

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

LOUIS PAOLINO and MARIE ISSA :  
 :  
 v. : C.A. No. 12-039ML  
 :  
 JF REALTY, LLC; et al. :

**MEMORANDUM AND ORDER**

Pending before me for determination (28 U.S.C. § 636(b)(1)(A); LR 72(a)) is Plaintiffs' Motion for Leave to File Motions to Compel Production of Documents and Further Answers to Interrogatories from Defendants. (Document No. 46). Defendants object to Plaintiffs' Motion as untimely. (Document No. 52). I agree with Defendants and DENY Plaintiffs' Motion for Leave.

On June 3, 2013, the Court issued a Standard Pretrial Order setting the following deadlines: Fact Discovery closed by January 27, 2014 (approximately 8 months); Expert Discovery closed by May 30, 2014 (an additional 4 months); and Dispositive Motions filed by June 13, 2014. (Document No. 23). The discovery requests in issue were served on November 13, 2013. Plaintiffs offer no explanation as to why they waited nearly six months to serve their written discovery requests. Defendants represent that they served timely responses on December 13, 2013. On December 20, 2013, Plaintiffs' counsel sent a letter to Defendants' counsel raising concerns about the completeness of Defendants' document production. (Document No. 44 at p. 10). The letter did not identify any deficiencies in Defendants' Interrogatory responses. Plaintiffs' counsel expressed urgency in the letter due to the upcoming January 27<sup>th</sup> discovery deadline. *Id.* at p. 11. Plaintiffs did not seek to extend the fact discovery deadline and did not move to compel under Rule 37, Fed. R. Civ. P., prior to the deadline or within the 14 day period for filing motions after the close of

discovery. (See Document No. 23 at p.3).

It does not appear that Plaintiffs took any further action until May 23, 2014 when their counsel sent a letter to Defendants' counsel seeking to "resolve outstanding discovery disputes." (Document No. 44 at p. 20). Plaintiffs' Motion for Leave is not accompanied by "a separate memorandum of law setting forth the reasons why the relief requested should be granted and any applicable points and authorities supporting the motion" as required by Local Rule Cv 7(a). Plaintiffs simply assert in their one-page Motion that "counsel has been requesting Defendants to supplement their discovery responses since December 20, 2013, as described in Plaintiffs' Motions to Compel filed herewith." However, a review of the Motions to Compel and Supporting Memoranda do not reveal any efforts to secure compliance between December 20, 2013 and May 23, 2014. Rather, it appears that Plaintiffs sat on their hands and allowed the fact discovery and motion filing deadlines to pass without action. All discovery in the case is now closed and Defendants' Motion for Summary Judgment is fully briefed. (See Document Nos. 49 and 59). Further, Plaintiffs have filed their Pretrial Memorandum<sup>1</sup> (Document No. 55) and their opposition to Defendants' Motion for Summary Judgment does not seek relief under Rule 56(d), Fed. R. Civ. P. , due to the unavailability of facts essential to justify their opposition. In other words, this is plainly an eleventh-hour attempt to reopen discovery that is simply too little, too late.

When a party seeks leave to file a motion after an expired deadline, Rule 6(b)(1)(B), Fed. R. Civ. P., requires a showing of "excusable neglect." "Determining...excusable neglect is an

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<sup>1</sup>The Pretrial Memorandum is detailed and does not identify any discovery deficiencies or otherwise suggest that the case is not trial ready in Plaintiffs' view.

equitable exercise that takes into account the totality of the circumstances.” Rivera-Almodovar v. Instituto Socioeconomico Comunitario, Inc., 730 F.3d 23, 27 (1st Cir. 2013). Typically, however, “‘inattention or carelessness’ without more, ‘normally does not constitute ‘excusable neglect.’” Id. (quoting Dimmitt v. Ockenfels, 407 F.3d 21, 24 (1st Cir.2005)).

Here, Plaintiffs’ one paragraph Motion for Leave fails to articulate any grounds that could reasonably be construed as excusable neglect. Furthermore, Plaintiffs also neglected to take the opportunity to file a reply brief pursuant to Local Rule Cv 7(b)(2) to directly respond to Defendants’ argument that their Motions are untimely and, more to the point, Defendants’ assertion that Plaintiffs’ statement that they had been attempting to resolve the claimed discovery deficiencies is a “complete fabrication.” (See Document No. 52 at p. 6). Plaintiffs have failed to demonstrate excusable neglect which would warrant reopening discovery motion practice at this late stage of the case. Accordingly, Plaintiffs’ Motion for Leave to File Motions to Compel (Document No. 46) is DENIED and the Motions to Compel (Document Nos. 44 and 45) are DENIED as untimely.

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
July 2, 2014