

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of
CHARLES T. GROSS,

Case No. 84-794-W
Chapter 11

Debtor.

CHARLES T. GROSS,
Plaintiff,

Adv. No. 86-0027

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant.

**ORDER - MOTION FOR CONTINUANCE AND FOR EXTENSION OF TIME
TO RESPOND TO THE MOTION FOR SUMMARY JUDGMENT**

On August 2, 1988, a telephonic hearing was held on plaintiff's motion for continuance of trial date and motion for extension of time within which to respond to Defendant's motion for summary judgment. John C. Brownrigg appeared on behalf of Plaintiff, and John K. Green appeared on behalf of Defendant.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court, having examined the file and considered the arguments of counsel, now enters its findings and conclusions pursuant to F.R. Bankr. p. 7052.

FINDINGS OF FACT

1. The final pretrial conference on the complaint to determine the validity, priority, and extent of lien was held on June 15, 1988.

2. The stipulated scheduling order was filed on the same date. Said order provided that dispositive motions were to be filed by July 15, 1988.

3. At the time of the pretrial conference, the Court indicated the trial date would probably not be set until October of 1988, but the scheduling clerk was not present so the trial date would depend upon the availability of dates for a 5-day trial.

4. On July 6, 1988, the notice and order was filed setting the trial date for August 29, 1988, at 9:00 a.m. This order further provided that the parties were to submit a final pretrial order and trial briefs by August 22, 1988. A copy of this order was received by counsel on July 7, 1988.

5. Defendant filed its motion for summary judgment on July 15, 1988.

6. Defendant's brief in support of its motion for summary judgment was also filed on July 15, 1988. It is a 73-page document with 12 brief points and 52 case citations.

7. On July 26, 1988, the Court permitted Defendant to file a brief in excess of 50 pages.

8. On July 27, 1988, Plaintiff filed his motion for continuance of the trial date and motion for extension of time in which to respond to Defendant's motion for summary judgment.

DISCUSSION

The granting or refusal of a continuance rests in the discretion of the Court. Watson v. Miers, 772 F.2d 433, 437 (8th Cir. 1985). The Court must make this determination based upon the facts and circumstances of the immediate case at hand. Id.

A motion for a continuance is addressed to the discretion of the trial court and its denial of such a motion will be reversed on appeal only when the action is, to use the conventional term, "an abuse of discretion."

... When the question for the trial court is a scheduling decision, such as whether a continuance should be granted, the judgment range is exceedingly wide, for, in handling its calendar and determining when matters should be considered, the district court must consider not only the facts of the particular case but also all of the demands on counsel's time and the court's.

Fontenot v. Upjohn Co., 780 F.2d 1190, 1193 (5th Cir. 1986).

In ruling on a motion for continuance in a civil case, the Court must balance the right of a party to have a reasonable opportunity to try the case upon its merits, and the right of a party for relief, in the form of a continuance, where the movant acts in good faith and with diligence, and where it clearly appears that the moving party would be deprived of a right to a fair trial if forced to proceed to trial at the scheduled time.

In the case at bar, the motion appears to be filed in good faith and not merely for purposes of delaying the trial. Even if most of the issues raised by the motion for summary judgment were known to Plaintiff, the mere volume of the motion will require considerable time in marshaling the facts and drafting the document in opposition to said motion.

Said motion also presents a scheduling problem for the Court. The Court must give this motion the attention which it deserves. The rulings on the brief points could radically affect the course of the trial. In considering the schedule of the Court, it is doubtful that the Court can render a ruling on the motion in sufficient time for counsel to digest the same and prepare for trial in light of the ruling.

The Court concludes that granting the motion would not unduely prejudice the Defendant and the motion for continuance is not motivated by procrastination or bad faith on the part of the Plaintiff or counsel.

IT IS ACCORDINGLY ORDERED that Plaintiff's motion for continuance of the trial date is sustained.

FURTHER, this adversary proceeding is continued for trial until October 31, 1988, at 9:00 a.m.

FURTHER, Plaintiff may have until August 17, 1988, to file his brief, statement of material facts, affidavits and documentary evidence in opposition to said motion.

FURTHER, the parties shall file a stipulated final prehearing order with the Clerk of the Bankruptcy Court no later than October 7, 1988.

Dated this 5th day of August, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE