

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

ANDREA ROSSI and LEONARDO
CORPORATION,

Plaintiffs,

v.

THOMAS DARDEN; JOHN T. VAUGHN,
INDUSTRIAL HEAT, LLC; IPH
INTERNATIONAL B.V.; and
CHEROKEE INVESTMENT PARTNERS,
LLC,

Defendants.

CASE NO. 1:16-cv-21199-CMA

INDUSTRIAL HEAT, LLC and IPH
INTERNATIONAL B.V.,

Counter-Plaintiffs,

v.

ANDREA ROSSI and LEONARDO
CORPORATION,

Counter-Defendants,

and

J.M. PRODUCTS, INC.; HENRY
JOHNSON; FABIO PENON; UNITED
STATES QUANTUM LEAP, LLC;
FULVIO FABIANI; and JAMES A. BASS,

Third-Party Defendants.

**UNOPPOSED MOTION FOR
EXTENSION OF TIME**

UNOPPOSED MOTION FOR EXTENSION OF TIME

Defendants Thomas Darden, John T. Vaughn, Industrial Heat, LLC (“Industrial Heat”), IPH International, B.V. (“IPH”), and Cherokee Investment Partners, LLC (collectively, “Defendants”), pursuant to Federal Rule of Civil Procedure 6, hereby file this unopposed motion for extension of time to file and serve responses to Andrea Rossi and Leonardo Corporation’s (collectively, “Plaintiffs”) (1) Motion to Strike Defendants’ Affirmative Defenses, or Alternatively, For a More Definite Statement (“Motion to Strike”) ([D.E. 39]) and (2) Motion to Dismiss Defendants’ Amended Counterclaims (“Motion to Dismiss”) ([D.E. 41]), and in support state as follows:

INTRODUCTION

Defendants seek an extension of the current deadlines to respond to the Motion to Strike and the Motion to Dismiss. Defendants have filed an unopposed motion for leave (“Unopposed Motion for Leave to Amend”) to file a 2d Amended Answer, Additional Defenses, Counterclaims and Third Party Claims (“2d Amended AACT”) ([D.E. 45]). An order granting Defendants’ Unopposed Motion for Leave to Amend would render the Motion to Strike and Motion to Dismiss moot, as they would be based upon a pleading that is no longer operative in this case. Accordingly, an extension of time until the Court rules on the Unopposed Motion for Leave to Amend would obviate the need for the parties to submit filings that will – assuming the Court grants the Unopposed Motion for Leave to Amend – become moot. In the event the Court denies Defendants’ Unopposed Motion for Leave to Amend, Defendants seek an extension of time of five (5) days after the Court’s denial to file responses to the Motion to Strike and the Motion to Dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed their Complaint in April 2016. [D.E. 1]. Defendants filed a Motion to Dismiss the Complaint ([D.E. 17]), which the Court granted in part, and denied in part on July 19, 2016 ([D.E. 24]). On August 11, 2016, Defendants filed their 1st Amended AACT. [D.E. 30]. In response to the 1st Amended AACT, Plaintiffs filed the Motion to Strike ([D.E. 39]) and the Motion to Dismiss ([D.E. 41]). The Motion to Strike argues, *inter alia*, that Defendants' affirmative defenses do not contain sufficient detail to give Plaintiffs "fair notice" as to the basis for the additional defenses, and the Motion to Dismiss challenges the sufficiency of Industrial Heat and IPH's counterclaims on various grounds. Currently, Defendants' response to the Motion to Strike is due on September 16, 2016 and their response to the Motion to Dismiss is due on September 19, 2016.

On September 15, 2016, Defendants filed the Unopposed Motion for Leave to Amend, which attaches as an exhibit the proposed 2d Amended AACT. The proposed 2d Amended AACT attempts to address many of the issues raised by Plaintiffs either in their recently filed motions or elsewhere.

ARGUMENT

This motion for extension of time is predicated on the fact that Defendants have sought leave to file the proposed 2d Amended AACT. If the Court grants the Unopposed Motion for Leave to Amend, Defendants will file the 2d Amended AACT. At that point, the 1st Amended AACT will no longer be an operative pleading in this case, and a number of the issues raised in Plaintiffs' Motion to Strike and Motion to Dismiss the 1st Amended AACT will potentially become moot. Therefore, it would be more efficient if motions and responses were directed to the proposed 2d Amended AACT.

This motion is not being submitted for the purpose of delay, nor are Plaintiffs prejudiced by the requested extension of time. As set forth in the Certification below, counsel for Plaintiffs and represented Third-Party Defendants do not oppose this request for an extension of time.

WHEREFORE, Defendants respectfully requests an extension of time that will allow Defendants to file their responses to the Motion to Strike and Motion to Dismiss after the Court rules on the Unopposed Motion for Leave to Amend.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(3)

Pursuant to S.D. Fla. Local Rule 7.1(3), the undersigned certifies that counsel for Defendants has conferred with counsel for Plaintiffs and represented Third-Party Defendants and they do not oppose the relief requested in this motion.

Dated: September 15, 2016.

Respectfully submitted,

/s/ Christopher R. J. Pace

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Attorneys for Defendants/Counter-Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel or parties of record.

/s/ Christopher R. J. Pace

Christopher R.J. Pace

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Third-Party Defendants.

**ORDER ON UNOPPOSED
MOTION FOR EXTENSION OF
TIME**

**ORDER ON UNOPPOSED MOTION
FOR EXTENSION OF TIME**

THIS CAUSE came before the Court on Defendants' Unopposed Motion for Extension of Time to file and serve responses to: (1) Plaintiffs' Motion to Strike Defendants' Affirmative Defenses, or Alternatively, for a More Definite Statement ("Motion to Strike") ([D.E. 39]) and (2) Plaintiffs' Motion to Dismiss Defendants' Amended Counterclaims ("Motion to Dismiss") ([D.E. 41]). [D.E. __]. Having reviewed the file and being fully advised of the premises, it is hereby

ORDERED AND ADJUDGED that the motion is GRANTED. In the event the Court denies Defendants' Unopposed Motion for Leave to File Second Amended Answer, Additional Defenses, Counterclaims, and Third-Party Claims ("Unopposed Motion for Leave") ([D.E. 45]), Defendants shall have up to and including five (5) days from such denial to file and serve responses to the Motion to Strike and the Motion to Dismiss. In the event the Court grants the Unopposed Motion for Leave, the pending Motion to Strike and Motion to Dismiss will be denied without prejudice as moot.

DONE AND ORDERED in chambers in Miami, Florida this __ day of September, 2016.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE