

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

MAGDALEN BRADEN, et al. : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 98-CV-2718

MEMORANDUM AND ORDER

J. M. KELLY, J.

APRIL 12, 1999

Presently before the Court is Plaintiffs' Motion for Leave to Amend the Complaint. Plaintiffs would like to amend the complaint to substitute Walter Hall for Defendant John Doe, and Defendants do not object to this request. Plaintiffs' request with respect to Mr. Hall therefore is granted. Plaintiffs also seek to name additional defendants even though the period for factual discovery is closed and this case likely will be placed in the trial pool within six weeks. For the reasons that follow, Plaintiffs' request to amend the complaint to add Donna G. Marshall, Esquire, and Cureley Cole, Esquire, as defendants is denied.

Plaintiffs recently uncovered the City of Philadelphia's practice of having the chief of the Department of Licenses and Inspections Enforcement Unit, Defendant James Gavarone, fill out blank verifications that eventually were attached to complaints in equity seeking civil search warrants. Ms. Marshall, an Assistant City Solicitor, knew of this practice and believed it was in effect at the time the City obtained a civil search warrant to search Plaintiffs' homes. (Marshall Dep. at 14-16.) Plaintiffs state they wish to add Ms. Marshall as a defendant for filing a falsely verified complaint with the Court of Common Pleas. Plaintiffs argue Ms. Cole, a Deputy City Solicitor who supervises Ms. Marshall, also should be added as a defendant for filing the complaint and suggesting to the Court of Common Pleas that inspections, as opposed to searches,

are not protected by the Fourth Amendment.

The rules of civil procedure reflect a strong preference for permitting amendments. District courts should grant leave to amend freely when justice so requires. Fed. R. Civ. P. 15(a). Courts, however, are not required to grant leave to amend automatically; denial of leave to amend is justified when the amendment is proposed too late, in bad faith, with a dilatory motive; would be futile; or would cause prejudice. In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997). With respect to prejudice, a mere claim is insufficient. The non-moving party “must show it was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the . . . amendments been timely.” Bechtel v. Robinson, 886 F.2d 644, 652 (3d Cir. 1989).

The Court will exercise its broad discretion in allowing amendments, Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330 (1971), and deny Plaintiffs’ request. Ms. Marshall and Cole would be unfairly disadvantaged if added as defendants at this point in the litigation. Factual discovery is over, and this case is on the verge of trial. Contra Bechtel, 886 F.2d at 652. Plaintiffs argue that there is no prejudice because the other Defendants’ counsel likely would represent them, too; factual discovery could take place informally; and because the parties have agreed to conduct expert discovery until April 30, Ms. Marshall and Cole could participate in that portion of discovery. The Court does not find these arguments to be availing, and concludes permitting Plaintiffs leave to amend the complaint would visit substantial prejudice on Ms. Marshall and Cole. Plaintiffs’ request therefore is denied.

An Order follows.

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

MAGDALEN BRADEN, et al. : CIVIL ACTION
:
v. :
:
:
CITY OF PHILADELPHIA, et al. : NO. 98-CV-2718

ORDER

AND NOW, this 12th day of April, 1999, upon consideration of Plaintiffs' Motion for Leave to Amend (Document No. 29), Defendants' response thereto, and Plaintiffs' reply, it is hereby **ORDERED**:

1. Plaintiffs' motion is **GRANTED** with respect to the substitution of Walter Hall for Defendant John Doe; and
2. Plaintiffs' motion is **DENIED** regarding Plaintiffs' proposed addition of Ms. Donna Marshall and Ms. Cureley Cole as defendants.

BY THE COURT:

JAMES MCGIRR KELLY, J.