

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**Brian D. Forant,
Debtor.**

**Chapter 7 Case
02-10643**

**Corinne R. Devenger,
Plaintiff,**

v.

**Brian D. Forant,
Defendant.**

**Adversary Proceeding
02-1049**

**ORDER DENYING DEFENDANT'S MOTION
FOR AN EXTENSION OF TIME TO ANSWER SUMMARY JUDGMENT MOTION**

The Plaintiff herein, proceeding *pro se*, filed a motion for summary judgment on January 21, 2003. On February 19, 2003 the Defendant filed a Motion to Extend Time to Respond to Plaintiff's Motion for Summary Judgment, and the Plaintiff now seeks an Order denying the Defendant's motion for an extension of time. For the reasons set forth below, the Defendant's motion for an extension of time to respond to Plaintiff's summary judgment motion is denied.

In this matter the Order on Pre-Trial Deadlines dated August 5, 2002 specifically provided that

The Court may grant motions for summary judgement without holding a hearing or notice unless the party opposing such motion sets forth specific facts to demonstrate the existence of a genuine issue of material fact for trial, in the manner specified in Bankruptcy Rule 7055 and Vt. Bankruptcy Rule 7056-1 and 7056-2.

See August 5, 2002 Order on Pre-Trial Deadlines at ¶ 5 (doc. #2). The Plaintiff herein, proceeding *pro se*, filed a motion for summary judgment on January 21, 2003. Pursuant to the local rules, the Defendant's response to that motion was due on February 10, 2003. See Vt. LBR 7056(a)(2). However, the Defendant failed to file a response or opposition to the motion for summary judgment. Rather, on February 19, 2003, the Defendant filed a motion to extend time to respond, after the time for a response had expired.

Pursuant to Rule 9006 of the Federal Rules of Bankruptcy Procedure, the Court has authority to extend the time within which certain papers may be filed, under certain circumstances. Specifically:

the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. Rule 9006(b). In this instance, the Plaintiff provided proper notice of the motion for summary judgment to the Defendant, and the Defendant had previously been served with the Scheduling Order which clearly made reference to the rules controlling the filing requirements for responses to such motions and set forth the consequences that would befall a party who failed to comply with those requirements. The Defendant's motion to extend time states that the Defendant did not retain counsel prior to the expiration of the time period for responding to the motion. This does not constitute excusable neglect. See, e.g., Pioneer Investment Services Co. v. Brunswick Assoc. Ltd. P'ship (In re Pioneer Investment Services Co.), 507 U.S. 380, 388 (1993).

The Court does not question why the Defendant's new counsel did not act more promptly or whether she had a basis for not filing the response sooner that would constitute excusable neglect. She was not retained until after the time for responding had expired. As of the date a response was due to Plaintiff's motion for summary judgment, the Defendant was proceeding *pro se*. Hence, the inquiry is whether he, as both defendant and counsel for the defendant, had grounds which would constitute excusable neglect. No argument has been presented to substantiate excusable neglect by the Defendant in his *pro se* capacity.

While the Court recognizes the need to provide special accommodation to parties who proceed in litigation without benefit of counsel, such parties are not relieved of the obligations to comply with Court orders and conduct themselves responsibly in the litigation. In the instant case, the Plaintiff has proceeded *pro se* throughout the pendency of the proceeding. The Defendant had counsel who represented him in connection with the chapter 7 case, but that counsel, Richard Scholes, Esq., moved to be permitted to withdraw as counsel in the adversary proceeding; that motion was granted on September 10, 2002. See doc #7 in case #02-10643. Thereafter, the Defendant proceeded *pro se* until February 18, 2003 when he retained Attorney Debra Leahy, Esq. Before the motion for summary judgment was filed, the Court advised both parties of their obligations under the Scheduling Order and strongly encouraged them to retain counsel.

It is important to note that neither the Plaintiff nor the Defendant are novices at court proceedings. As the papers attached to the Complaint and the Motion for Summary Judgment demonstrate, these parties


were involved in a long and vigorously litigated divorce proceeding and the very issues presented in this adversary proceeding were also addressed in state court. Accordingly, the Court finds it reasonable to infer that both parties understand the importance of filing court papers on time, the potential consequences of one's failure to meet court imposed time limits, and the role of counsel in court proceedings. Moreover, since the Defendant had been represented by counsel in the bankruptcy case and for the early stages of this adversary proceeding, it is reasonable to infer that he had, or should have had, familiarity with these principles in the context of the instant proceeding, namely the import of the Scheduling Order and the need to refer to the local rules of this Court for guidance as to when the response to the motion was due.

The fact that a party is proceeding without benefit of counsel is likewise not a license to exploit the legal system for his or her own gain. The Plaintiff's Complaint and Motion for Summary Judgment make clear that there is a sense of urgency to her prayer for relief. The Defendant's choice not to retain counsel until after the expiration of the time to respond to the Motion has already had the effect of delaying action on the Motion. It is not unusual to have the passage of time benefit one party to litigation and harm the other. However, it is incumbent upon the courts to manage cases in a way that fosters prompt determinations; to grant extensions of time only if all parties consent or if the enlargement of time is permitted by applicable law, justified by the circumstances and appears to be necessary to a fair adjudication; and, to be vigilant about prohibiting parties from creating intentional delay in order to advance their own goals or in some way harm their adversary. If the Court were to grant the Defendant's motion for additional time to respond, the proceedings here would, inevitably, be further delayed. Such a delay is not warranted under Rule 9006, since the motion was made after the time to respond had expired; is not justified by the circumstances since there is no showing of excusable neglect and could, quite plausibly, be part of a pattern of intentional delays aimed at depriving the Plaintiff from the relief she was awarded in the state court judgment as part of the divorce.

Therefore, the Court finds that there is neither a legal, nor factual, nor equitable basis for enlarging the Defendant's time to respond to the Motion for Summary Judgment. Accordingly, the Defendant's motion for an extension of time to answer the Plaintiff's Motion for Summary Judgment is DENIED. The Court will take under advisement the Plaintiff's Motion for Summary Judgment and treat it as unopposed.

SO ORDERED.

February 24, 2003
Rutland, Vermont


Colleen A. Brown
United States Bankruptcy Judge