

STATE OF MICHIGAN
COURT OF APPEALS

PAUL WILLIAM SCHOENEMANN,

Plaintiff-Appellee,

v

ANTHONY STEVEN BRENNEN,

Defendant-Appellee,

and

DAIMLERCHRYSLER CORP.,

Defendant,

and

CORPORATE AUTO RESOURCE
SPECIALISTS, a/k/a KEN TOMPOR AUTO
BROKER & LEASING, LTD.,

Defendant-Appellant.

UNPUBLISHED

December 28, 2006

No. 268451

Oakland Circuit Court

LC No. 02-045003-NI

Before: Owens, P.J., and White and Hoekstra, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent.

I am unable to conclude that Judge Kuhn's order constituted a clear ruling that defendant's motion for partial summary disposition would be considered in the exercise of his discretion, notwithstanding its late filing and the failure to file a motion to extend the time in which to file the motion. Judge Kuhn, indeed, had the discretion to so order, but Judge Warren's interpretation of the scheduling order as leaving open the question whether plaintiff's procedural

objection would carry the day was not contrary to the face of the order, which simply did not decide the matter.¹

Consequently, I cannot conclude that Judge Warren erred in entertaining plaintiff's motion to strike. Further, I conclude that Judge Warren himself then had discretion to hear or not hear the motion, and that his decision not to hear the motion was not an abuse of discretion under the circumstances. While I agree that Judge Warren erred in faulting defendants for failing to file a motion to adjourn under 2.503(B), the court could appropriately require a motion under MCR 2.108(E).²

/s/ Helene N. White

¹ Judge Kuhn's scheduling order expressly noted that plaintiff had filed an objection to defendant's motion for partial summary disposition, and that "to the extent the objection is not intended to serve as the Response [to defendant's motion for partial summary disposition], the responding party's Response . . . is due no later than December 3, 2004 . . ." Thus, Judge Kuhn's scheduling order can be understood as contemplating the further consideration of plaintiff's objection to defendant's motion for partial summary disposition, as well as plaintiff's substantive response.

² MCR 2.108(E) provides:

(E) Extension of Time. A court may, with notice to the other parties who have appeared, extend the time for serving and filing a pleading or motion or the doing of another act, if the request is made before the expiration of the period originally prescribed. *After the expiration of the original period, the court may, on motion, permit a party to act if the failure to act was the result of excusable neglect.* However if a rule governing a particular limits the authority to extend the time, those limitations must be observed. . . . [emphasis added].