

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION**

SEXUAL MINORITIES UGANDA,	:	CIVIL ACTION
	:	
Plaintiff,	:	3:12-CV-30051-MAP
	:	
v.	:	JUDGE MICHAEL A. PONSOR
	:	
SCOTT LIVELY, individually and as	:	MAGISTRATE JUDGE
president of Abiding Truth Ministries,	:	KATHERINE A. ROBERTSON
	:	
Defendant.	:	

**DEFENDANT SCOTT LIVELY’S RESPONSE TO
PLAINTIFF SEXUAL MINORITIES UGANDA’S MOTION
FOR EXTENSION OF EXPERT AND OTHER LITIGATION DEADLINES**

In an ordinary case, SMUG’s Motion for Extension of Expert and Other Litigation Deadlines (dkt. 178) would be unremarkable and would most likely reach the Court as an agreed motion, because litigants are expected to – and most often do – cooperatively resolve scheduling issues to accommodate unforeseen litigation circumstances. Regrettably, this is no ordinary case. SMUG appears to operate under a different and one-sided set of rules, where it can seek yet another very substantive delay of this litigation to accommodate its own needs, but it is not willing to grant a much more modest courtesy to Lively. The Court should not countenance such tactics, and should afford the parties mutual relief that resolves both of their concerns.

Only two days after the parties discussed taking SMUG’s and Onziema’s depositions on June 26 and 30, it became apparent to Lively’s counsel that – despite Herculean and round-the-clock efforts – they could not complete their review of SMUG’s gigantic, belated and deficient 24,934-page document production prior to those depositions and the close of fact discovery, particularly since their attention and presence was now required at a flurry of other depositions

and motions arising in this very case. (*See* SMUG Opposition to Lively's Motion to Postpone SMUG's Deposition, dkt. 182, p. 3) (correctly stating that only two days passed between the June 10 scheduling of SMUG's deposition and the June 12 request by Lively to postpone same). SMUG's concurrent need to postpone all litigation deadlines subsequent to the close of fact discovery **by three months** should have provided the perfect opportunity for the parties to resolve their mutual concerns in a cooperative and amicable fashion, so as not to trouble the Court with needless and petty motion practice. This is precisely the solution that Lively proposed to SMUG: an agreed **three month** extension for SMUG to provide a replacement expert report, coupled with a more modest extension for Lively to take SMUG's deposition as soon as the pending and related document and discovery issues are resolved. (Dkt. 181-6, p. 4).¹ The additional three month break in the litigation schedule sought by SMUG should provide more than sufficient time for the parties to reschedule SMUG's deposition at a mutually convenient date.

But rather than seek an amicable and reasonable resolution of mutual scheduling concerns, SMUG took – and incredibly maintains with a straight face – the position that, in the intervening **two days** since the deposition schedule was last discussed by the parties, its representative became so irreversibly committed to that schedule that no rescheduling would ever be possible under any set of circumstances to accommodate Lively's concerns. (Dkt. 182, pp. 8-9). This, we are told, is the case even though SMUG admits that its representative was already in the United States long before the deposition was scheduled; would remain in the United States for at least thirty days after the scheduled deposition; and thus could not have made

¹ During the parties' pre-motion discussions, SMUG only requested an 8-week extension, and Lively suggested an agreed motion to resolve both SMUG's and Lively's scheduling concerns. (*Id.*) Now that SMUG wants three, not just two, extra months, its position with respect to Lively's request for more time is all the more unreasonable.

non-refundable international travel arrangements just to attend the deposition. (Onziema Decl., dkt. 184, ¶ 2).

Even more incredibly, SMUG takes the position that, within the entire three month delay that it seeks – that is, between July 15 and October 15, 2015 – its representative cannot find a single two-day period to be deposed individually and as SMUG’s representative. (Dkt. 182, pp. 8-9). Since SMUG’s representative took the time to provide a Declaration to that effect (dkt. 184), one would expect SMUG and its representative to provide **at least one** specific conflict that would make the rescheduling of SMUG’s deposition such an insurmountable task. But all that we are told, tellingly, is that SMUG’s representative has unspecified “previously scheduled commitments” during all of July 2015, all of August 2015, and impliedly all of September and half of October 2015 as well. (Dkt. 184, ¶¶ 5-6).

The Court should reject SMUG’s transparent tactic. Instead, the Court should provide SMUG with the three month extension that it needs to complete its expert report, while at the same time providing Lively with thirty to sixty days of additional time to meaningfully review SMUG’s massive document production and resolve other critical and related document issues before taking SMUG’s deposition. No prejudice will befall SMUG, and no additional delay will be necessary beyond what SMUG itself already seeks. Lively is hopeful that, with such guidance from the Court, the parties could easily come up with a mutually convenient two-day period in late July, August or September 2015 in which to conduct the SMUG/Onziema deposition.²

² SMUG now claims that if its deposition is postponed, Lively’s deposition must also be postponed. (Dkt. 182, p. 9). SMUG never made this request in communications with Lively’s counsel. Had it done so, Lively would have readily agreed to postpone his own deposition in order to come up with an agreed schedule that would obviate the need to trouble the Court. Be that as it may, the parties are scheduled to meet for the deposition of another party on the morning of Monday, June 22, 2015, and Lively will offer the postponement of his deposition as yet another means of compromise. If the parties do not notify the court that they have reached

If the Court denies Lively the additional time he needs to review SMUG's documents and resolve the related issues prior to SMUG's deposition, then the Court should make SMUG live by the same hard-line and inflexible litigation rules that SMUG seeks to foist upon Lively. In that event, the Court should give SMUG no more than a one-week or two-week extension to provide its expert report, so that the parties can proceed expeditiously to summary judgment.

Finally, with respect to any extension provided to SMUG for its expert report, the Court should make clear that the extension covers only one replacement expert report, on the same subject on which SMUG's deceased expert, Sheri Rosenberg, was working at the time of her death. SMUG has indicated that Ms. Rosenberg would have provided expert opinion on "the impact of widespread or systematic persecution."³ (Dkt. 181-6, p. 2). To the extent SMUG had employed other experts to provide reports and/or testimony on other topics, Ms. Rosenberg's unfortunate death would not have affected those experts, and SMUG should provide those reports on the original deadline. In other words, the untimely and regrettable death of SMUG's sole expert should not provide SMUG with an undeserved opportunity to find and retain new experts on other topics.

agreement on these issues by noon on June 22, the Court may understand that SMUG rejected Lively's offer (and that SMUG was likely never genuinely interested in postponing Lively's deposition, but merely raised it as yet another roadblock to the relief sought by Lively).

³ Lively does not concede that the identified subject matter is a proper area for expert testimony, but that is a matter for another day.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Court on June 22, 2015. Service will be effectuated by the Court's electronic notification system upon all counsel or parties of record.

/s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Defendant Scott Lively