequently view the plaintiff's discovery requests as irrelevant and have refused to produce requested documents required by the plaintiff to prove his claims under the controlling Missouri state court determinations of contract related claims.
4. The defendants also have declined to produce the written contracts between the parties described in the complaint as breached including the written agreement for escrow accounts, the written application for financing (or in the alternative the required written rejection notice), the checking account contract, and the Five Star Guarantee provided as a warranty to the plaintiff also based on the defense view that these documents are not relevant.
5. The defendants have also withheld the names and addresses of witnesses described or named in the plaintiff's complaint as having knowledge of the charged conduct alleged also based on the defense view that these witnesses are not relevant.

6. The defendants have a motion for a blanket protective order before this court and are not complying with the plaintiff's discovery production requests in the belief that this court might deprive the plaintiff of discovery based on earlier dismissals and sanctions orders procured by the defendants.
7. The defendants ___ have; X have not agreed to the plaintiff's proposed extension.
8. The magistrate has determined that the deadline for completion of discovery is 7/1/2008 and therefore, the deadline for serving supplemental disclosures is 5/21/2008.

MEMORANDUM IN SUPPORT

The plaintiff's expectation of outstanding discovery is good cause to extend the deadline for close of discovery. See *Nat'l R.R. Passenger Corp. v. Notter*, 677 F.Supp. 1, 8 (D.D.C.1987)

Should this court decide not to overturn this district and circuit's controlling law on relevancy by denying the defendants' motion for a protective order, the plaintiff's request for an extension of time to obtain previously requested discovery would normally be moot:

"In this case, in his motion Brosted sought an extension of time in order to obtain responses from the defendants to "discovery previously requested." Prior to ruling on that motion, the district court denied the defendants' request for a protective order. Without a protective order prohibiting discovery, the defendants were forced to respond to the discovery requests that Brosted had filed before the discovery deadline. This, as the district court recognized, made the request for an extension of time to obtain responses for discovery previously requested moot."

Brosted v. Unum Life Ins. Co. of America, 421 F.3d 459 at 463 (Fed. 7th Cir., 2005). However the defendants' blanket denial at the initial request for production prevents the plaintiff from developing his discovery and narrowing down witnesses and establishing what evidence supports his claims that would come from successive production requests, depositions and third party subpoenas for records that would take place after receiving the initial documents, identities and addresses requested.

The defendants would similarly be prejudiced by determination near or after the close of discovery that the court is not going to over rule the Missouri Supreme Court, courts of appeal and legislature on the Missouri UCC imposed inherent duty of good faith and fair dealing in Missouri contracts or that the court is not going to over rule the Missouri Supreme Court and courts of appeal on the requirement to prove bad faith motive in claims for tortuous interference.

The court should hereby be apprised that more time for discovery than that included in the case management order will likely be required by the parties:

“..district courts "reasonably expect notification when more time for discovery is needed."
Evans v. Technologies Applications & Serv. Co., 80 F.3d 954, 961 (4th Cir. 1996); *Lowndes v. Global Marine Drilling Co.*, 909 F.2d 818, 820 (5th Cir. 1990)”

Cacevic v. City of Hazel Park, 226 F.3d 483 at 492 (6th Cir., 2000).

CONCLUSION

For the above stated reasons the plaintiff respectfully requests that the court extend close of discovery by four months to 10/1/2008 and reset the subsequent pretrial events and trial date accordingly.

Respectfully Submitted,

S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via email, on this 28th day of April, 2008 to:

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