

**United States Bankruptcy Court
District of New Mexico**

Document Verification

Case Title: VDP, Inc. v. Kendal M. Emory, et al.
Case Number: 02-01239
Nature of Suit:
Judge Code: S
Reference Number: 02-01239 - S

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

VDP, INC.,
Debtor.

No. 11-01-17042 SL

VDP, INC.,
Plaintiff,

v.

Adv. No. 02-1239 S

KENDAL M. EMORY, et al.,
Defendants.

ORDER DENYING MOTION FOR EXTENSION OF TIME (RULE 56(f))

This matter is before the Court on Plaintiff's Motion for Extension of Time (Rule 56(f)) (doc. 98) and the objections thereto filed by Defendants Wright and Richmond (doc. 101) and Defendant Lala (doc. 107), and Plaintiff's Response (doc. 110). Plaintiff seeks an Order pursuant to Bankruptcy Rule 7056(f), which incorporates Fed.R.Civ.P. 56(f), to permit affidavits to be obtained or depositions to be taken or discovery to be had with respect to James Gubachy. In support of the motion, Plaintiff submits the "Supplemental Affidavit of Walter P. Black" (doc. 111).

By separate Orders entered herewith, the Court has denied the Motions for Summary Judgment by Mr. Richmond (doc. 60), Mr. Wright (doc. 70), and Ms. Lalla (doc. 72). Therefore, the Motion is moot as to those Motions. Also by separate order entered herewith, the Court has denied Plaintiff's Motion to

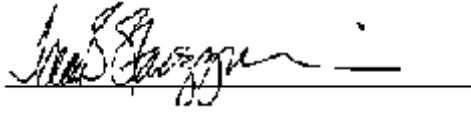
Strike Mr. Emery's Motion for Summary Judgment, and ordered Plaintiff to file a reply. Therefore, there is one pending motion to which Rule 56(f) would apply.

Reviewing Mr. Black's supplemental affidavit, however, indicates that an affidavit from or discovery of Mr. Gubachy would be irrelevant to the Emery Summary Judgment Motion. Paragraphs 4.1 through 4.18 of the Black affidavit lists information that would result from further discovery of Mr. Gubachy. Mr. Emery is not mentioned a single time.

Fed.R.Civ.P. 56(f) requires that the party seeking to invoke its protection state with specificity how the additional material will rebut the summary judgment motion. Jensen v. Redevelopment Agency, 998 F.2d 1550, 1554 (10th Cir. 1993). A party may not invoke Fed.R.Civ.P. 56(f) by merely asserting that discovery is incomplete or that specific facts necessary to oppose summary judgment are unavailable. Id. Rather, the party must demonstrate precisely how additional discovery will lead to a genuine issue of material fact. Id.

Ben Ezra, Weinstein, and Co., Inc. v. America Online Inc., 206 F.3d 980, 987 (10th Cir. 2000). Because Plaintiff has not specified how further discovery from Mr. Gubachy would establish genuine issue of material facts related to Mr. Emery's motion, the Court finds that the motion for extension of time should be denied.

IT IS ORDERED that Plaintiff's Motion for Extension of Time (Rule 56(f)) is denied.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on October 15, 2004, a true and correct copy of the foregoing was electronically transmitted, faxed, delivered, or mailed to the listed counsel and/or parties.

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