

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.

Defendants.

**DEFENDANT, FRANK AVELLINO'S MOTION FOR EXTENSION OF TIME
TO COMPLETE DISCOVERY AND FILE DISPOSITIVE MOTIONS**

Defendant, Frank Avellino, by and through his undersigned attorneys, files this Motion for an Extension of Time to Complete Discovery and File Dispositive Motions (the "Motion"), and in support thereof states as follows:

1. The Case Management Order in this matter provides that fact discovery is to be completed by June 25, 2014 and that dispositive motions are to be filed by June 2, 2014.
2. Despite Avellino's diligent efforts, Plaintiff has failed to provide adequate responses to discovery demands which responses are required in order for Avellino to file a motion for summary judgment.
3. On November 26, 2013, Avellino served Interrogatories and Request for Production on Plaintiff. Plaintiff's responses as well as his supplemental responses were inadequate, necessitating on April 7, 2014, the filing of a motion to strike/compel. Avellino is in the process of obtaining a special setting for such motion.

4. Avellino's initial discovery, served over five months ago, was directed at Plaintiff's initial complaint. Since then Plaintiff has twice filed amended complaints, the latest of which raised for the first time new and significant allegations against Avellino. See, Second Amended Complaint, ¶¶ 93-96. Avellino has served additional discovery directed to these additional allegations to which Plaintiff has yet to respond.

5. Further, on April 28, 2014, this Court heard defendants' motions to dismiss the Second Amended Complaint, granting in part and denying in part such motions with leave for Plaintiff to file an amended pleading. To date, no order as to the Court's oral ruling at the hearing has been entered or submitted.

6. Through no fault of Avellino, deadlines for discovery cutoff and to file dispositive motions are rapidly approaching. Plaintiff has failed to comply with his discovery obligations and in light of the Court's recent oral ruling on the defendants' motions to dismiss, it is not even clear what claims still exist or may be asserted by Plaintiff.

7. Avellino believes that he has a viable motion for summary judgment on grounds of Statute of Limitations and lack of facts sufficient to support his claims, among other grounds. Plaintiff's failure to comply with the outstanding discovery precludes Avellino from timely filing such motion.

8. The relief sought by this motion should not compromise the Court's stated desire to try this case before the end of the year. It should be noted that the Court's Amended Order Setting Trial entered on December 20, 2013 after Case Management Order provided for a discovery cutoff date of August 15, 2014.

9. No party will be prejudiced by the relief sought herein.

WHEREFORE, defendant, Avellino requests that this Court enter an order extending the deadline to complete discovery to and including August 1, 2014 and to file dispositive motions to and including July 1, 2014, together with such other and further relief as the Court may deem just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May 2014, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

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