

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**OGD EQUIPMENT CO. d/b/a OVERHEAD  
GARAGE DOOR, LLC,**

**Plaintiff,**

**v.**

**OVERHEAD DOOR CORPORATION and  
OVERHEAD DOOR COMPANY OF  
LUBBOCK, INC.,**

**Defendants.**

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§ **Civil Action No.: 4:17-cv-00898-ALM-KPJ**  
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**ORDER AND REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is Plaintiff OGD Equipment Co.’s (“OGD”) Request for Rule 56(d) Relief (the “Motion”) (Dkt. 123). In the Motion, Plaintiff requests that the Court defer consideration of Defendants Overhead Door Corporation and Overhead Door Company of Lubbock’s (together, “Defendants”) Motion for Partial Summary Judgment (Dkt. 104) until the pending discovery issues are resolved. *See* Dkt. 123 at 1.

On July 15, 2019, pursuant to Defendants’ request, the Court stayed all discovery relating solely to OGD’s antitrust claim pending the Court’s final ruling on Defendants’ Motions to Dismiss (Dkts. 51, 55). *See* Dkt. 79. On August 14, 2019, after the Court denied Defendants’ Motion to Dismiss (Dkt. 99), the Court lifted the stay of discovery. Dkt. 100. On August 15, 2019, Defendants filed a Motion for Partial Summary Judgment. Dkt. 104. On August 31, OGD filed this Motion and a Motion for Leave to File a Response to Defendants’ Partial Motion for Summary Judgment and Request for Rule 56(d) Relief (the “Motion for Leave”). *See* Dkt. 122. Defendants filed responses to both motions. *See* Dkts. 139, 140. On September 20, 2019, the Court conducted

the hearing (“Hearing”), wherein both motions and discovery disputes was discussed. *See* Dkt. 146. On September 24, 2019, the Court granted Plaintiff’s Motion for Leave, wherein the Court ordered the parties to exchange all requested and not objected to documents and emails by October 9, 2019. Dkt. 150. The Court further ordered the parties to take all depositions by October 25, 2019, and submit all responses to dispositive motions by November 6, 2019. *Id.*

Upon consideration of the pleadings and oral arguments at the Hearing, the Court finds that OGD’s Motion (Dkt. 123) should be **GRANTED**.

### **I. ANALYSIS**

Plaintiff argues the Court should defer consideration of Defendant’s Motion for Partial Summary Judgment (Dkt. 104) so that Plaintiff may be afforded an opportunity to conduct discovery under Federal Rule of Civil Procedure 56(d). When a party moves for summary judgment, the nonmoving party must look beyond the pleadings and designate specific facts in the record which present a genuine issue for trial. *See Stults v. Conoco, Inc.*, 76 F.3d 651, 655 (5th Cir. 1996). Pursuant to Rule 56(d), if the nonmovant shows that it cannot present facts essential to justify its opposition to the motion for summary judgment, a court may: (1) defer considering the motion or deny it; (2) allow time for the party to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order. *See D.B. by and Through Becton v. City of McKinney, Tex.*, 2017 WL 9285514, at \*7 (E.D. Tex. Sept. 8, 2017); FED. R. CIV. P. 56(d). Rule 56(d)<sup>1</sup> was designed to “safeguard non-moving parties from summary judgment motions that they cannot adequately oppose.” *Culwell v. City of Fort Worth*, 468 F.3d 868, 871 (5th Cir. 2006); *see also Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990).

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<sup>1</sup> Rule 56(d) was previously Rule 56(f).

It is undisputed that, until recently, the parties focused in large part on reaching a settlement; hence, discovery did not begin in earnest until June 2019. *See* Dkts. 123 at 2, 140 at 2. Subsequently, Defendants requested the Court issue a stay on discovery related to OGD's antitrust claims pending the Court's ruling on Defendants' Motions to Dismiss. *See* Dkt. 79. The Court granted the Defendants' request, but the Court cautioned that if discovery was stayed pending Defendants' Motions to Dismiss and the Court subsequently decided to deny those Motions, then discovery on OGD's antitrust claims would need to be accelerated. While the discovery stay was in place, OGD filed its Second Amended Complaint, which narrowed its antitrust claim. *See* Dkt. 81 at 25–34. Defendants then filed the pending Motion for Partial Summary Judgment (Dkt. 104), seeking summary judgment as to OGD's antitrust and unfair competition claims, one day after the discovery stay was lifted. *See* Dkts. 100, 104. OGD has indicated that it has not received the discovery it needs in order to properly respond to a no-evidence motion for summary judgment on its antitrust claims. *See* Dkt. 123 at 5. At the Hearing, OGD informed the court of multiple outstanding discovery requests, and additionally that no emails have yet been exchanged by any party. Because discovery was stayed as to the antitrust claims, and OGD has not had the benefit of full discovery on those claims, the Court finds that deferring to rule on Defendants' Motion for Partial Summary Judgment (Dkt. 104) until discovery is completed is appropriate. *See Zoch v. Daimler, A.G.*, 2018 WL 3603064 at \*2 (E.D. Tex. June 19, 2018).

For these reasons, the Court finds OGD's Motion (Dkt. 123) should be granted. Thus, the Court will defer deciding the pending Motion for Partial Summary Judgment (Dkt. 104) until discovery is concluded. Per the Court's Order on Plaintiff's Motion for Leave, any supplemental responses to the pending Motion for Partial Summary Judgment must be filed with the Court by November 6, 2019. *See* Dkt. 150.

## **II. CONCLUSION**

For the foregoing reasons, the Court recommends OGD's Motion (Dkt. 123) be **GRANTED.**

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

A party is entitled to a de novo review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

**So ORDERED and SIGNED this 7th day of October, 2019.**



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KIMBERLY C. PRIEST JOHNSON  
UNITED STATES MAGISTRATE JUDGE