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

MARIA BALLAS, et al.	:	CIVIL ACTION
v.	:	
CITY OF READING, et al.	:	NO. 00-CV-2943

ORDER - MEMORANDUM

Padova, J.

AND NOW, this day of June, 2001, upon consideration of Plaintiff's[1] Motion for a Jury Trial (Doc. No. 38), and Defendants' response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**. The matter shall proceed as a bench trial.

In this case, Plaintiff checked the box on the civil cover sheet indicating the desire for a jury trial, but failed to actually request a jury in the Amended Complaint or serve a timely written demand. Courts uniformly agree that "the notation on the Cover Sheet is not a substitute for the service of written notice on the defendants required by the Federal Rules." Personal Touch, Inc. v. Lenox, Inc., 122 F.R.D. 470, 471 (E.D. Pa. 1988) (quoting Omawale v. WBZ, 610 F.2d 20, 22 (1st Cir. 1979) and citing Wall v. National Railroad Passenger Corp., 718 F.2d 906, 909 (9th Cir.

[1]In an accompanying Memorandum and Opinion, the Court granted summary judgment in favor of Defendants on the remaining claims alleged by Henry Lessig. Accordingly, Maria Ballas is the sole remaining plaintiff in this action.

1983); Cochran v. Birkel, 651 F.2d 1219, 1221 n. 4 (6th Cir. 1981), cert. denied, 454 U.S. 1152 (1982); Biesenkamp v. Atlantic Richfield Co., 70 F.R.D. 365, 366 (E.D. Pa. 1976)). The civil docket sheet is merely an administrative instrument utilized by the court to assist it in the management of its cases and is not served on the defendant. Id. At the preliminary pretrial conference held on November 8, 2000, the Court advised Plaintiff's counsel that no jury trial had been requested in the Amended Complaint. Although Plaintiff's counsel indicated at that time that he would promptly move to request a jury trial, the instant Motion was not filed until May 18, 2001, one month before trial.

Federal Rule of Civil Procedure 38 permits parties to demand a trial by jury with respect to issues that are triable by a jury by filing a demand with the court pursuant to Rule 5(d) and by serving a written demand upon the other parties between commencement of the action and ten days after the service of the last pleading directed to the issue that is triable by the jury. Fed. R. Civ. P. 38(b). The failure of a party to serve and file such a demand constitutes a waiver by that party of a trial by jury. Fed. R. Civ. P. 38(d). Rule 39, however, permits the district court to order a trial by jury where the party fails to timely demand one. Fed. R. Civ. P. 39(b). In granting a request for a jury trial under Rule 39, the court must consider five factors in determining whether to grant an untimely request for a jury trial:

(1) whether the issues are suitable for a jury; (2) whether granting the motion would disrupt the schedule of the court or the adverse party; (3) whether any prejudice would result to the adverse party; (4) how long the party delayed in bringing the motion; and (5) the reasons for the failure to file a timely demand. United States Securities & Exchange Comm'n v. Infinity Group Co., 212 F.3d 180, 195-96 (3d Cir. 2000).

The Court concludes that Plaintiff fails to present sufficient reason under this standard to justify granting the untimely request for a jury trial. While § 1983 cases certainly may be tried before a jury, Plaintiff submits no argument that the circumstances of this case are "particularly suited to a jury." See id. at 196. Permitting a jury trial at this late date would disrupt the scheduling of this case since Defendants would need a continuance to adjust their trial preparation and file supplemental pretrial submissions. Changing from a bench trial to a jury trial would also prejudice Defendants because they have made strategic decisions with respect to the scope of discovery based on the assumption of a bench trial.[2]

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[2]Plaintiff's counsel argues that no prejudice could inure because he has indicated his desire for a jury trial throughout the case. However, it is reasonable for Defendants to act on the presumption of a bench trial given the lengthy amount of time that Plaintiff's counsel waited before requesting a jury trial and in light of the Court's admonishment at the pretrial conference that any jury trial request should be made promptly.

Most important, however, is the lengthy delay in requesting a jury trial and the lack of any reasonable justification for the delay. The Court personally placed Plaintiff's counsel on notice that the Amended Complaint failed to request a jury trial on November 8, 2000. Plaintiff cannot claim now that the reason for her delay in requesting a jury trial is lack of knowledge that one had not already been requested. Plaintiff knew of the Amended Complaint's deficiency since the earliest stage of this litigation. Despite this knowledge, Plaintiff proceeded through nearly the entire course of the litigation process without moving for a jury trial.

Since none of the factors for consideration support Plaintiff's request, the Court denies the Motion.

BY THE COURT:

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John R. Padova, J.