

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES J. O'CONNOR : CIVIL ACTION  
v. :  
TRANS UNION CORPORATION : NO. 97-4633

MEMORANDUM AND ORDER

HUTTON, J.

September 24, 1998

Presently before the Court are Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 7), Plaintiff's response thereto (Docket No. 10), Defendant's reply thereto (Docket No. 15), and Plaintiff's sur reply thereto (Docket No. 16). For the reasons stated below, the Defendant's motion is **DENIED WITH LEAVE TO RENEW** following close of discovery.

**I. BACKGROUND**

On July 16, 1997, the Plaintiff James J. O'Connor brought this action against Defendant Trans Union Corporation ("Trans Union") alleging various violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (1988) ("FCRA") and Pennsylvania tort law. In his complaint, O'Connor alleges, in substance, that the Defendant prepared a credit report containing false and defamatory information, and that they refused to delete the information from his credit file after he notified them of the

inaccuracy. On April 24, 1998, the Defendant filed a Motion for Summary Judgment. On May 12, 1998, the Plaintiff filed a Response in Opposition to this Motion, and in the alternative, requests the Court to grant a continuance until close of discovery. The Defendant filed a Reply Memorandum on June 5, 1998. The Plaintiff filed a Sur Reply Memorandum on June 18, 1998. Because the Plaintiff has not had an opportunity to conduct discovery, the Defendant's motion is not ripe, and thus this Court refuses to consider the Defendant's Motion for Summary Judgment.

## **II. DISCUSSION**

The purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits,

depositions, or admissions on file to show that there is a genuine issue for trial. Id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmoving party. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

The Court, however, may deny summary judgment if the motion is premature. Anderson, 477 U.S. at 250 n.5. Because a plaintiff should not be "'railroaded' by a premature motion for summary judgment," the United States Supreme Court has held that a district court must apply Federal Rule of Civil Procedure Rule 56(f) if the opposing party has not made full discovery. Celotex, 477 U.S. at 326. Rule 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that he cannot for

reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f) (emphasis added). Thus, the district court is empowered with discretion to decide whether the movant's motion is ripe and thus determine whether to delay action on a motion for summary judgment. St. Surin v. Virgin Islands Daily News, Inc., 21 F.3d 1309, 1313 (3d Cir. 1994); Sames v. Gable, 732 F.2d 49, 51 (3d Cir. 1984).

In order to preserve the issue for appeal, Rule 56(f) requires the opposing party to a motion for summary judgment to file an affidavit outlining the reasons for the party's opposition. See St. Surin, 21 F.3d at 1313; Galgay v. Gil-Pre Corp., 864 F.2d 1018, 1020 n.3 (3d Cir. 1988); Dowling v. City of Philadelphia, 855 F.2d 136, 139-40 (3d Cir. 1988). The United States Court of Appeals for the Third Circuit has consistently emphasized the desirability of full technical compliance with the affidavit requirement of Rule 56(f). See St. Surin, 21 F.3d at 1314; Radich v. Goode, 886 F.2d 1391, 1393-95 (3d Cir. 1989); Lunderstadt v. Colafella, 885 F.2d 66, 70 (3d Cir. 1989); Dowling, 855 F.2d at 139-40. But see Sames, 732 F.2d at 52 n.3 (finding opposing party's failure to strictly comply with Rule 56(f) not

"sufficiently egregious" to warrant granting summary judgment).\<sup>1</sup> Nevertheless, failure to support a Rule 56(f) motion by affidavit is not automatically fatal to its consideration. St. Surin, 21 F.2d 1314. The Third Circuit has stated that if a Rule 56(f) motion does not meet the affidavit requirement, the opposing party "must still 'identify with specificity what particular information is sought; how, if uncovered, it would preclude summary judgment; and why it has not previously been obtained.'" Id. (quoting Lunderstadt, 855 F.2d at 71). The opposing party, however, must be specific and provide all three types of information required. See, e.g., Radich, 886 F.2d at 1394-95 (affirming district court's grant of summary judgment when opposing party only identified several unanswered interrogatories and failed to file affidavit, identify how unanswered interrogatories would preclude summary judgment, or identify information sought).

In the present matter, the Plaintiff argues that summary judgment is premature because discovery is not yet complete. (Pl.'s Resp. at 32.) The Plaintiff has filed a Rule 56(f) affidavit, and therefore has complied with the Third Circuit's mandate of strict compliance with the affidavit rule. Furthermore, the Plaintiff states in his memorandum of law that because discovery is not complete, he may not be able to supply the Court

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<sup>1/</sup> Some federal circuit courts of appeals have liberally applied the affidavit requirement of Rule 56(f). See, e.g., International Shortstop, Inc. v. Rally's Inc., 939 F.2d 1257, 1267 (5th Cir. 1991) (requiring only statement of party's need for additional discovery), cert. denied, 502 U.S. 1059 (1992).

with evidence to contradict several of the factual assertions made by the Defendant in its Motion for Summary Judgment, particularly those regarding Trans Union's reporting and reinvestigation procedures. (Id.) This information, he argues, is essential for determining whether summary judgment is appropriate, because it will allow the Court to ascertain the "reasonableness" of Trans Union's procedures. (Id.) Therefore, the Plaintiff requests that the Court deny the Defendant's motion so that he may obtain discovery on the reporting and reinvestigation procedures of the Defendant, something about which he has minimal or no information. (Id.)

After reviewing the parties' pleadings, motions, and briefs, this Court finds that the Plaintiff has filed an affidavit, identified information that has yet to be discovered, shown that this information will affect summary judgment, and shown why the discovery has not previously been obtained. See St. Surin, 21 F.3d at 1314 (quoting Lunderstadt, 855 F.2d at 71). In addition, this Court is required to give a party opposing a motion for summary judgment adequate time for discovery. Dowling, 855 F.2d at 139 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1985)). Therefore, because Rule 56(f) grants the district court discretion to "order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just," the Defendant's Motion for Summary

Judgment is hereby denied with leave to renew following the close of discovery.

An appropriate Order follows.

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JAMES J. O'CONNOR	:	CIVIL ACTION
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TRANS UNION CORPORATION	:	NO. 97-4633

O R D E R

AND NOW, this 24th day of September, 1998, upon consideration of the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (Docket No. 7), Plaintiff's response thereto (Docket No. 10), Defendant's reply thereto (Docket No. 15), and Plaintiff's sur reply thereto (Docket No. 16), IT IS HEREBY ORDERED that the Defendants' Motion is **DENIED WITH LEAVE TO RENEW** following close of discovery.

BY THE COURT:

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HERBERT J. HUTTON, J.