

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 07-CV-00849-FJG
)	
GENERAL ELECTRIC COMPANY, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ OPPOSITION TO PLAINTIFF’S
MOTION FOR EXTENSION OF TIME (DOC. 21)**

Defendants General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC, Heartland Financial Group, Inc., Christopher McDaniel and Stuart Foster (collectively the “Moving Defendants”) oppose Plaintiff’s Motion for Extension of Time (Doc. 21). For their opposition to Plaintiff’s motion, the Moving Defendants state as follows:

1. Defendants General Electric Company, General Electric Capital Business Asset Funding Corporation, and GE Transportation Systems Global Signaling, LLC (collectively the “GE Defendants”) filed a Motion to Dismiss Plaintiff’s Amended Complaint on January 18, 2008. (Doc. 11) Plaintiff’s response to this Motion to Dismiss was due on February 4, 2008.

2. On February 11, 2008, one week after the deadline for his response to the GE Defendants’ Motion to Dismiss had passed, Plaintiff filed a Motion for Extension of Time which requested that he be allowed twenty-three (23) days after the filing of the last motion to dismiss to file a single omnibus opposition to all motions to dismiss pending at that time. (Doc. 18) Plaintiff stated in his motion that the omnibus response would “aid[]

opposing counsel in the parties' thorough resolution of all pleading sufficiency issues before the plaintiff undertakes amendment for their cure."¹ *Id.* (emphasis added).

3. Also on February 11, 2008, Defendant Seyfarth Shaw LLP filed a Motion to Dismiss Plaintiff's Amended Complaint. (Doc. 16) Plaintiff's response to this Motion to Dismiss was due on February 26, 2008.

4. On February 12, 2008, Defendant Jeffrey Immelt filed his Motion to Dismiss Plaintiff's Amended Complaint. (Doc. 19) Plaintiff's response to this Motion to Dismiss was due on February 27, 2008.

5. On February 13, 2008, Plaintiff filed an amended Motion for Extension of Time (Doc. 21) which corrected an inaccurate statement in Plaintiff's February 11, 2008 Motion, and otherwise incorporated the argument and prayer for relief stated in the prior motion.

6. On February 27, 2008, Defendants Heartland Financial Group, Inc., Christopher McDaniel and Stuart Foster filed a Motion to Dismiss Plaintiff's Amended Complaint. (Doc. 32) Plaintiff's response to this motion is due on March 13, 2008.

7. As of the present date, it does not appear that Defendant Bradley Schlozman has been served with process in this case.² Defendant Schlozman is the only named defendant who has not been served and who has not already filed a motion to dismiss Plaintiff's Amended Complaint.

¹ Plaintiff appears to acknowledge the deficiencies of his pleading, and presumes that he will be allowed to file another amended complaint. Such a presumption is unwarranted, and Defendants will oppose any request to file an amended pleading.

² See Plaintiff's Rule 4(c)(3) Motion for Service on Defendant Bradley Schlozman by U.S. Marshal, filed on February 20, 2008 (Doc. 30).

ARGUMENT

The Moving Defendants oppose Plaintiff's Motion for Extension of Time because: (1) Plaintiff's unlimited and indefinite request for time to respond is prejudicial to the Moving Defendants; and (2) an omnibus response from the Plaintiff will greatly increase the likelihood that separate arguments from separate defendants will be lumped together and will not be cogently addressed by the Plaintiff.

Plaintiff requests that he be relieved from not having to file a response to any motion to dismiss until twenty-three (23) days³ from the date that the last motion to dismiss is filed. Every defendant except Schlozman has been served, and each of these defendants has filed a motion to dismiss. As such, there are presently four separate motions to dismiss on file, and Plaintiff has yet to file a response to any one of them.⁴ With respect to Defendant Schlozman, it is unclear whether he will ever be served. Additionally, it is unclear whether Defendant Schlozman will even file a motion to dismiss if he is ever served.

Based upon the foregoing, it becomes apparent that Plaintiff is essentially requesting that the Court push back his dispositive motion response deadline to some indefinite date in the future which will be triggered by a motion to dismiss that may (or may not) be filed by a yet-unserved defendant. This is unreasonable and prejudicial to the Moving Defendants. Under Plaintiff's proposed plan, this case will remain in an indefinite holding pattern, unable to move forward towards resolution. Plaintiff has already missed

³ Plaintiff's motion erroneously cites the twenty (20) day response deadline (plus three (3) days for mailing) set forth in F.R.C.P. 12. However, this deadline applies to responding to complaints, crossclaims and/or counterclaims, not motions to dismiss. Under Local Rule 7.1(d), the deadline for filing an opposition to a motion to dismiss is twelve days (plus three (3) days for mailing).

⁴ Notably, the deadlines for Plaintiff to respond to three of the four motions to dismiss have already passed.

the response deadline for three of the four pending motions to dismiss, and this dilatory conduct should not be allowed to continue.

The Moving Defendants also oppose Plaintiff's request to file a single consolidated response to the pending motions to dismiss. Plaintiff's Amended Complaint (Doc. 6) is a 68-page/403-paragraph rambling morass of non-linear and bizarre allegations. On numerous instances within the Amended Complaint, Plaintiff simply makes sweeping allegations against "the defendants", rather than making specific allegations against specific defendants. It is highly likely that if Plaintiff is allowed to file one large omnibus response to the various motions to dismiss, his response will exhibit the same nebulous quality of his Amended Complaint, thereby leaving the defendants and the Court guessing as to which specific arguments from which specific motions to dismiss he is addressing. Therefore, the Moving Defendants request that Plaintiff's request to file a single consolidated opposition brief be denied.

CONCLUSION

The Moving Defendants request that the Court deny Plaintiff's Motion for Extension of Time. In the alternative, the Moving Defendants request that the Court order Plaintiff to file separate oppositions to the four separate pending motions to dismiss by March 13, 2008, which is the current deadline for Plaintiff to respond to the most recently filed motion to dismiss.

HUSCH & EPPENBERGER, LLC

By: /s/ Michael S. Hargens

John K. Power #35312
Michael S. Hargens #51077
1200 Main Street, Suite 2300
Kansas City, MO 64105
Telephone: (816) 421-4800
Facsimile: (816) 421-0596
john.power@husch.com
Michael.hargens@husch.com

ATTORNEYS FOR DEFENDANTS
GENERAL ELECTRIC COMPANY,
GENERAL ELECTRIC CAPITAL
BUSINESS ASSET FUNDING
CORPORATION, GE TRANSPORTATION
SYSTEMS GLOBAL SIGNALING, LLC,
HEARTLAND FINANCIAL GROUP, INC.,
CHRISTOPHER MCDANIEL AND
STUART FOSTER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was forwarded this 28th day of February, 2008, by first class mail, postage prepaid to:

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

And an electronic copy was filed via the CM/ECF system which will send a notice of electronic filing to the following:

Nick Badgerow
Spencer Fane Britt & Browne LLP
9401 Indian Creek Parkway, Suite 700
Overland Park, KS 66210

/s/ Michael S. Hargens