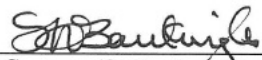




SO ORDERED.

SIGNED this 15th day of June, 2022

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

SAMUEL ALLAN PINNER

Debtor

BRANDON COFFEY
LAUREN COFFEY

Plaintiffs

v.

SAMUEL ALLAN PINNER

Defendant

Case No. 3:21-bk-30565-SHB
Chapter 7

Adv. Proc. No. 3:21-ap-3033-SHB

ORDER

Defendant filed a Motion for Summary Judgment on April 19, 2022, as amended on April 22, 2022, together with a supporting brief and statement of undisputed material facts as required by E.D. Tenn. LBRs 7007-1(a) and 7056-1(a) [Docs. 28-30, 33.] On June 9, 2022, Plaintiffs filed a Motion for Additional Time to Obtain Discovery Before Consideration of Defendant's

Summary Judgment Motion (“Motion”) and supporting brief [Docs. 34, 36], arguing that, under Federal Rule of Civil Procedure 56(d)(2)¹, they should be granted additional time to depose or obtain an affidavit from Fred “Chip” Leonard because they were unaware of Leonard’s involvement in construction of the home or that he acted as the general contractor for the project until they received answers to interrogatories and the summary judgment motion after the April 15, 2022 discovery deadline and that such discovery from Mr. Leonard will create a genuine dispute of material fact. [Doc. 36.] Defendant filed an objection in opposition to the Motion on June 11, 2022 [Doc. 35], arguing that Plaintiffs did not seek to extend the discovery deadline, that Defendant identified Mr. Leonard in both his Answer and his Rule 26 disclosures, and that the Motion was filed beyond the deadline for Plaintiffs to respond to summary judgment.

Plaintiffs’ Motion was filed beyond the 21-day response time included in the legend on Defendant’s Amended Motion for Summary Judgment filed on April 22, 2022 [Doc. 33]. The Pretrial Order, however, which was approved by both parties and entered on February 8, 2022, established a deadline of June 10, 2022, for response to any dispositive motion (rather than the 21-day response language included in the Court’s sample pretrial order). [Doc. 26 at ¶ 2.B.] Thus, Plaintiffs’ Motion was timely filed on June 9, 2022.²

Plaintiffs’ assertions that they were unaware of Mr. Leonard’s involvement until they received Defendant’s responses to interrogatories on April 15, 2022, are not well-taken. First, Defendant’s Answer stated that “Southeastern Development Group, Inc. . . . was co-owned by Fred M. Leonard, Jr. when it was an active company.” [Doc. 16 at ¶ 17.C.] More problematic for Plaintiffs, on January 27, 2022, Defendant twice identified Mr. Leonard as a person “likely to

¹ Rule 56 is applicable in this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7056

² Procedurally, the Certificates of Service for the Motion and its supporting brief do not comply with the requirements of E.D. Tenn. LBR 9013-3(b) because they do not “include a description of the paper served or noticed[.]”

have discoverable information,” disclosing the “[d]esignated representative of Southeastern Development Group, Inc., c/o Fred ‘Chip’ Leonard, Jr.” and separately identifying “Fred ‘Chip’ Leonard, Jr.” and providing two potential addresses for Mr. Leonard. [Doc. 35-1 at pp. 1, 2, 3.]

In *Doe v. City of Memphis*, 928 F.3d 481, 490–91 (6th Cir. 2019), the Sixth Circuit Court of Appeals set out the standard for a court’s consideration of a motion under Rule 56(d) for additional time to conduct discovery before responding to a motion for summary judgment:

The purpose behind Rule 56(d) is to ensure that [non-movants] receive “‘a full opportunity to conduct discovery’ to be able to successfully defeat a motion for summary judgment.” *Ball v. Union Carbide Corp.*, 385 F.3d 713, 719 (6th Cir. 2004) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986)). “A party invoking [the] protections [of Rule 56(d)] must do so in good faith by affirmatively demonstrating . . . how postponement of a ruling on the motion will enable him . . . to rebut the movant's showing of the absence of a genuine issue of fact.” *Fed. Trade Comm’n v. E.M.A Nationwide, Inc.*, 767 F.3d 611, 623 (6th Cir. 2014) (quoting *Willmar Poultry Co. v. Morton-Norwich Prods., Inc.*, 520 F.2d 289, 297 (8th Cir. 1975)). The affidavit must “indicate to the [trial] court [the party's] need for discovery, what material facts it hopes to uncover, and why it has not previously discovered the information.” *Ball*, 385 F.3d at 720 (quoting *Cacevic v. City of Hazel Park*, 226 F.3d 483, 488 (6th Cir. 2000)).

The Sixth Circuit has said that trial courts should construe Rule 56(d) motions generously and has set out five factors for consideration:

(1) when the appellant learned of the issue that is the subject of the desired discovery; (2) whether the desired discovery would have changed the ruling below; (3) how long the discovery period had lasted; (4) whether the appellant was dilatory in its discovery efforts; and (5) whether the appellee was responsive to discovery requests.

CenTra, Inc. v. Estrin, 538 F.3d 402, 420 (6th Cir. 2008) (quoting *Plott v. Gen. Motors Corp.*, 71 F.3d 1190, 1196–97 (6th Cir. 1995)).

Here, the Court finds that these factors weigh heavily in favor of denial of the Motion.

The Court, accordingly, directs the following:

1. The Motion for Additional Time to Obtain Discovery Before Consideration of

Defendant's Summary Judgment Motion filed on June 9, 2022 [Doc. 34], is DENIED.

2. Plaintiffs shall file a response to Defendant's request for summary judgment no later than June 22, 2022.

###