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**Galaxy Next Gen. v. Ehlert, ORDER ON MOTION TO ENLARGE
TIME**

Kelly L. Ellerbe

Judge, Superior Court of Fulton County, Metro Atlanta Business Case Division

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

GALAXY NEXT GENERATION,)
INC.,)
)
Plaintiff,) Civil Action
) File No. 2021CV352606
)
v.)
)
BRADLEY EHLERT,)
)
Defendant/Counterclaim Plaintiff)
)
v.)
)
GALAXY NEXT GENERATION,)
INC., EHLERT SOLUTIONS)
GROUP, INC., INTERLOCK)
CONCEPTS, INC., GARY LEROY,)
MAGEN MCGAHEE, WADE)
WALKER, BECKY QUINTANA,)
SOMERSET CPAS, P.C.,)
)
Counterclaim Defendants.)

**ORDER ON DEFENDANT/COUNTERCLAIM-PLAINTIFF'S MOTION TO
ENLARGE TIME FOR FILING OPPOSITION TO COUNTERCLAIM-
DEFENDANT WADE WALKER'S MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION AND VENUE**

This matter comes before the Court on Defendant/Counterclaim-Plaintiff
Bradley Ehlert's ("Ehlert's") Motion to Enlarge Time for Filing Opposition to
Counterclaim-Defendant Wade Walker's Motion to Dismiss for Lack of Personal

Jurisdiction, and Venue, filed January 24, 2022 (“Motion”). Having reviewed the record and considered the Motion, Counterclaim Defendant Wade Walker’s (“Walker’s”) Response in Opposition, filed February 11, 2022 (the “Response”) and Ehlert’s Reply, filed February 14, 2022 (the “Reply”), the Court enters the following order.

1. BACKGROUND

The underlying facts and posture of the case are complex; however, the Court finds it can address the present dispute with minimal exposition.

Ehlert lodged business tort claims against Walker and a number of others concerning a failed transaction to sell certain companies to Galaxy Next Generation, Inc. (“Galaxy”). Ehlert’s pleadings describe Walker as a Galaxy advisor who participated in a pivotal meeting about the sale occurring in Atlanta, Georgia on October 9, 2019. (Ehlert Complaint, ¶¶ 136-146.)¹ According to Walker, Ehlert achieved substitute service on Walker via his minor daughter at Walker’s residence in Seneca, South Carolina on September 30, 2021.² (Resp., p. 2.) On November 22, 2021, Ehlert and Walker filed a Joint Stipulation Extending Time to Respond, extending Walker’s deadline to file an answer or responsive pleading to December

¹ On August 30, 2021, Ehlert filed a complaint in the Fulton County Superior Court against Galaxy, Walker, and numerous others in Ehlert v. Galaxy Next Generation, Inc., Civil Action Case No. 2021CV353898 although Galaxy had previously filed a claim only against Ehlert under the present case number. On November 16, 2021, the judge previously assigned to these cases entered an order consolidating the two matters under the present case number and established the case style and party designations found above.

² While not at issue here, Walker contests the propriety of this service. (Resp., p. 2.)

20, 2021. On December 20, 2021, Walker filed a special appearance answer and a Motion to Dismiss for Lack of Personal Jurisdiction and Venue (“Motion to Dismiss”).

In his Motion to Dismiss, Walker claims he is a resident of South Carolina and that his acts within this state would not properly subject him to personal jurisdiction under the Georgia Long Arm Statute. See O.C.G.A. § 9-10-91. On January 24, 2022, the date his response to Walker’s Motion to Dismiss was due, Ehlert filed the instant Motion seeking to enlarge the deadline for filing his opposition until June 24, 2022, a five-month extension. (Mot., ¶ 5.) According to the Motion, Ehlert intends to use that time to perform discovery testing Walker’s jurisdictional and venue defenses. (Id., ¶ 4.)

According to Walker, Ehlert lodged a request for production of documents on Walker in December of 2021. (Resp., p. 4.) Since filing the Motion, Ehlert claims he has twice requested dates when Walker might be available for a deposition and received no response, prompting him to unilaterally notice Walker’s deposition for March 30, 2022. (Reply, n. 1.)

Walker contests the Motion, claiming no extension of time to respond is merited under these facts. Alternatively, should the Court grant the extension and permit additional discovery, Walker asks that his deposition be limited “to the issues of personal jurisdiction and venue.” (Resp., p. 6.)

2. STANDARD OF REVIEW

With regard to extending deadlines, O.C.G.A. § 9-11-6(b) provides a trial court, “may at any time in its discretion . . . order the period extended if request therefor is made before the expiration of the period originally prescribed. . . .” While noting it is not “unrestrained”, the Georgia Court of Appeals has found a trial court has “wide discretionary authority to enlarge the time within which an act may be done.” King v. Green, 189 Ga. App. 105, 106 (1988).

3. ANALYSIS

Ehlert seeks an enlargement of time under O.C.G.A. § 9-11-12(j)(4) which provides that if a motion to dismiss raises issues of personal jurisdiction or venue, “limited discovery needed to respond to such defenses . . . shall be permitted until the Court rules on such motion (emphasis supplied.)”

Walker has offered three primary reasons why Ehlert’s Motion to extend the response period should not be granted.

3.1 Court’s Jurisdiction

First, Walker argues that the Court has no jurisdiction over him such that Ehlert’s Motion is without basis. (Resp., p. 4.) The Court finds this argument is circular. Essentially, Walker claims the Court lacks personal jurisdiction over him so no extension may be permitted to allow Ehlert to conduct discovery to confirm or contest Walker’s claim that the Court lacks personal jurisdiction over him. In Kolb

v. Daruda, 350 Ga. App 642, 645 (2019), the Court of Appeals recognized the mandatory nature of the limited jurisdictional discovery permitted by O.C.G.A. § 9-11-12(j)(4) and so does this Court.

3.2 Waiver

Second, Walker claims that Ehlert has “waived his right to take further discovery” against Walker by not commencing it prior to the original response deadline for the Motion to Dismiss. (Resp., p. 4.) Walker acknowledges that Ehlert lodged Requests for Production of Documents on him in December of 2020 but argues Ehlert failed to propound interrogatories or requests for admissions or timely serve a deposition notice. (Id.) Walker claims doing these things would have allowed Ehlert to address any outstanding jurisdictional issues when his response to the Motion to Dismiss was due. (Id.) The Court finds the factual evidence of a waiver to be lacking. It is understandable why Ehlert may not have vigorously pursued discovery until Walker formally outlined his defenses in his answer and Motion to Dismiss, filed December 20, 2021. Additionally, once Walker’s Motion to Dismiss was filed, it would have been difficult for Ehlert to obtain the discovery necessary to timely respond to the Motion to Dismiss. Indeed, these same timing concerns may explain the reasoning behind the statutory mandate of O.C.G.A. § 9-11-12(j)(4) allowing limited discovery when these types of dismissal motions are filed.

3.3. Ability to Respond

Finally, Walker claims that by failing to respond to the Motion to Dismiss without having first secured an extension, Ehlert “should not be allowed to respond to the Motion to Dismiss at all” (Resp., p. 5.) As noted above, O.C.G.A. § 9-11-6(b) addresses the authority of a court to grant an extension of time. Ehlert filed his Motion requesting an extension on January 24, 2022, the day his response to the Motion to Dismiss was due. See USCR 6.2 (general deadline for motion responses is thirty days); O.C.G.A. § 9-11-6(e) (three days added to response period when a party is served via mail or email). According to O.C.G.A. § 9-11-6(b), in light of this timely request, the Court “may at any time” enlarge Ehlert’s response deadline, even after that deadline has passed.

Walker relies upon Holsey v. Davidson, 211 Ga. App. 529, 530-531 (1993) which affirmed the trial court’s grant of a motion to strike a late response to a motion for summary judgment pursuant to USCR 6.2. Although USCR 6.2 has been amended since Holsey, in pertinent part it provided and still states, “[u]nless otherwise ordered by the judge or as provided by law, each party opposing a motion shall serve and file a response, reply memorandum, affidavits, or other responsive material not later than 30 days after service of the motion (emphasis supplied).” In Holsey, unlike the present case, the party responding to the motion for summary judgment never sought an extension of time to respond. Id. at 530. Accordingly,

there was no interplay with O.C.G.A. § 9-11-6(b). The Court of Appeals determined the “guidelines are clear. In this case, [respondent’s] failure to comply with the rule’s deadline warranted the striking of his [late] response.” Id. at 531.

The present matter also differs from Holsey in another key respect. As expressly reflected in USCR 6.2, the response time may be extended not only with permission of a judge, but “as provided by law.” As discussed above, Georgia law accords the right of limited discovery to a party responding to a motion to dismiss based on jurisdictional grounds that continues up until the time the Court rules on the motion. O.C.G.A. § 9-11-12(j)(4). Clearly, the statute contemplates that this additional discovery could be shared with the Court in response to such a dismissal motion. Thus, Georgia law provides for materials to be submitted in response to motions to dismiss based on jurisdictional grounds after the standard response period.


Here, the Court finds Ehlert has established good cause for an enlargement of his response time. Specifically, the Court finds it preferable that Ehlert perform the limited discovery permitted in this circumstance and present the Court with a comprehensive response to Walker’s Motion to Dismiss rather than insist on a response that would be timely but incomplete and subject to supplementation as the permitted discovery occurred.

However, while the Court is receptive to enlarging the deadline for Ehlert's response to Walker's Motion to Dismiss, it finds the five-month extension Ehlert requests is far too generous. Walker is embroiled in a complex business dispute with numerous other parties that will be expensive to defend. Therefore, the Court finds the resolution of his Motion to Dismiss should be expedited and his litigation expenses should be minimized pending its resolution.

4. CONCLUSION

For all of the above-stated reasons, the Motion is **GRANTED, IN PART**. Accordingly, Ehlert shall file his response to the Motion to Dismiss **no later than April 15, 2022**. Until the Motion to Dismiss is resolved, any discovery directed to Walker shall be limited in accordance with O.C.G.A. §9-11-12(j)(4). Further, as recognized in Kolb, "if a dispute arises, the court retains discretion to determine the scope of the limited discovery needed (Punctuation and citation omitted.)" Kolb, 350 Ga. App. at 646. Accordingly, if required, the Court stands ready to address disputes about the propriety of any particular discovery that Ehlert may seek to pursue.

SO ORDERED this 23rd day of February, 2022.


KELLY LEE ELLERBE, Judge
Superior Court of Fulton County
Metro Atlanta Business Case Division

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Attorneys for Plaintiff and Counterclaim Defendants	Attorneys for Defendant / Counterclaim Plaintiff
<p>Michael J. Ernst J. Griff Lucas, III STOKES CARMICHAEL & ERNST LLP 2018 Powers Ferry Rd., Suite 700 Atlanta, GA 30339 Tel: (404) 352-1465 mje@scelaw.com jgl@scelaw.com</p> <p><i>Attorneys for Galaxy Next Generation, Inc., Gary LeCroy, Magen McGahee, Ehlert Solutions Group, Inc. and Interlock Concepts, Inc.</i></p> <p>D. Michael Williams HALL BOOTH SMITH, PC 191 Peachtree Street, NE Suite 2900 Atlanta, GA 30303-1775 Tel: (404) 954-5000</p> <p><i>Attorneys for Somerset CPAs, P.C. and Becky Quintana</i></p> <p>Catherine G. Lucas SOUTHERN HEALTH LAWYERS, LLC (a Sanders & Mustari Law Firm) 3550 Lenox Road NE, Suite 2100 Atlanta, GA 30326 Tel: (404) 806-5575 klucas@southernhealthlawyers.com</p> <p><i>Attorneys for Wade Walker</i></p>	<p>Jon David W. Huffman Scott B. McMahan Timothy Andrews POOLE HUFFMAN, LLC 3562 Habersham at Northlake Building J, Suite 200 Tucker, GA 30084 Tel: (404) 373-4008 jondavid@poolehuffman.com scott@poolehuffman.com timandrews@poolehuffman.com</p> <p><i>Attorneys for Bradley Ehlert</i></p>