

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ANTONETTA IACOBBO :
 :
 v. : C.A. No. 12-368S
 :
 THE HERTZ CORPORATION :

MEMORANDUM AND ORDER

Pending before me for expedited determination is Plaintiff's Motion for an Extension of Time to Complete Discovery. (Document No. 26). Defendants object. (Document Nos. 27 and 28). For the following reasons, Plaintiff's Motion is DENIED.

This case was commenced in Superior Court on February 21, 2012 and removed to this Court on May 15, 2012. On September 17, 2012, Judge Smith entered a Standard Pretrial Order which set a February 28, 2013 deadline for fact discovery. (Document No. 15). On December 6, 2012, Defendant Hertz moved to compel Plaintiff to respond to written discovery requests which were served in July 2012 and never answered by Plaintiff. (Document No. 17). Plaintiff filed a pro forma Objection on December 24, 2012 and offered no justification for the tardiness in responding. (Document No. 18). Although Defendant's request for monetary sanctions was denied, Plaintiff was deemed to have waived objections to Defendant's discovery requests because of Plaintiff's "unexcused and unexplained failure to respond to discovery in a timely manner."

On February 19, 2013, the parties jointly moved for a ninety-day extension of the pretrial deadlines. (Document No. 20). In an email to Defendants' counsel dated February 12, 2013, Plaintiff's counsel proposed the ninety-day extension and indicated that Plaintiff's discovery requests "will be going out within the next few days" and that he wished "to schedule some

depositions of existing Hertz employees.” (Document No. 27-2 at p. 1). On February 22, 2013, Judge Smith granted the joint Motion and extended the fact discovery deadline to May 29, 2013. According to Defendants’ counsel, Plaintiff did not serve written discovery “within the next few days” as advertised in the February 12, 2013 email and did not serve any written discovery requests until May 9, 2013.¹ Plaintiff’s counsel also noticed nine depositions on the eve of the discovery closure date. In fact, on May 20, 2013, Plaintiff sought and was granted a twenty-one day extension for the “limited purpose” of completing some of these depositions. (Document No. 25). In the Motion, Plaintiff’s counsel indicated that he did not anticipate seeking any further extensions and was not requesting the Court to extend any other deadlines. *Id.* at p. 2. However, at the time that statement was made, Plaintiff’s counsel knew that his written discovery requests were served just ten days earlier and that responses would not be due until after the discovery closure date. Thus, by waiting until the eleventh hour to serve written discovery requests, Plaintiff’s counsel accepted the risk that he would be precluded from any follow-up discovery generated by the responses.

Now, Plaintiff’s counsel seeks another forty-day extension (until July 29, 2013) to conduct an additional four depositions. He argues that these witnesses were just recently disclosed in response to eleventh-hour interrogatories and that Defendants would not be prejudiced by the depositions. Plaintiff’s counsel, however, has not shown “good cause” under Fed. R. Civ. P. 16(b)(4) to modify the discovery schedule at this late date. Plaintiff’s counsel is in this predicament because he dragged his feet for months in conducting discovery and waited nearly nine months after the Rule 16 conference with Judge Smith (and twenty days before the extended deadline) to

¹ Since the requests were served twenty days before the deadline and the applicable rules (Fed. R. Civ. P. 33 and 34) provide for thirty days to respond, the requests did not comply with Local Rule Cv 26(c) which provides that “pretrial discovery must be completed by the discovery closure date.” (emphasis added).

commence discovery. Furthermore, Plaintiff has already noticed nine depositions and seeks to take an additional four depositions, and Plaintiff has not moved the Court for leave to exceed the ten deposition maximum imposed by Fed. R Civ. P. 30(a)(2).

For the foregoing reasons, Plaintiff's Motion for an Extension of Time (Document No. 26) is DENIED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
June 25, 2013