

**UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,)	CIVIL NO. 4:09-CV-00013-RP-SBJ
)	
Plaintiff,)	
)	
vs.)	
)	
GREGORY SWECKER a/k/a GREGORY)	ORDER ON DEFENDANTS'
R. SWECKER a/k/a GREG SWECKER;)	MOTIONS ON DISCOVERY,
BEVERLY SWECKER a/k/a BEVERLY)	JOINDER AND EXTENSION
F. SWECKER; SWECKS, INC.;)	OF DEADLINES
PALISADES COLLECTION, LLC;)	
STATE OF IOWA; GRAND JUNCTION)	
MUNICIPAL UTILITIES; UNIFUND)	
CCR PARTNERS; and MIDLAND)	
POWER COOPERATIVE,)	
)	
Defendants.)	

The United States of America initiated this foreclosure action on January 8, 2009 against defendants Gregory R. Swecker and Beverly F. Swecker. (*See* Complaint (Doc. No. 1).) The case had been stayed for several years until the Court entered an Order (Doc. No. 79) on June 18, 2015, granting the United States' Motion to Lift Stay. Defendants were ordered to file an answer to the Complaint by July 10, 2015. (*Id.*)

On July 10, 2015, defendants filed their Answer to Complaint for Foreclosure and Defendants' Counterclaim. (Doc. No. 87.) The defendants generally denied the allegations set forth in the complaint filed by the United States, and also pled counterclaims alleging (1) a breach of a settlement agreement entered into on July 11, 1996; (2) violations of the Equal Credit Opportunity Act; (3) violations of the Privacy Act; and (4) violations of Section 210 of the Public Utility Regulatory Policy Act. (*Id.*) On October 8, 2015, the United States filed a motion to dismiss the counterclaims. (Doc. No. 110.) In its motion, the United States asserts that none of the

counterclaims have any jurisdictional basis, and such counterclaims also fail to state a claim upon which relief may be granted. (*Id.*) The motion to dismiss is currently pending before the Honorable Judge Robert W. Pratt. Pending before this Magistrate Judge are a number of motions filed by defendants which will be addressed in turn, below.

1. Motion to Compel Discovery (Doc. No. 101):

Defendants filed a motion to compel discovery (Doc. No. 101), and a brief in support thereof (Doc. No. 100) on September 14, 2015. The United States filed its resistance to the motion to compel discovery and request for a stay of discovery on October 8, 2015. (Doc. No. 108.) Defendants filed their response to such resistance on October 13, 2015. (Doc. No. 111.)

The current Federal Rule of Civil Procedure 26(b)(1), which became effective December 1, 2015, sets forth the permissible scope of discovery as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Within this scope, a party may request documents or other materials in another party's "possession, custody, or control." Fed. R. Civ. P. 34(a).

Here, defendants request that the Court order the United States to produce certified financial and statistical reports from 1994 through 2014 for Midland Power Cooperative ("Midland") and Central Iowa Power Cooperative ("CIPCO"). In support of their request, defendants claim that the Rural Utilities Services receives and maintains those reports in the ordinary course of its duties. Defendants seek these reports to examine what are known as the "full

avoided cost” rates for each of these entities. Defendants assert such information pertains to money owed to them from Midland and CIPCO under the Public Utility Regulatory Policy Act. Defendants claim that they are entitled to this information as Midland and CIPCO are both recipients of federal financial assistance from the Rural Utilities Service, which is a division of the United States Department of Agriculture.

In resistance, the United States objects to the discovery on the basis that the information sought is not relevant to the foreclosure issues being pursued in this proceeding, the information has been repeatedly pursued in numerous other actions defendants have filed directly against Midland and CIPCO, and the information is not collected or maintained by the Farm Services Administration as part of its regular activities. The United States further asserts the information is not relevant to defendants’ first, second or third counterclaims. In the United States’ view, the only possible claim the information might arguably be linked to is defendants’ fourth counterclaim which references Midland and CIPCO. The fourth counterclaim includes allegations that the Rural Utilities Services is colluding with Midland to hide information, and that this foreclosure action is in retaliation for litigation initiated by defendants against Midland and CIPCO with the Federal Energy Regulatory Commission. The United States requests that defendants’ motion be denied; alternatively it requests that discovery on defendants’ counterclaims be stayed pending disposition of the motion to dismiss filed by the United States.

The Court finds that the information requested by defendants only potentially relates to the allegations asserted in their fourth counterclaim but is not connected to the foreclosure claim asserted by the United States in the complaint.¹ The information sought, as defendants

¹ The United States named Midland in the complaint as an entity that “may claim an interest in the real estate” at issue. (Doc. No. 1 ¶ 26(f).)

acknowledge, has been pursued by defendants in multiple other actions. Finally, the United States' pending motion to dismiss requests the Court dismiss defendants' fourth counterclaim. For these reasons and primarily due to the fact the information sought by defendants is only possibly relevant to their fourth counterclaim, the Court believes it is best to stay discovery on defendants' counterclaims pending the disposition by Judge Pratt of the United States' motion to dismiss. To the extent the United States is successful in its motion to dismiss the counterclaims, the discovery sought by defendants would not be relevant to any pending issues. However, to the extent that the motion to dismiss is not successful with respect to the fourth counterclaim, such information may be discoverable. Accordingly, defendants' motion to compel (Doc. No. 101) is denied without prejudice for defendants to revisit this issue should the United States not be successful on its motion to dismiss defendants' fourth counterclaim. Further, due to the pendency of the motion to dismiss, discovery relating to defendants' counterclaims shall be stayed pending ruling by Judge Pratt on the motion.

2. Motion for Leave and Motion for Joinder (Doc. No. 103):

Defendants' Motion for Leave and Motion for Joinder was filed September 29, 2015. (Doc. No. 103.) In this motion, defendants seek to add as counterclaim defendants Midland and CIPCO. Defendants assert that the Rural Utilities Services, along with Midland and CIPCO, engaged in a series of acts to hinder defendants from receiving benefits and participating in the use of renewable energy sources consistent with Section 210 of the Public Utility Regulatory Policy Act. Defendants claim the Rural Utilities Services conspired with Midland and CIPCO, as detailed in defendants' fourth counterclaim. (See Doc. No. 87.) For those reasons, defendants assert that Midland and CIPCO would be properly joined parties and seek leave of Court to amend their previous filings to include Midland and CIPCO as counterclaim defendants.

The United States resists defendants' request (Doc. No. 114) and contends the only conceivable relationship Midland and CIPCO would have to defendants' claims would be through the fourth counterclaim. The United States notes its pending motion seeks to dismiss all of defendants' counterclaims, including the fourth counterclaim, for lack of subject matter jurisdiction and/or failure to state a claim upon which relief can be granted. The United States believes defendants' attempt to join Midland and CIPCO as third-party defendants is simply a continuation of a long drawn-out dispute between those parties over the proper rate for reimbursement for energy generated by defendants. The defendants filed a reply (Doc. No. 117) on October 27, 2015.

Pursuant to Federal Rule of Civil Procedure 20, a person may be joined in an action as a defendant if:

- (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
- (B) any question of law or fact common to all defendants will arise in the action.

Fed. R. Civ. P. 20(a).

While the Court is aware from both parties' pleadings of the multiple lawsuits and litigation involving these defendants, Midland and CIPCO, here, Midland and CIPCO would only be involved in the same occurrences or transactions involving common questions of law or fact in this proceeding in connection with defendants' fourth counterclaim. Consequently, it is premature to address this issue before Judge Pratt rules on the United States' motion to dismiss. To the extent the fourth counterclaim is dismissed, then there would be no basis to add these parties as counterclaim defendants. If the fourth counterclaim survives dismissal, this issue can be revisited. For these reasons, the Court denies the relief as requested by defendants in their Motion for Leave

and Motion for Joinder without prejudice to defendants reasserting the issue should the United States not succeed on its motion to dismiss the fourth counterclaim.

3. Motion for Extension of Time to Add Parties and Motion to Amend Pleadings and Motion to Compel Discovery (Doc. No. 120):

Defendants' Motion for Extension of Time to Add Parties and Motion to Amend Pleadings and Motion to Compel Discovery was filed November 6, 2015 (Doc. No. 120). In such motion, defendants seek an order extending the time to add parties, extending the time to amend pleadings, and compelling discovery from the United States. Defendants seek discovery concerning employees of the United States Department of Agriculture in their individual capacities, relating to discriminatory and unlawful conduct by such employees, as well as the names of the individual employees involved with the foreclosure action, relating to claims that such individuals initiated or reinstated this foreclosure action while a national moratorium was in effect. Because of delay in providing such information that defendants attribute to the United States, defendants also seek to extend the deadlines to add parties and amend pleadings.

The United States resists (Doc. No. 123) the relief requested by defendants and states that, to date, the United States has responded to all previous requests by defendants for discovery. Prior to this motion being filed, the United States claims that the defendants had never requested disclosure of this particular information from the United States. The information defendants seek was only requested of the United States for the first time on November 6, 2015, in the form of defendants' motion to compel. Due to this fact, the United States contends it should have 30 days to respond to the extent that such request is deemed a valid discovery request. Further, the United States asserts that defendants did not consult with them concerning these discovery issues prior to filing this motion.

The United States also resists the request to extend the time to add parties and to amend pleadings as defendants have had ample opportunity to do so since this action was filed in 2009. Further, to the extent that defendants seek to bring claims against certain federal employees, defendants have not set forth any claims with any particularity of an employee acting outside the scope of their duties, therefore warranting inclusion of such person as a defendant in an individual capacity. Further, those claims are indistinguishable from those already made against the United States. For those reasons, the United States asserts defendants have not submitted sufficient reasons to extend the time to add parties or amend pleadings.

Defendants filed a reply (Doc. No. 125) on December 3, 2015. In their conclusion, defendants request an extension of 30 days to designate expert witnesses. The current deadline is December 10, 2015. (Scheduling and Trial Setting Order (Doc. No. 94).) The original deadline for motions to add parties and motions for leave to amend pleadings was set for October 9, 2015, then extended to November 9, 2015, at the request of defendants. (See id.; Text Order (Doc. No. 107).)

The Court finds the United States' arguments are well taken with respect to the request to extend the deadline to add parties or amend pleadings. Defendants have had ample time since the filing of their answer to seek such discovery, and have only done so just before the deadline to amend pleadings or add parties. Defendants cannot complain that they have not been provided such information concerning the names of employees from the United States when they only sought such information three days before the deadline to amend pleadings or add parties. Further, defendants make general, broad allegations without showing that there exist any facts sufficient to support the allegations. Accordingly, the Court does not find good cause to extend the deadline to add parties or amend pleadings. See Fed. R. Civ. P. 6(b) ("court may, for good cause, extend" deadlines).

Further, because defendants have not followed the rules of procedure with respect to these discovery requests, their motion to compel is premature. The Federal Rules of Civil Procedure require that written requests for discovery be served on a party, and this Court's Local Rules prohibit the filing of the discovery requests on the docket. See Fed. R. Civ. P. 33(a), 34(a); L.R. 5.1. The party from whom discovery is sought then has a period of time to respond to the discovery. See Fed. R. Civ. P. 33(b), 34(b). Once responded to in writing, to the extent such discovery responses are believed to be deficient or incomplete, a good faith conference with the other party about the issues is required. See Fed. R. Civ. P. 37(a)(1); L.R. 37(a). Only then may a motion to compel be filed with the court seeking relief. Id. Defendants have not followed this process with the discovery requests at issue and, therefore, their motion to compel the discovery must be denied. As previously noted, defendants must review and comply with the Federal Rules of Civil Procedure and Local Rules concerning discovery and filing of motions.


Finally, the Court finds there is sufficient good cause to extend defendants' deadline to designate expert witnesses. Moreover, the 30 day extension requested by defendants should not unfairly prejudice the United States or unduly delay this case. Consequently, defendants shall have until January 11, 2016, to designate expert witnesses and disclose their written reports. The United States shall have until February 10, 2016, to designate rebuttal expert witnesses and disclose their written reports.

FOR THE REASONS ABOVE: Defendants' Motion to Compel Discovery (Doc. No. 101) shall be, and is hereby, denied without prejudice; Defendants' Motion for Leave and Motion for Joinder (Doc. No. 103) shall be, and is hereby, denied without prejudice; and Defendants' Motion for Extension of Time to Add Parties and Motion to Amend Pleadings and Motion to Compel Discovery (Doc. No. 120) shall be, and is hereby, denied.

As requested in their reply (Doc. No. 125), defendants shall have until January 11, 2016, to designate expert witnesses and disclose their written reports. The United States shall have until February 10, 2016, to designate rebuttal expert witnesses and disclose their written reports.

IT IS SO ORDERED.

DATED this 4th day of December, 2015.



STEPHEN B. JACKSON, JR.
UNITED STATES MAGISTRATE JUDGE