UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
HOLCO CAPITAL GROUP, INC.	)	CASE NO. 10-30006 HCD
DEBTOR	)	CHAPTER 7
	)	
	)	
J. RICHARD RANSEL, TRUSTEE	)	
PLAINTIFF	)	
vs.	)	PROC. NO. 12-3023
	)	
LIBERTYVILLE BANK and TRUST CO.,	)	
WELLS FARGO BANK, N.A., HSL	)	
FINANCIAL, LLC, SL FINANCIAL of	)	
ILLINOIS, LLC.	)	
DEFENDANTS	)	

DECISION AND ORDER DENYING PLAINTIFF'S MOTION
FOR LEAVE TO FILE SURREPLY TO WELLS FARGO BANK, N.A.

At South Bend, Indiana, on July 6, 2015.

Before the court are the Plaintiff's Motion for Leave to File Surreply to Wells Fargo Bank, N.A. (ECF No. 132), and Wells Fargo Bank, N.A.'s Response in Opposition to Trustee's Motion for Leave to File Sur-Reply (ECF No. 133). This court has discretion whether to allow the filing of a surreply. *Pulliam v. Zimmer, Inc.*, 17 Fed. Appx. 456, 460 (7th Cir. 2001); *In re Dairy Farmers of America, Inc.*, 2015 WL 753946, *12 (N.D. Ill., Feb. 20, 2015). For the reasons set out below, the court denies the Plaintiff's Motion.

Defendants Libertyville and Wells Fargo each filed motions for summary judgment and supporting briefs on March 9, 2015. The Plaintiff filed his statements of genuine issues and briefs in opposition on April 7 and April 8. On May 7 and May 8 these Defendants filed their replies in support of summary judgment. The Plaintiff filed his Motion for Leave to File Surreply to Wells Fargo on June 17, 2015, some 40 days after the last reply. Defendant Wells Fargo has filed its opposition to this Motion.

Northern District of Indiana Local Bankruptcy Rule B-7056-1(b) permits a party opposing a summary judgment motion to file a surreply brief "only if the movant cites new evidence in the reply or objects to the admissibility of the evidence cited in the non-movant's response to the motion." This local rule further specifies that the surreply is "limited to the new evidence and objections." The surreply must be filed "within 7 days after the movant serves the reply." *Id.*

As of the date of this Order, the court notes this adversary proceeding to recover a fraudulent transfer has been pending for more than three years. The court docket reflects the parties have been actively prosecuting this adversary proceeding during this time. In his Motion, the Plaintiff suggests that Defendant Wells Fargo has raised new evidence, the supplemental affidavit of Kerry Stephens and a brokerage account statement, in its reply in support of summary judgment. Wells Fargo maintains that its reply only responded to the Plaintiff's assertions in his opposition to its motion for summary judgment. Wells Fargo states it previously made the brokerage account statement available to the Plaintiff.

The parties have not directed the attention of the court to any inadequacies in discovery or other pretrial activities. As the parties have noted in their submissions concerning the Motion before the court, "the point of a surreply is to allow a party to respond to an opponent's new facts and arguments—not to unearth facts and arguments never before raised." *Gonzalez-Vera v. Townley*, 2015 WL 1262278, *6 (D. D.C., March 19, 2015). The Plaintiff maintains the court should permit him to reply to the "new evidence" in the affidavit and account statement that is part of the Wells Fargo reply. He has not suggested any failure by Wells Fargo to comply with his discovery requests. Nor has he denied that he has previously received account records as Wells Fargo has asserted. The Plaintiff has not convinced the court that Wells Fargo has done anything other than provide a detailed response to his opposition to its motion for summary judgment. Plaintiff has not convinced the court the Wells Fargo response raises any new matter that requires additional response. *See, e.g.*, *Baptist Memorial Hospital v. Sebelius*, 765 F. Supp.2d 20, 31 (D. D.C. 2011) ("Leave to file is appropriate when the movant's surreply raises new arguments requiring some additional response."); *U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, Inc.*, 238 F. Supp.2d 270, 276 (D. D.C. 2002) ("A surreply may be filed ... only to address new matters raised in a reply, to which a party would otherwise be unable to respond."). The court denies the Plaintiff's Motion for Leave to File Surreply.

Also, the court notes that it has granted by separate order the Plaintiff's request for oral argument on the Defendant's summary judgment

motions. This hearing will let both sides educate the court about the financial transactions at the center of this adversary proceeding. The Plaintiff will have the opportunity to elucidate any inadequacies in the affidavit and account statement at that hearing.

The court further notes Local Rule B-7007-1 governs motion practice in this district. This local rule specifies time periods for filing responses and replies to motions. See B-7007-1(a). As relevant here, this rule states "The failure to respond or reply within the time required will be deemed a waiver of the opportunity to do so and may subject the motion to a ruling without further submissions." Under Local Rule B-7056-1(b), the Plaintiff's Motion is not timely because he filed it more than seven days after the Wells Fargo reply. The Plaintiff has not offered good cause, suggested excusable neglect, unique circumstances, or any reason for that matter, addressing his lack of diligence in filing this untimely motion. He simply asserts the affidavit and account statement is "a new argument supported by new evidence." The Plaintiff has not convinced the court that the interests of justice require an additional submission. The court denies the Plaintiff's Motion for Leave to File Surreply to Wells Fargo, N.A. as untimely.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT