

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. FERRON,)	CASE NO. 2:06-CV-322
)	
Plaintiff,)	JUDGE FROST
)	
vs.)	MAGISTRATE JUDGE ABEL
)	
VC E-COMMERCE SOLUTIONS, INC., et al.)	
)	
Defendants.)	

**JOINT OPPOSITION OF DEFENDANTS, VC E-COMMERCE SOLUTIONS, INC. AND
OPTINREALBIG.COM, LLC, TO PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME TO
FILE MOTIONS SEEKING LEAVE TO AMEND PLEADINGS OR ADD PARTIES**

Now come Defendants, **VC E-Commerce Solutions, Inc. and Optinrealbig.com, LLC**, by and through counsel and submit their Joint Opposition to Plaintiff's Motion for Enlargement of Time to File Motions Seeking Leave to Amend the Pleading or Add Parties. Plaintiff's request for additional time is riddled with his continued attempts to prematurely pass the burden of proof to the Defendants. In the end, Plaintiff has not demonstrated any proper cause for enlargement of time. For these reasons, which are more fully explained in the attached Memorandum in Support, Defendants VC E-Commerce Solutions, Inc. and Optinrealbig.com, LLC each request that this Honorable Court deny Plaintiff's request for enlargement of time.

Respectfully Submitted,
SUTTER, O'CONNELL & FARCHIONE

/s/ Christina J. Marshall
CHRISTINA J. MARSHALL (0069963)
DAVID J. HUDAK (0070510)
3600 Erieview Tower
1301 E. 9th Street
Cleveland, Ohio 44114
Phone: (216) 928-2200
Fax: (216) 928-4400
E-Mail: cmarshall@sutter-law.com

Attorney for Defendants,
VC E-Commerce Solutions, Inc. and
OptinRealBig.com, LLC

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 5, 2007, Plaintiff was required to seek leave to amend his pleadings to add parties. In an attempt to avoid any consequence from the passing of this date, Plaintiff once again pointed to Defendants to shoulder the burden of proving his case. According to Plaintiff's Motion, he needs an enlargement of time for amending his pleadings because of the following:

- (1) Defendants have not identified which emails it allegedly sent to Plaintiff;
- (2) Defendants have not identified other companies allegedly involved in sending Plaintiff emails; and
- (3) Defendants have not responded to his Second Set of Interrogatories

Plaintiff's Motion asserting these requests is untimely. Furthermore, these are not proper "reasons" demonstrating a necessity to enlarge the amount of time any further in this case. As such, Defendants oppose any enlargement of time and request that this Court deny his request for an Order allowing for the same.

II. LAW AND ARGUMENT

A. Plaintiff Has Had More Than Enough Time To Identify John Does

According to this Court's November 2, 2006 Order (Doc. 42), the parties were required to seek leave to amend their pleadings to add parties by no later than March 5, 2007. It is strangely convenient that Plaintiff waited until literally the last day to request additional time. However, it is not that surprising of a strategy considering Plaintiff's repeated attempts to place the blame on Defendant for the shortcomings of his own investigations into the potential parties involved in his claims.

Plaintiff was well aware of the status of discovery in this matter and could have addressed this issue well before the deadline. At some point, this matter must proceed against *these* Defendants. For this reason, the Court should come to the proper determination that in order for *this* matter to proceed no more time should be granted.

B. Plaintiff's Reasons for Enlargement of Time are Improper

Plaintiff bears the burden of proof in this case. In Plaintiff's subjective view of litigation this burden is fulfilled with the simple filing of a civil Complaint. The mere assertion of allegations followed by the production of voluminous information is enough to shift the burden to Defendant. Although this practice is wholly improper, Plaintiff spent the majority of its Motion for Enlargement of Time (Doc. 80) making an argument based upon this premise. Defendants, however, have no duty whatsoever to provide the identities of the "John Does" Plaintiff seeks to add to this lawsuit. The only burden Defendants carry is to defend themselves against the allegations made against them by the Plaintiff. The remainder of the burden associated with this case rests squarely on Plaintiff. Asserting that Defendant has had anything to do with Plaintiff's own failure to timely identify John Does is disingenuous and too far reaching a reason to allow for an additional enlargement of time.

Likewise, Plaintiff's request boldly alludes to several different spans of time within which he believes Defendant should have reviewed the "thumb drive" of emails produced in August 2006. These timeline arguments conveniently lack any mention of what Plaintiff has been doing to identify the other potential parties to this lawsuit. Moreover, Defendants only responsibility should identify those emails that are related to their companies. This is a monumental task considering Defendants must sift through each and every email on the "thumb drive" to make any identification. If Plaintiff wants more parties in this lawsuit, then he should accept the responsibility of dealing with those emails while Defendants continue to handle the defense of their emails. Simply because Plaintiff has ignored this responsibility does not mean more time is needed for any party to review the "thumb drive" for purposes of identifying additional parties.

Finally, Plaintiff's request ignores the probability that extending the amount of time to add new parties will force this litigation to become almost permanent in nature. Plaintiff's "thumb drive" contains more than 62,000 emails. According to Plaintiff's Motion, Defendants

only transmitted “hundreds” of those emails. (Doc. 80 at p.2). At some point Plaintiff must identify the “hundreds” of emails and move forward with his allegations. The remaining 60,000-plus emails should not be the anchor that weighs down this case. Unless this matter proceeds on its current schedule, Plaintiff will continuously require additional amounts of time until each and every one of the emails on the “thumb drive” is linked to another entity. Defendants should not be forced to endure this process, as they are ultimately only responsible for defending the “hundreds” of emails Plaintiff alleges they transmitted to him.

III. Conclusion

For the reasons stated herein, Defendants VC E-Commerce Solutions, Inc. and Optinrealbig.com, LLC each request that this Honorable Court deny Plaintiff’s request for enlargement of time.

Respectfully Submitted,

SUTTER, O’CONNELL & FARCHIONE

/s/ Christina J. Marshall
CHRISTINA J. MARSHALL (0069963)
DAVID J. HUDAK (0070510)
3600 Erieview Tower
1301 E. 9th Street
Cleveland, Ohio 44114
Phone: (216) 928-2200
Fax: (216) 928-4400
E-Mail: cmarshall@sutter-law.com

Attorney for Defendants,
VC E-Commerce Solutions, Inc. and
OptinRealBig.com, LLC

CERTIFICATE OF SERVICE

A copy of the foregoing was sent via the Court's ECF Filing System on this 26nd day of
March, 2007 upon:

Lisa A. Wafer, Esq.
Ferron & Associates
580 North Fourth Street, Suite 450
Columbus, Ohio 13215-2125

Attorney for Plaintiff

/s/ Christina J. Marshall
CHRISTINA J. MARSHALL (0069963)