

4/25/95

APR 25 1995 13

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ATHENS DIVISION

51,146
I
2p.

STEVEN SCHMIDT,

Plaintiff

vs.

CIV. NO.; 95-6-ATH(DF)

JOHN DOE a/k/a E.T. HOWELL
and CREDIT BUREAU OF ATHENS,
INC.,

Defendants.

8:28 AM
Filed

APR 24 1995
Ma Walsh
DEPUTY CLERK OF COURT
MIDDLE DISTRICT OF GEORGIA

ORDER

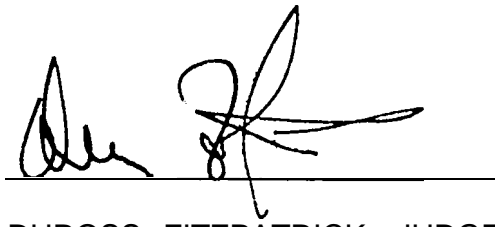
Before the court is Defendant's motion to stay filing its response to Plaintiff's motion for summary judgment until after conclusion of discovery.

On January 11, 1995 Plaintiff filed his complaint against Defendant. On February 23, 1995 Defendant timely filed a motion for a more definite statement and to strike. This court denied that motion on April 3, 1995. Pursuant to Rule 12(a)(4)(A), Defendant then had until April 13, 1995 to file an answer to Plaintiff's complaint. Defendant did file his answer on April 13, 1995. As a result, the pleadings in this case are now closed and any party may properly move for judgment on the pleadings. Fed. R. Civ. P. 12(c).

From his motion, it appears that Defendant has misconstrued the purpose of a motion for summary judgment *on the pleadings*. A motion for summary judgment on the pleadings is granted only when, after examining the pleadings, the

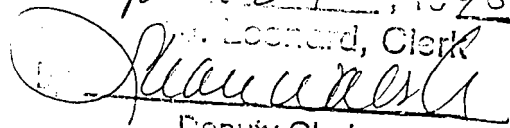
court decides that no genuine issues of material fact remain and the nonmoving party is entitled to judgment as a matter of law. In making its decision, the court is constrained to only those matters contained in the pleadings. Fed. R. Civ. P. 12(c). "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . ." *Id.* Thus, the stay requested by Defendant will not help him to respond to Plaintiffs motion for summary judgment on the pleadings. Accordingly, Defendant's motion is DENIED and Defendant is ordered to respond to Plaintiffs motion for summary judgment on the pleadings within ten days of the date this order is filed.

SO ORDERED, this 24 day of April, 1995.



DUROSS FITZPATRICK, JUDGE
UNITED STATES DISTRICT COURT

DF/le

FILED ON DOCKET
April 24, 1995
W. Leonard, Clerk

Deputy Clerk