

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

THOMAS KOOLEN :
 :
 v. : C.A. No. 10-050S
 :
 BELTWAY CAPITAL MANAGEMENT :
 LLC, et al. :

MEMORANDUM AND ORDER

Pro se Plaintiff, Mr. Thomas Koolen, commenced this action in Superior Court on December 17, 2009 seeking, in part, to enjoin a property foreclosure sale scheduled for December 18, 2009. The action was removed to this Court on February 4, 2010. A Rule 16 scheduling conference was held on March 2, 2010 and a pretrial order issued which set certain pretrial deadlines including the completion of discovery by October 31, 2010. (Document No. 10). On September 20, 2010, the Court also reset the deadline for filing dispositive motions to October 15, 2010. On October 8, 2010, Defendants Beltway Capital Management, Inc., Mortgage Electronic Registration Systems, Inc. and BSI Financial Services, Inc. moved for summary judgment. (Document Nos. 45 and 46).

In response, Plaintiff filed an untimely Opposition to the Motion for Summary Judgment (Document No. 49) and a Motion pursuant to Rule 56(f), Fed. R. Civ. P.,¹ seeking a six-month stay of adjudication of Defendants' Motion. (Document No. 50). Defendants oppose the request and portray it as a further and groundless attempt by Plaintiff to continue to delay foreclosure. (Document No. 51).

¹ Presently cited as Rule 56(d) after the latest amendments to the Federal Rules of Civil Procedure effective December 1, 2010.

Under Rule 56(d), the Court “may” defer considering a motion for summary judgment if a party “shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition.” A party seeking relief under Rule 56(d) must establish “(i) good cause for his inability to have discovered or marshaled the necessary facts earlier in the proceedings; (ii) a plausible basis for believing that additional facts probably exist and can be retrieved within a reasonable time; and (iii) an explanation of how these facts, if collected, will suffice to defeat the pending summary judgment motion.” Rivera-Torres v. Rey-Hernandez, 502 F.3d 7, 10 (1st Cir. 2007). Here, Plaintiff’s conclusory submission fails on all three counts. This is not a case where a defendant is attempting to gain advantage by jumping the gun and filing a motion for summary judgment early in the discovery period before the plaintiff has had a reasonable opportunity to conduct discovery. Defendants’ Motion was filed on the eve of the close of discovery and Plaintiff has offered no explanation as to why he was unable to gather sufficient evidence supporting his claims over the last several months prior to the close of discovery. Although the Court does not reach any conclusion as to Plaintiff’s intent in filing his Motion, Defendants’ argument that Plaintiff’s motive is delay is unfortunately suggested by the vague and conclusory nature of his Motion to Stay.

For the foregoing reasons, Plaintiff’s Motion to Stay Hearing and/or Adjudication of Defendants’ Motion for Summary Judgment (Document No. 50) is DENIED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
December 21, 2010