


ORDERED.

Dated: February 21, 2023



Tiffany P. Geyer
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

Juan Carlos Gonzalez,

Case No.: 6:21-bk-04033-TPG

Chapter 13

Debtor.

Q & H Partners, LLC,

Plaintiff,

Adv. Pro. No. 6:21-ap-00157-TPG

vs.

Juan Carlos Gonzalez,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO EXTEND DISCOVERY DEADLINE**

THIS CASE came on for consideration upon the Defendant's motion to extend the discovery deadline from January 31, 2023, to April 3, 2023 (the "Motion") (Doc. No. 39) and Plaintiff's opposition thereto (Doc. No. 40). Defendant filed the Motion on January 31, 2023, the date the parties had selected for the discovery deadline as memorialized in the Pretrial and Discovery Conference Report (Doc. No. 22). Five days prior to the discovery deadline, the Court

entered an order (Doc. No. 37) denying Plaintiff's motion for summary judgment (Doc. No. 24), which meant the parties were going to trial on Plaintiff's complaint against the Debtor/Defendant seeking a discharge exception under 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(6).

Plaintiff filed its complaint on November 29, 2021, and pretrial conferences were held on March 14, 2022 (Doc. No. 14), June 9, 2022 (Doc. No. 20), and August 16, 2022 (Doc. No. 21).¹ During the August pretrial conference, the Court set a trial date of May 11, 2023 (Doc. No. 21), and the parties agreed they would work together to submit a scheduling order, which they did on September 20, 2022 (Doc. No. 22). Prior to the dispositive motion deadline and prior to the discovery deadline, Plaintiff filed a summary judgment motion, on October 14, 2022 (Doc. No. 24). Defendant filed a response in opposition (Doc. No. 26), Plaintiff filed a reply (Doc. No. 28), and the Court heard oral argument on December 7, 2022, and took the matter under advisement (Doc. No. 36).

Because Plaintiff's summary judgment motion presented a pure question of law, Defendant did not propound discovery (Doc. No. 39 ¶ 3), wanting to avoid the costs while waiting for this Court to rule, reasoning that, if Plaintiff was awarded a summary judgment, the costs of engaging in discovery would have been pointless. Ultimately, however, Plaintiff did not prevail; the Court denied Plaintiff's summary judgment motion on January 26, 2023 (Doc. No. 37), and, on the date selected by the parties as the discovery deadline, January 31, 2023 (Doc. No. 22), the Defendant requested the extension. Plaintiff opposes the request, citing *Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218 (11th Cir. 2008), in which the Eleventh Circuit affirmed a decision denying a motion for an extension of time to amend the complaint where the

¹ The adversary proceeding was originally assigned to Judge Karen S. Jennemann. On December 3, 2021, the case was reassigned to Judge Grace E. Robson, and on May 3, 2022, it was reassigned to me.

movant failed to demonstrate the requisite diligence, and *Ashmore v. Secretary, Department of Transportation*, 503 F. App'x 683, 686 (11th Cir. 2013), in which the Eleventh Circuit affirmed the district court's denial of an extension of the discovery deadline where the movant sought the extension one day before the deadline expired and had not propounded any discovery requests. (Doc. No. 40 ¶ 6.)

Federal Rule of Civil Procedure 16(b)(1), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7016, requires the Court to issue a scheduling order which must contain, among other things, the deadline to complete discovery. Fed. R. Bankr. P. 7016(b)(3)(A). A scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 7016(b)(4). “Properly construed, ‘good cause’ means that scheduling deadlines cannot be met despite a party’s diligent efforts.” *In re Dabney*, 604 B.R. 233, 237 (Bankr. D.S.C. 2019) (internal citations omitted). “This good cause standard precludes modification unless the schedule cannot be met despite the diligence of the party seeking the extension. But if a party was not diligent, that ends the good cause inquiry.” *In re Seven Stars on Hudson Corp.*, 637 B.R. 180, 209–10 (Bankr. S.D. Fla. 2022), *aff’d sub nom. Seven Stars on the Hudson Corp. v. MDG Powerline Holdings, LLC*, No. 22-CIV-60299-RAR, 2022 WL 10046439 (S.D. Fla. Oct. 17, 2022). “To establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party’s diligence.” *Ashmore v. Sec’y, Dep’t of Transp.*, 503 F. App'x at 685–86 (citing *Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d at 1232).

Here, the Court cannot conclude that the Defendant was diligent in efforts to meet the established deadline. Rather, to save costs, the Defendant opted to wait until the Court ruled on summary judgment before beginning to undertake any discovery at all, and, according to

Plaintiff, Defendant has engaged in no discovery since the case's inception. (Doc. No. 40 ¶ 5). Certainly, the Court understands the costs of discovery and appreciates counsel's legitimate desire not to incur potentially unnecessary costs on behalf of his client, a Chapter 7 consumer debtor seeking a fresh start. And there may be circumstances where financial difficulties could justify an extension. *Seven Stars on the Hudson Corp.*, No. 22-CIV-60299-RAR, 2022 WL 10046439, at *9 (citing *Knight ex rel. Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 812 (11th Cir. 2017) (acknowledging possibility that financial difficulties may justify an extension, if timely brought to the trial court's attention)). But to achieve the goal of limiting litigation expenses, Defendant could have and should have exercised greater diligence in seeking an order tolling and extending the relevant deadlines. Instead, Defendant waited until the deadline and did not demonstrate the requisite level of diligence necessary for this Court to make a finding of good cause as required by Federal Rule of Bankruptcy Procedure 7016(b)(4) in modifying a scheduling order. *Ashmore v. Sec'y, Dep't of Transp.*, 503 F. App'x at 685–86 (district court did not abuse its discretion in denying motion to extend discovery where plaintiff filed motion one day before discovery deadline and had not propounded any discovery requests); *In re Seven Stars on Hudson Corp.*, 637 B.R. at 209–10 (lack of funding does not permit a party to decide ex parte that it is justified in not prosecuting the suit and is free to ignore the rules of the court).

Accordingly, it is **ORDERED** that the Motion (Doc. No. 39) is **DENIED**.

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The Clerk is directed to serve a copy of this order on all interested parties.