

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

JAMES GEORGE DOURIS : CIVIL ACTION
v. :
MARIE COSTELLO & COUNTY OF BUCKS : NO. 99-3357

MEMORANDUM AND ORDER

HUTTON, J.

July 13, 2000

Presently before this Court are Defendants Bucks County and Marie Costello's ("Costello") (collectively, the "Defendants") Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(c) (Docket No. 12), Defendants' Motion for Protective Order (Docket No. 13), Defendants' Motion to Compel a Medical Examination of Plaintiff and a Vocational Examination of Plaintiff (Docket No. 14), and Plaintiff James George Douris's ("Douris" or "Plaintiff") omnibus Reply to Defendants' motions (Docket No. 15). For the reasons stated below, each motion to Dismiss is denied with leave to renew.

I. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 12(c), Defendants seek dismissal of Counts I , II , II, V and VI of Douris's Complaint. Douris, however, seeks leave of the Court to amend his Complaint. The Court first considers Douris's request for leave to amend.

Douris requests that he be allowed to amend his Complaint to plead a claim under 42 U.S.C. § 1983. Federal Rule of Civil Procedure 15(a) provides as follows:

Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may also amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended complaint within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

Fed. R. Civ. P. 15(a). Motions to amend under Rule 15(a) may be filed to cure a defective pleading, to correct insufficiently stated claims, to amplify a previously alleged claim, to change the nature or theory of the case, to state additional claims, to increase the amount of damages sought, to elect different remedies, or to add, substitute or drop parties to the action. L. Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, Federal Practice and Procedure: Civil 2d § 1474 (1990). See Goodman v. Mead Johnson & Co., 534 F.2d 566, 569 (3d Cir. 1976) (district court improperly denied amendment to add claims and substitute parties), cert. denied, 429 U.S. 1038, 97 S. Ct. 732 (1977). It must be noted that in considering such a motion, Rule 15(a) expressly demands that "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a).

The Third Circuit stated, however, that the "potential for undue prejudice [to the non-moving party] is 'the touchstone for the denial of the leave to amend.'" Coventry v. United States Steel Corp., 856 F.2d 514, 519 (3d Cir. 1988) (quoting Cornell & Co., Inc. v. Occupational Safety & Health Review Comm'n, 573 F.2d 820, 823 (3d Cir. 1978)); Howze v. Jones & Laughlin Steel Corp., 750 F.2d 1208, 1212 (3d Cir. 1984) (same). This is not to say, however, that courts infrequently grant such motions.

Leave to amend may be properly denied where there exists "undue delay, bad faith or dilatory motive on part of the movant . . . undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment" Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). The Foman Court warned, however, that is it an abuse of discretion if the district court refuses to grant leave to amend without providing a reason for its decision. Id., 83 S. Ct. at 230.

Douris's request is not in the form of a motion but rather is set forth in his omnibus response to Defendants' motions. As Defendants filed an Answer to Douris's Complaint, Douris may only amend his pleadings with leave of Court or the consent of the Defendants. Defendants do not object on the record to Douris's request.

Two factors weigh in favor of granting Douris's request: (1) Douris can "cure [any] defective pleading[s], . . . correct

insufficiently stated claims, . . . amplify a previously alleged claim," etc; and (2) this case has not proceeded so far that Defendants will be unduly prejudiced. The Court therefore will grant Douris's request; he has leave to amend all of his claims. Accordingly, Defendants' Motion to Dismiss is denied with leave to renew.¹

Defendants also have pending before the Court two discovery motions: (1) a Motion for a Protective Order; and (2) a Motion to Compel Medical Examination of Plaintiff and Vocational Examination of Plaintiff. Said motions are denied with leave to renew as they are premature given this suit's current procedural posture.

An appropriate Order follows.

¹ The Court notes it will be more expeditious for it to consider a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) after Plaintiff has had the opportunity to amend some or all of his pleadings. The Plaintiff, should he chooses to amend, must carefully and deliberately draft his claims such that all parties are on notice of both the relief desired and the authority under which such relief is sought.

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O R D E R

AND NOW, this day of July, 2000, upon consideration of Defendants Bucks County and Marie Costello's ("Costello") (collectively, the "Defendants") Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(c) (Docket No. 12), Defendants' Motion for Protective Order (Docket No. 13), Defendants' Motion to Compel a Medical Examination of Plaintiff and a Vocational Examination of Plaintiff (Docket No. 14), and Plaintiff James George Douris's ("Douris") omnibus Reply to Defendants' motions (Docket No. 15), IT IS HEREBY ORDERED that:

(1) Defendants Bucks County and Marie Costello's ("Costello") (collectively, the "Defendants") Motion to Dismiss Plaintiff's Complaint Pursuant to F.R.C.P. 12(c) (Docket No. 12) is **DENIED with leave to renew**; and

(2) Defendants' Motion for Protective Order (Docket No. 13) is **DENIED with leave to renew**; and

(3) Defendants' Motion to Compel a Medical Examination of Plaintiff and a Vocational Examination of Plaintiff (Docket No. 14) is **DENIED with leave to renew**.

IT IS HEREBY FURTHER ORDERED that Plaintiff **SHALL** have twenty (20) days from the date of entry of this Order to amend his Complaint.

BY THE COURT:

HERBERT J. HUTTON, J.