

Torres v. Goddard

United States District Court for the District of Arizona

January 10, 2007, Decided

No. CIV 06-2482-PHX-SMM

Reporter: 2007 U.S. Dist. LEXIS 2341

Javier Torres, et al., Plaintiffs, v. Terry Goddard, Attorney General of Arizona, et al., Defendants.

Subsequent History: Motion to strike granted by, Motion to strike denied by [Torres v. Goddard, 2007 U.S. Dist. LEXIS 92327 \(D. Ariz., Dec. 3, 2007\)](#)

Related proceeding at [State v. Western Union Fin. Servs., 219 Ariz. 337, 199 P.3d 592, 2008 Ariz. App. LEXIS 103 \(Ariz. Ct. App., 2008\)](#)

Counsel: [*1] For Javier Torres, Alma Santiago, Lia Rivadeneyra, on behalf of themselves and others similarly situated, Plaintiffs: Alex R Montgomery, Mary M Rowland, Matthew J Piers, Patrick M OBrien, LEAD ATTORNEYS, Hughes Socol Piers Resnick & Dym Ltd, Chicago, IL; Jean-Jacques Cabou, Timothy Joel Eckstein, LEAD ATTORNEYS, Osborn Maledon PA, Phoenix, AZ.

For Terry Goddard, Attorney General of the State of Arizona, in his individual and official capacities, Cameron Holmes, in his individual capacity, Defendants: Michael King Goodwin, William August Richards, LEAD ATTORNEYS, Office of the Attorney General, Phoenix, AZ; Michael H Hinson, Office of the Attorney General, Tucson, Az.

Judges: Stephen M. McNamee, United States District Judge.

Opinion by: Stephen M. McNamee

Opinion

ORDER

Pending before the Court is a "Motion for Open Extension of Time to Respond to Allegations of Plaintiffs' Complaint Not Addressed by Defendants' [Rule 12\(b\)\(6\)](#) Motion to Dismiss" (Dkt. 25) filed defendants Terry Goddard, the Attorney General of the State of Arizona, and Cameron Holmes, an Assistant Attorney General. Plaintiffs' filed a Response in opposition to Defendants's motion on December 5, 2006. (Dkt. 27). In turn, [*2] Defendants's

filed a reply on December 15, 2006. (Dkt. 30). After considering the arguments raised by the parties in their briefs, the Court issues the following Order. ¹

BACKGROUND

Plaintiffs' filed a four-count Complaint on October 18, 2006. (Dkt. 1). On November 20, 2006, Defendants moved to dismiss the portions of Plaintiffs's Complaint asserting claims for monetary relief pursuant to [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#). (Dkt. 24). Because Defendants's Motion to Dismiss only addressed the portions of Plaintiffs's Complaint asserting claims for monetary relief, Defendants filed the instant motion requesting the Court to grant them an open extension of time to answer those portions [*3] of the Complaint not addressed in the Motion to Dismiss.

DISCUSSION

The issue pending before the Court is whether filing a [Rule 12\(b\)\(6\)](#) Motion to Dismiss which addresses only some of the claims in the Complaint suspends the time for responding to the remaining claims as well. Under the rules, a defendant must file an answer within 20 days of being served with the Complaint. [Fed. R. Civ. P. 12\(a\)\(1\)\(A\)](#). However, when a motion is made on any of the grounds enumerated in [Rule 12\(b\)](#), the responsive pleading is due within 10 days after notice of the court's action. [Fed. R. Civ. P. 12\(a\)\(4\)](#).

Based on the language of [Rule 12\(a\) of the Federal Rules of Civil Procedure](#), it is unclear whether service of a [Rule 12\(b\)](#) motion directed at only parts of a pleading enlarges the time for answering the remaining portions of the pleading. Of the courts that have ruled on this issue, "the weight of the limited authority on this point is to the effect that the filing of a motion that only addresses part of a complaint suspends the time to respond to the entire complaint, not [*4] just to the claims that are the subject of the motion." ²See e.g. [Finnegan v. University of Rochester Medical Center](#), 180 F.R.D. 247 (W.D.N.Y., 1998); [Brocksopp Engineering, Inc. v. Bach-Simpson, Ltd.](#).

¹ The parties have had the opportunity to submit briefs in support of their respective positions and the Court would not find oral argument helpful in resolving this matter. Accordingly, the Court finds the pending motion suitable for decision without oral argument.

² Charles Alan Wright & Arthur R. Miller, 5B Fed. Prac. & Proc. Civ. 3d § 1346 (West 2006).

136 F.R.D. 485 (E.D. Wis. 1991); Godlewski v. Affiliated Computer Services, Inc., 210 F.R.D. 571 (E.D. Va. 2002). The rationale underlying the majority view is that the minority approach requires duplicative sets of pleadings in the event that the Rule 12(b) motion is denied and causes confusion over the proper scope of discovery while the motion is pending. Godlewski, 210 F.R.D. at 572. On the other hand, the minority approach prevents a party from using a partial Rule 12(b) motion to delay adjudication of the remaining portion of the action. *Id.*

This Court prefers the majority view, which extends the defendant's time to file a responsive pleading [*5] until 10 days after notice of the court's ruling even where the 12(b) motion challenges only some of the claims in the Complaint. The Court recognizes that there is a possibility that partial Rule 12(b) motions will be used as a dilatory tactic under the majority view; nonetheless, the Court finds that refusing to extend time for unchallenged portions of a Complaint adds superfluous wrinkles to a lawsuit in its infancy. In this Court's view, the majority

approach is more efficient because it eliminates confusion over the proper scope of discovery.

CONCLUSION

Accordingly,

IT IS ORDERED that Defendants's Motion for Open Extension of Time to Respond to Allegations of Plaintiffs' Complaint Not Addressed by Defendants' Rule 12(b)(6) Motion to Dismiss (Dkt. 25) is **GRANTED**.

IT IS FURTHER ORDERED that Defendants shall file an answer to the entire Complaint with 10 days after notice of the Court's ruling on Defendants's Rule 12(b)(6) Motion to Dismiss Plaintiffs' Claims for Monetary Relief. (Dkt. 24).

DATED this 10<th> day of January, 2007.

[*6] Stephen M. McNamee

United States District Judge