

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NUNO CASANOVA,

Plaintiff,

v.

MARATHON CORPORATION, *et al.*,

Defendants.

Civil Action No. 05-496 (JMF)

ORDER

This case was referred to me, upon consent of the parties, for all purposes including trial. On April 26, 2006, Aggregate and Dirt Solutions, LLC (“Aggregate and Dirt Solutions”) filed Third Party Defendant/Cross-Defendant Aggregate and Dirt Solutions, LLC’s Motion for Summary Judgment [#69]. On May 15, 2006, L&S Construction filed Third Party Plaintiff, L&S Construction’s Opposition to Third Party Defendant Aggregate and Dirt Solutions, LLC’s Motion for Summary Judgment [#71]. For the reasons discussed below, L&S Construction’s opposition was untimely.

Under Local Rule 7(h), a party opposing a motion has eleven days from the date of service to file its memorandum in opposition. LcvR 7(h). Under Rule 6 of the Federal Rules of Civil Procedure, “[w]hen the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.” Fed. R. Civ. P. 6(a). Further, “[w]henever a party has the right or is required to do some act . . . within a prescribed period after service of a notice or other paper upon the party and the notice of

paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.” Fed. R. Civ. P. 6(e). In this case, Aggregate and Dirt Solutions made service under Rule 5(b)(2)(D), which includes service through the Court’s electronic filing system. See Fed. R. Civ. P. 5(b)(2)(D). Applying these rules, any party opposing Aggregate and Dirt Solution’s motion for summary judgment had until May 10, 2005 to file its opposition. Therefore, L&S Construction’s opposition, which was filed on May 15, 2006, was untimely.

Under Rule 6, the Court may enlarge the time allowed for filing an opposition, with or without a motion, prior to the expiration of the deadline. Fed. R. Civ. P. 6(b)(1). However, once the deadline has expired, the deadline can only be extended upon motion and a showing of excusable neglect. Fed. R. Civ. P. 6(b)(2); Smith v. District of Columbia, 430 F.3d 450, 457 (D.C. Cir. 2005) (the district court abused its discretion by entertaining a late motion for summary judgment in the absence of any motion for an extension). L&S Construction neither moved the Court to enlarge the time for filing its opposition prior to the expiration of the May 10, 2006 deadline, nor moved for leave to file out of time. Accordingly, it is, hereby, **ORDERED** that L&S Construction’s opposition is stricken as untimely.

SO ORDERED.

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: