

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Sean McClendon,)
) No. 22-cv-5472
 Plaintiff,)
) (Judge Coleman)
 -vs-)
) (Magistrate Judge Valdez)
 City of Chicago, et al.)
)
 Defendants.)

**PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION FOR
EXTENSION OF TIME TO COMPLETE FACT DISCOVERY**

The Court should deny defendants' request for a third extension of time to complete discovery (ECF No. 78) for the reasons that follow.

1. **Background.** On February 24, 2023, Judge Coleman set a fact discovery deadline of October 24, 2023. (ECF No. 27.) After referral, this Court ordered that, because the “discovery deadline is so generous, there will be no extensions absent extraordinary circumstances.” (ECF No. 29.)

2. This Court, in response to extraordinary circumstances, has twice extended the deadline, first to November 30, 2023 (ECF No. 52) and then to January 31, 2024 (ECF No. 66.)

3. Defendants now seek a further extension of time without showing extraordinary circumstances or even good cause.

4. “In the Seventh Circuit, the court’s primary inquiry is the diligence of the party seeking the extension.” *McCann v. Cullinan*, No. 11 CV

50125, 2015 WL 4254226, at *10 (N.D. Ill. July 14, 2015). This Court has applied that rule in multiple cases. *E.g., Kapila v. Vallera*, No. 20 C 1760, 2022 WL 20652620, at *1 (N.D. Ill. Jan. 14, 2022); *Signal Fin. Holdings LLC v. Looking Glass Fin. LLC*, No. 17 C 8816, 2021 WL 4935979, at *3 (N.D. Ill. Mar. 22, 2021).

5. Plaintiff shows below that defendants have flunked the diligence requirement on each matter raised in their motion:

a. **Phone Call Discovery.** Defendants state they require additional time for the discovery authorized by the Court on January 19, 2024 regarding phone calls, but they do not state what efforts they have made since the Court ruled. Defendants do not appear to have attempted to serve the subpoena authorized by the Court or taken any other action regarding this discovery.

b. **Depositions of Brittany Hill and Moneka Curtis.** The Court's Order of January 19, 2024, stated that the depositions of Brittany Hill and Moneka Curtis "were noticed in plenty of time to be completed by the deadline." (ECF No. 74.) This is incorrect: these depositions have not been noticed and defendants do not appear to have made any efforts to subpoena these witnesses either before or after the Court's ruling on January 19, 2024.

c. **Deposition of Peter Limperis.** The Court's Order of January 19, 2024 noted that defendant *could* have sought to depose Peter Limperis, the defense lawyer at plaintiff's trial (ECF No. 74 at 9), but the Court did not authorize this deposition to take place after the discovery deadline. Defendants

do not claim to have made any attempts to subpoena Mr. Limperis or schedule this deposition before the deadline. Moreover, defendants are unable to explain the purpose of asking attorney Limperis about conversations he may have had in 2015 or 2016 with Emmanuel Poe; Poe testified at two hearings in state court and defendants have deposed Poe in this case.

d. Deposition of Latoya McClendon. Defendants seek to reopen the deposition of Ms. McClendon to question her about plaintiff's pending criminal case. This is a blatant misuse of a civil deposition to obtain discovery for use in a pending criminal case. In addition, it is incorrect for defendants to state plaintiff ended this deposition. (ECF No. 78 ¶ 12.) Plaintiff objected to one line of questioning, defendants agreed to let the Court resolve the objection, then plaintiff's counsel questioned the witness before the deposition was completed.

ACCORDINGLY, the Court should deny defendants' request for a third extension of time to complete discovery.

Respectfully submitted,

/s/ Joel A. Flaxman
Joel A. Flaxman
ARDC No. 6292818
Kenneth N. Flaxman
200 S Michigan Ave, Ste 201
Chicago, IL 60604
(312) 427-3200
attorneys for plaintiff