

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AIDA TORRES and EDWIN TORRES,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	No. 09-cv-0178
	:	
CONTROL BUILDING SERVICES,	:	
RITA'S WATER ICE FRANCHISE	:	
COMPANY, RITA'S WATER ICE, and	:	
LINCOLN PLAZA ASSOCIATES,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

Joyner, J.

September 11, 2009

This dispute has been brought before the Court on motion of Defendants Control Building Services and Lincoln Plaza Associates for leave to file a third-party complaint pursuant to Fed. R. Civ. P. 14(a). For the reasons articulated below, Defendants' Motion for Leave To File Third-Party Complaint (Doc. No. 16) shall be GRANTED.

Background

Plaintiffs, who are husband and wife, have filed suit to recover for injuries associated with Mrs. Torres's fall at the Oxford Valley Mall on February 24, 2007. Plaintiffs allege that there was a defective condition on the floor of the mall, and that Defendants were negligent in creating and failing to adequately repair or warn of an unsafe environment. Mrs. Torres

seeks compensation for her medical bills, physical disfigurement, and lost earning capacity, as well as damages for pain, mental suffering, and humiliation. Mr. Torres seeks damages for loss of consortium.

Defendant Lincoln Plaza Associates owns the Oxford Valley Mall, and employs Defendant Control Building Services ("CBS") as a janitorial service for all common areas of the mall. Plaintiffs allege that Defendant Rita's Water Ice Franchise Company is the party who owned and operated Defendant Rita's Water Ice kiosk in the Oxford Valley Mall at the time of the accident. Plaintiffs claim that the defective floor condition was caused by Defendant Rita's Water Ice when melted ice cream was left pooled on the floor, thereby making the floor slippery and dangerous.

Defendants Lincoln Plaza Associates and CBS have brought the present motion for leave to file a third-party complaint against Rita's Water Ice Real Estate Company. CBS and Lincoln Plaza allege that after November 1, 2006, Rita's Water Ice Real Estate Company is the corporate entity that was a party to the lease with Lincoln Plaza. Under this lease, Lincoln Plaza and CBS claim that Rita's Water Ice Real Estate Company is required to indemnify Lincoln Plaza and its agents, including CBS, for any personal injury arising from Rita's Water Ice Real Estate Company's tenancy in the Oxford Valley Mall.

Standard

A defendant can file a third-party complaint against "a nonparty who is or may be liable to it for all or part of the claim against it." Fed. R. Civ. P. 14(a)(1). A defendant, therefore, can only bring a third-party complaint if it is seeking contribution or indemnification. Craigie v. Gen. Motors Corp., 740 F. Supp. 353, 359 (E.D. Pa. 1990).

If a defendant files a third-party complaint more than ten days after serving its original answer, it must seek leave from the court to file. Fed. R. Civ. P. 14(a)(1). Pursuant to Local Rule of Civil Procedure 14.1(a), motions for leave to file a third-party complaint will ordinarily be denied as untimely if they are filed more than ninety days after the defendant served its original answer. This time limit, however, is not "cast in stone," and is generally seen as a "guideline for use by the court in its exercise of discretion." Christian v. United States, 1999 WL 1018252, at *2 (E.D. Pa. Nov. 8, 1999). When outside the ninety-day period established by Local Rule 14.1(a), the court should consider whether the failure to comply with this timeline prejudiced the plaintiff in any way, whether the third-party complaint will complicate the issues at trial, and whether there is a probability of delay from allowing the third-party complaint. Aldefer v. High Country Archery, Inc., 2009 WL 440295, at *1 (E.D. Pa. Feb. 20, 2009). In addition to these

factors, other courts have considered whether the delay will cause any harm to the proposed third-party defendant, and whether the third-party plaintiff has any excuse for its delay in filing. Christian, 1999 WL 1018252, at *2. Importantly, the party seeking to implead bears the burden of showing that the delay was justified. See Zielinski v. Zappala, 470 F. Supp. 351, 353 (E.D. Pa. 1979).

Discussion

As an initial matter, both Lincoln Plaza and CBS are seeking indemnification from Rita's Water Ice Real Estate Company, and, therefore, the request to bring a third-party complaint is proper. Because CBS and Lincoln Plaza filed their request to add a third-party defendant more than ten days after serving their Answer to the Complaint, this Court must determine whether leave should be granted to file the third-party complaint. Defendants served their Answer to the Complaint on April 21, 2009. The Motion for Leave To File a Third-Party Complaint was filed with this Court on August 17, 2009, 118 days after the Answer was served. This places the motion outside the ninety-day period set by Local Rule of Civil Procedure 14.1(a), and the Court must consider whether CBS and Lincoln Plaza have met their burden of establishing that it would be proper to add a third-party defendant at this stage.

Looking first at the possible prejudice to Plaintiffs, it

does not appear that any exists. Plaintiffs did not object to the filing of the third-party complaint, and CBS and Lincoln Plaza assert that Plaintiffs intended to bring suit against the party that owned the kiosk in the Oxford Valley Mall, but did not name the proper party. Plaintiffs are already litigating against two Rita's Water Ice entities, and it seems unlikely that it would prejudice Plaintiffs to add the specific entity that actually leased the kiosk in the Oxford Valley Mall.

Second, it does not appear that adding Rita's Water Ice Real Estate Company would complicate the issues at trial. CBS and Lincoln Plaza plan to assert that Rita's Water Ice Real Estate Company owed certain duties under its lease with Lincoln Plaza. While this will require the jury to consider whether Rita's Water Ice Real Estate Company was a party to the lease and whether the lease covers the incident in the present case, neither of these are particularly complicated or time-consuming issues, and the latter question will be intricately connected with the jury's findings of fact in the present case. Although allowing the third-party complaint will add minor considerations, it will not complicate any of the already-existing issues, and should not require extensive time at trial.

Third, allowing the third-party complaint will not cause any appreciable delay. The discovery deadline is not until the end of October, and CBS and Lincoln Plaza allege that the addition of

Rita's Water Ice Real Estate Company will not complicate discovery as several Rita's entities are already involved in the case. Rita's Water Ice Real Estate Company asserts in its response that the case will inevitably be delayed, but does not provide any reason to believe that this is true. This case does not have a trial date, and is not even set to enter the trial pool until January of 2010. Should discovery need to be extended slightly in order to accommodate the addition of a third-party defendant, this would not cause significant delay of the final resolution of this matter.

Fourth, it is unlikely that the third-party defendant will be prejudiced by this delay. CBS and Lincoln Plaza filed their motion twenty-eight days after the conclusion of the ninety-day window provided by Local Rule 14.1(a). Although this is not a short period of time, Rita's Water Ice Real Estate Company has not alleged any specific harm that would come from this delay. Further, given the connection between Rita's Water Ice Real Estate Company and the other Rita's entities that are already parties in this case, it is likely that to the extent that different portions of Rita's corporate structure are involved, the proposed third-party defendant is at least aware of the pending action.

Finally, although CBS and Lincoln Plaza have not fully explained their reasons for the delay in filing the present

motion, given the complex nature of the instant action and the number of parties already involved, it is understandable that it took CBS and Lincoln Plaza longer than usual to determine against whom this third-party complaint should be filed. From the beginning, Plaintiffs' complaint was brought against two Rita's entities. CBS and Lincoln Plaza cannot be expected to have full knowledge of Rita's complicated corporate structure, and it is reasonable for it to take a period of time for Lincoln Plaza and CBS to determine which specific Rita's entity was liable to them for indemnity.

Given that all of the above factors point in favor of allowing CBS and Lincoln Plaza to file a third-party complaint, this Court finds it proper to use its discretion to overlook the guideline established in Local Rule 14.1(a) and allow the third-party complaint to proceed.

Conclusion

Defendants Lincoln Plaza and CBS's Motion for Leave To File a Third-Party Complaint is GRANTED for the reasons set forth above. An appropriate order follows.

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RITA'S WATER ICE FRANCHISE	:	
COMPANY, RITA'S WATER ICE, and	:	
LINCOLN PLAZA ASSOCIATES,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 11th day of September, 2009, upon consideration of Defendants Lincoln Plaza Associates and Control Building Services' Motion for Leave To File Third-Party Complaint (Doc. No. 16) and response thereto, for the reasons set forth in the attached Memorandum, it is hereby ORDERED that the Motion is GRANTED.

BY THE COURT:

s/J. Curtis Joyner

J. CURTIS JOYNER, J.