

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

SAMUEL K. LIPARI,)	
)	
)	Plaintiff,
)	
vs.)	Case No. 07-CV-02146-CM-DJW
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

**DEFENDANTS’ OPPOSITION TO PLAINTIFF’S MOTION
FOR TIME TO EXTEND DISCOVERY**

Defendants U.S. Bancorp and U.S. Bank National Association by and through their attorneys Shughart Thomson & Kilroy, P.C., file this Opposition to Plaintiff’s Motion For Time To Extend Discovery. Plaintiff’s motion should be denied. Plaintiff has failed to show good cause as to why an extension of the discovery deadline is necessary and therefore the Court should not modify the current Scheduling Order.

Rule 16(b) of the Federal Rules of Civil Procedure allows courts to enter orders that govern deadlines in litigation. The rule sets forth the types of deadlines that should be included in a scheduling order and concludes by stating “a schedule shall not be modified except upon a showing of good cause and by leave of a district judge or, when authorized by local rule, by a magistrate judge.”

While the Federal Rules of Civil Procedure set forth a lenient standard for modification of pleadings, modification of a scheduling order is a much stricter standard. In order to meet the “good cause” requirement set forth in Rule 16(b), a party must show that it is has diligently attempted to meet the current deadline and cannot do so through no fault of its own. *See, Deghand v. Wal-Mart Stores, Inc.*, 904 F. Supp. 1218, 1221 (D. Kan., 1995); *Pfeiffer v. Eagle*

Manufacturing Company, 137 F.R.D. 352, 355 (D. Kan., 1991). Carelessness of the moving party to conduct discovery as well as lack of prejudice to the nonmoving party are not good cause reasons for modification of a scheduling order. *See, Deghand* 904 F. Supp., at 1221.

Plaintiff has failed to show good cause for extension of the discovery deadline. Plaintiff asserts that the discovery deadline should be extended because (1) the parties dispute whether a claim for breach of contract under Missouri law inherently contains a claim for breach of the covenant of good faith and fair dealing; and (2) whether or not tortious interference with business expectancy requires proof of bad faith motive. Without addressing the validity of these claimed “disputes,” neither reason is a good cause basis to extend discovery. These are legal issues to be decided by the Court and plaintiff makes no effort to show why discovery is needed to resolve these claimed disputes.

Plaintiff also contends that defendants have filed a protective order which has prohibited him from obtaining any discovery in this case. To date, plaintiff has served one set of requests for production of documents and one notice of deposition. As noted in defendants’ Motion for Protective Order, the Requests for Production are improper. Plaintiff has made no attempt to modify the requests but has taken an all or nothing approach. Plaintiff does not set forth any proposed discovery he wishes to conduct and does not show why it cannot be conducted by the current July 1, 2008 deadline. In short, Plaintiff has failed to show any diligent effort or good cause to extend discovery deadline and the Court should deny his Motion for Time to Extend Discovery.

WHEREFORE the above-stated reasons, defendants requests the Court deny plaintiff’s Motion For Time To Extend Discovery and grant defendants whatever other relief to which they are justly entitled.

