

FILED

IN THE CHANCERY COURT, STATE OF WYOMING

2025 WYCH 16

Wenwen Yu, Min Li, DADA BUSINESS
TRADING Co., Limited, Xiangrong Dai,
Yan Qin Chen, FUTURE SCIENCE AND
TECHNOLOGY Co. Ltd, and Zheng Dai,

Plaintiffs,

v.

NEXT TECHNOLOGY HOLDING, INC.
f/k/a WETRADE GROUP, INC.,

Defendant.

Docket No. CH-2025-0000016

**ORDER DENYING RULE 12(b)(6) MOTION AS UNTIMELY UNDER CMSO,
SETTING RESPONSIVE PLEADING DEADLINE, AND
ALLOWING CONVERSION TO A RULE 12(c) MOTION**

[¶1] This order addresses a scheduling conflict inherent in the rapid cadence of chancery court’s procedural rules. Under Rule 16(b)(2), the court normally issues a scheduling order 14 days after any defendant appears. At that early stage, though, it may not be known whether that defendant—or, for that matter, another party appearing later—will counter with new claims or bring in new parties in their responsive pleading. The scheduling order must nevertheless limit the time to join parties, amend pleadings, and file motions. W.R.C.P.Ch.C. 16(b)(3)(A). With chancery’s statutory mandate to resolve matters expeditiously, cases move quickly; and without care, parties may unknowingly stipulate away “the proper method for testing the legal sufficiency” of counterclaims. *See Stevens v. Governing Body of Town of Saratoga*, 2025 WY 35, ¶ 31, 566 P.3d 166, 175 (Wyo. 2025). Absent a request to accept an untimely motion, the court must hold parties to scheduling deadlines (even those agreed upon before the full scope of the case is known).

[¶2] Despite that, the unusual circumstances presented here—in particular, the grounds raised in counterclaim defendants’ motion to dismiss—allow the court to hold counterclaim defendants to a court-ordered initial-motions deadline and to still eventually reach the merits of their tardy filing. This resolution honors the purpose of the rules. *See* W.R.C.P.Ch.C. 1 (the court must construe, administer, and employ its rules of civil procedure “to secure the just, effective, and expeditious resolution of every action”). The motion will now be denied as untimely and later, at counterclaim defendants’ option, may be converted to a motion for judgment on the pleadings.

BACKGROUND

[¶3] Counterclaim defendants (also plaintiffs here) moved on November 10, 2025 to dismiss counterclaim plaintiff (also defendant) Next Tech’s seven counterclaims. (FSX No. 77747366).

[¶4] Next Tech’s response to that motion noted that it was untimely under the Case Management and Scheduling Order (CMSO) (FSX No. 77492790), which set November 5 as the deadline for initial motions, amendments, and joinder. (FSX No. 77893262).

[¶5] In reply, counterclaim defendants point out that Rule 12(a)(1)(B) generally allows 20 days to file a response pleading following service of a counterclaim—a deadline of November 10 here. (FSX No. 78017202). They argue that it “would be nonsensical to interpret the Court’s Order as conflicting with that timeline” or to put them “at a disadvantage by unfairly reducing the time permitted to respond” to the counterclaims served on October 22. *Id.* pg. 3. According to Rule 12(a), the 20-day window controls “[u]nless another time is specified by this rule or a state statute[.]” At the same time, Rule 6 makes *all timelines* “subject to adjustment and reduction by the chancery court judge.”

[¶6] Because the initial-motions deadline is disputed, the court reviews in part the procedural history that led to its adoption. The parties, and the claims raised by plaintiffs, are described in the court’s earlier *Order Denying Motion to Dismiss for Forum Non Conveniens*, 2025 WYCH 12. Following that order, the court convened a scheduling and case management conference for October 29 and directed the parties to file a Joint Proposed Case Management and Scheduling Order by October 24. (FSX No. 77276052). The parties could not agree upon all dates for that proposed order, primarily due to the international discovery described in 2025 WYCH 12. Both sides consequently submitted their own version of the proposed order on October 24. (FSX Nos. 77441510 and 77441766). Both versions proposed a deadline of November 5 for initial motions, pleading amendment, and joinder. The court adopted that date for all three deadlines in its CMSO issued on October 30. (FSX No. 77492790).

[¶7] Counterclaim defendants’ proposed case management order of October 22 stated that at that time, plaintiff did “not plan to file any initial motions” but “expressly reserve[d] the right to do so” if the need arose. Then, at the conclusion of the scheduling hearing held October 29, counsel for counterclaim defendants, when asked if there were any concerns about the dates and deadlines proposed—including the initial motion deadline of November 5 at issue here—noted the possibility of a motion to dismiss the counterclaims but did not seek to alter or object to the initial motions deadline.

[¶8] With this context in mind, the court turns to the rules that govern the timeliness of the motion to dismiss the counterclaims.

DISCUSSION

[¶9] Counterclaim defendants rely on Rule 12(a)(1)(B)’s 20-day answer period. That argument, however, concerns the time to file a responsive pleading. At issue here is whether the motion to dismiss was timely filed, and a motion to dismiss is not a responsive pleading. *AishangYou Limited v. WeTrade Group, Inc.*, 2024 WYCH 4, ¶ 6 (Wyo. Ch. C. 2024). Under Rule 12(b), a motion’s deadline is “before pleading if a responsive pleading is allowed.”

[¶10] The court does not interpret this language to prevent agreeing to a motion-to-dismiss deadline that falls earlier than the responsive-pleading deadline of 20 days. *See, e.g., Norwich Pharmacal Co. v. Rakway, Inc.*, 189 F. Supp. 348, 349 (E.D. Pa. 1960) (noting that “stipulations voluntarily entered into by counsel for the parties with the approval of the Court” varying Rule 12 deadlines “must be given full force and effect”). Here, the parties agreed upon an initial-motions deadline of November 5, and the court adopted that deadline.

[¶11] Further complicating matters, Rule 12(a)(2) alters the general 20-day window for answering counterclaims if a motion to dismiss is filed before that answer is due. That subsection moves the deadline back by 14 days if the court denies or postpones a ruling on a motion to dismiss. Here, the parties’ proposed orders and the issued CMSO do not address—and therefore do not affect the operation of—Rule 12(a)(2).

[¶12] The CMSO nonetheless requires denial of the motion to dismiss, stating that “all dates set forth in this order are firm and may be modified only by this court’s order upon extraordinary cause shown.” And by rule, the court may modify a scheduling order only upon a showing of good cause. W.R.C.P.Ch.C. 16(b) and 6(b)(1). On top of that, because counterclaim defendants did not seek an extension before the November 5 deadline for initial motions, they must under Rule 6(b)(1)(B) show by motion that the “failure to act was the result of excusable neglect” before the court may accept the late-filed motion. *See Chagnon v. Nelson*, 2025 WYCH 3, ¶ 4 (Wyo. Ch. C. 2025). In the context of Rule 6, excusable neglect is “behavior which might be the act of a reasonably prudent person under the circumstances” and requires a showing of rather extreme circumstances like death or illness. *Weber v. McCoy*, 950 P.2d 548, 553 (Wyo. 1997); *Harris v. Grizzle*, 625 P.2d 747, 750 (Wyo. 1981). Counterclaim defendants have not moved under Rule 6(b)(1)(B) or attempted to show good cause, extraordinary cause, or excusable neglect in their reply. Their motion must be denied as untimely.

[¶13] An untimely 12(b)(6) motion is “not necessarily fatal” to its merits, however. Under Rule 12(h)(2), a party retains the ability to challenge whether a claimant has stated a claim upon which relief can be granted in a 12(c) motion or even at trial. *Stevens v. Showalter*, 458 B.R. 852, 856 (D. Md. 2011). As a result, “many courts have concluded that a court may construe an untimely Rule 12(b)(6) motion as a Rule 12(c) motion for judgment on the pleadings.” *Id.*

CONCLUSION

[¶14] The court concludes that the motion to dismiss was untimely for purposes of the CMSO but was timely for purposes of extending the responsive-pleading deadline under Rule 12(a)(2). On account of the unusual posture of the case and the nature of the arguments raised, the court is willing to entertain the substance of the motion at an appropriate time as a motion for judgment on the pleadings. Doing so without further briefing honors this court’s statutory directive to be an expeditious forum of “limited motions practice.” Wyo. Stat. § 5-13-115(a).

[¶15] Therefore:

- a. Counterclaim defendants’ motion to dismiss is denied as untimely.
- b. Counterclaim defendants have 14 days from the date of this order to file a responsive pleading.
- c. With that filing, counterclaim defendants may request that the court convert their untimely Rule 12(b)(6) motion to dismiss into a timely Rule 12(c) motion for judgment on the pleadings. If so requested, the court will adjudicate the motion without further briefing.

SO ORDERED.

Dated: December 31, 2025

/s/ Benjamin M. Burningham
CHANCERY COURT JUDGE