

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

SYLVANIA GARDENS APARTMENTS and RJS : CIVIL ACTION
SHERWOOD ASSOCIATES :
 :
v. :
 :
HARTFORD FIRE INSURANCE COMPANY and :
INSURANCE COMPANY OF THE STATE OF :
PENNSYLVANIA : NO. 98-5870

MEMORANDUM AND ORDER

HUTTON, J.

April 19, 1999

Presently before the Court are the Defendant Hartford Fire Insurance Company's Motion to Dismiss Plaintiffs' Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Docket No. 8), Plaintiffs Sylvania Gardens Apartments and RJS Sherwood Associates' reply (Docket No. 11), and Defendant's sur reply (Docket No. 14). Also before the Court are Plaintiffs' Motion for Leave to File Amended Complaint (Docket No. 9) and Defendants' reply thereto (Docket No. 13). For the reasons stated below, the Plaintiff's Motion for Leave to File Amended Complaint is **GRANTED** and Defendants' Motion to Dismiss is **DENIED AS MOOT**.

I. BACKGROUND

This case is a good example of poor pleading by Plaintiffs' counsel. On December 19, 1996, Plaintiffs experienced a fire loss at their property located at 4417 South 48th Street, Philadelphia, Pennsylvania. As a result, Plaintiffs submitted a

claim under their primary policy of insurance issued by Defendant Insurance Company of the State of Pennsylvania ("Insurance Company"). The Insurance Company allegedly paid the Plaintiffs \$500,000, the maximum under the policy.

Thereafter, Plaintiffs submitted a claim with Defendant Hartford Fire Insurance Company ("Hartford"). The Hartford policy was effective from June 1, 1996 to June 1, 1997. In response to the Plaintiffs' claim, Hartford paid \$3,195,711.34 as a result of fire loss.

On November 5, 1998, the Plaintiffs filed a complaint. The first complaint named Hartford Fire Insurance Company as a defendant and had two counts. The first count alleged that Hartford failed to honor its obligations under insurance policy. The second count alleged that Hartford denied coverage under this policy in bad faith.

On January 15, 1999, Hartford filed a motion to dismiss. In this motion to dismiss, Hartford argued that they did not issue the insurance policy that Plaintiff mentions in their complaint. This Court granted Hartford's motion to dismiss as unopposed and dismissed Hartford as a defendant from the first complaint.

Subsequently, on January 29, 1999, the Plaintiff filed an amended complaint. This amended complaint named the Insurance Company of the State of Pennsylvania as the defendant. While the amended complaint no longer listed Hartford as a defendant in the

caption, the amended complaint still alleged that Defendant Hartford breached the terms of their insurance policy and did so in bad faith. On February 10, 1999, Hartford filed another motion to dismiss. In this motion, Hartford sought to be dismissed from the amended complaint because they were not named in the caption.

Before the Court ruled on this second motion to dismiss,, the Plaintiff attempted to file a second amended complaint on February 11, 1999. The second amended complaint named both the Insurance Company of Pennsylvania and Hartford as defendants in the caption. The Clerk's Office, however, refused to docket the second amended complaint because the Plaintiffs did not seek leave of court. This Court granted the Plaintiff leave to file the second amended complaint and denied Hartford's second motion to dismiss as moot.

On February 25, 1999, Defendant Hartford filed a third motion to dismiss. The Plaintiffs responded by filing a motion for leave to file a third amended complaint. The Court considers both motions.

II. DISCUSSION

A. Motion to Amend

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Because the Plaintiff seeks to amend their complaint long

after the Defendant served their responsive pleading, the Plaintiff "may amend [their complaint] only by leave of court." Fed. R. Civ. P. 15(a). Rule 15(a) clearly states that, "leave shall be freely given when justice so requires." Id. "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted); see also Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993). The Third Circuit has found that "prejudice to the non-moving party is the touchstone for denial of an amendment." Id. at 1414.

The Plaintiffs contend that, if the Court grants their motion for leave to file a third amended complaint, the Defendant's motion to dismiss is rendered moot. Given the number of amended complaints already filed by the Plaintiffs and the corresponding motions to dismiss by the Defendant, the Defendant strenuously object to granting Plaintiffs leave to file a third amended complaint. Thus, the Defendant urges the Court to rule on their motion to dismiss.

Despite the Defendant's objections, the Court grants the Plaintiffs leave to file an amended complaint. The Defendant cannot demonstrate that it will suffer any prejudice as a result of a third amended complaint. See Lorenz, 1 F.3d at 1414 (finding that "prejudice to the non-moving party is the touchstone for

denial of an amendment"). While the Court understands the Defendant's frustration with Plaintiffs' numerous poor pleadings, it cannot deny leave to file an amended complaint on this ground under the liberal standards of the Federal Rules of Civil Procedure on this matter. Furthermore, while the Defendant argues that the filing of a Third Amended Complaint would be futile, it fails to go beyond general conclusions. Accordingly, the Plaintiffs' motion for leave to file a third amended complaint is granted.

B. Motion to Dismiss

Because the Court grants the motion for leave to file a third amended complaint, the Defendant's motion to dismiss is moot. Therefore, the Court denies the Defendant's motion.

An appropriate Order follows.

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O R D E R

AND NOW, this 19th day of April, 1999, upon consideration of the Defendant Hartford Fire Insurance Company's Motion to Dismiss and Plaintiff's Motion for Leave to File Amended Complaint, IT IS HEREBY ORDERED that:

(1) Plaintiff's Motion for Leave to File Amended Complaint is **GRANTED**;

(2) Plaintiff has twenty (20) days from the date of this Order to file a Third Amended Complaint; and

(3) Defendant's Motion to Dismiss is **DENIED AS MOOT**.

BY THE COURT:

HERBERT J. HUTTON, J.