

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

DISABLED IN ACTION OF	:	
PENNSYLVANIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY	:	
and	:	
THE CITY OF PHILADELPHIA,	:	
	:	
Defendants	:	03-CV-1577

Gene E.K. Pratter

MEMORANDUM AND ORDER

February 15, 2005

Disabled in Action (“DIA”) has moved for leave to file a Fourth Amended Complaint in this case. Defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”) opposes the motion. Oral argument on the motion was held on February 11, 2005. For the reasons that follow, the motion will be granted.

Factual Background

In the present case, DIA seeks to amend its complaint in this matter for the fourth time. As is obvious from the title of the proposed amended complaint, DIA has a history of amending its complaint in this matter. DIA filed its First Amended Complaint on June 12, 2003, for the purpose of adding the City of Philadelphia as a party as SEPTA had demanded in a preliminary motion.¹ DIA filed its Second Amended Complaint on October 10, 2003, for the purpose of including an

¹ SEPTA filed an answer to the First Amended Complaint on August 1, 2003.

exhibit that DIA allegedly believed would assist the parties in reaching an amicable resolution.²

DIA moved a third time to amend its complaint on December 15, 2003, for the purpose of adding its claim that the City Hall transit station is a “key station” for purposes of its treatment under the Americans with Disabilities Act.

After DIA filed its Third Amended Complaint on January 7, 2004, SEPTA moved to dismiss and strike portions of the Third Amended Complaint. In that motion, SEPTA noted that DIA had agreed, by written stipulation, not to pursue allegations that SEPTA agreed to construct elevators at City Hall in lieu of not constructing elevators at the Suburban Station transit station, and sought to have these portions of the Third Amended Complaint stricken. SEPTA also argued that all allegations relating to treating City Hall as a key station should be dismissed.

On December 23, 2004, this Court entered an order granting SEPTA’s motion in part and denying it in part. The Court granted SEPTA’s motion to strike the portions of the Third Amended Complaint that were contrary to the parties’ stipulation, and directed DIA to “excise these allegations in accord with the parties’ stipulated agreement in this regard and to file a fourth amended complaint on or before January 18, 2005.” DIA did not file a fourth amended complaint, but rather moved on January 14, 2005 for leave to file a fourth amended complaint that removed the provisions contrary to the stipulation but that also included some new allegations.

In its motion to file a Fourth Amended Complaint, DIA states that as a result of recent discovery, counsel for DIA learned that SEPTA had modified the southeast entrance of the Broad Street subway line and has plans to alter the northwest entrance to the Broad Street subway line.

² SEPTA filed an answer to the Second Amended Complaint on November 18, 2003, and amended this answer on November 26, 2003.

DIA asserts that these modifications trigger further ADA obligations pursuant to the same legal issue presented in the existing complaint. Thus, DIA seeks to amend the Third Amended Complaint to include these additional claims.

SEPTA objects to the proposed amended complaint, arguing that DIA should not be permitted to introduce “new theories, new facts, new claims for relief and new claimed violations” of the ADA at this point in the litigation. SEPTA asserts that DIA has already added the “key station” theory in a prior amendment to the complaint, and that the latest new theory that alleges alterations that occurred in 2003 has triggered not only an obligation under the ADA, but has implicated a new issue – access to and transfers between the Market Frankford elevated and Broad Street subway lines. SEPTA argues that this proposed pleading addition is dilatory and prejudicial, and should therefore not be allowed.

Standard of Review for Amending a Complaint

After a responsive pleading has been filed and served, leave of court is required to amend a pleading. FED. R. CIV. P. 15(a). Grant of leave to amend is within the discretion of the district court. See Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330, 91 S. Ct. 795, 28 L. Ed. 2d 77 (1971). Leave to amend a pleading “shall be freely given when justice so requires.” FED. R. CIV. P. 15(a). In the Third Circuit, prejudice to the non-moving party “is the touchstone for the denial of an amendment.” Lorenz v. CSX Corp., 1 F.3d 1406, 1414 (3d Cir. 1993) (quoting Cornell & Co. v. Occupational Safety & Health Rev. Comm’n, 573 F.2d 820, 823 (3d Cir. 1978)).

If an amendment would not be substantially or unduly prejudicial, denial of a request to amend must be grounded in “bad faith or dilatory motives, truly undue or unexplained delay, repeated failure to cure deficiency by amendments previously allowed or futility of amendment.”

USX Corp. v. Barnhart, 395 F.3d 161 (3d Cir. 2004). Delay alone is not sufficient to deny a plaintiff's motion to amend a complaint. Id. Only when delay is "undue," placing an "unwarranted burden on the court," or will place an unfair burden on the opposing party, resulting in prejudice, will delay be sufficient to deny a motion to amend. Cureton v. National College Athletic Assoc., 252 F.3d 267, 273 (3d Cir. 2001).

In considering whether a proposed amendment would impose prejudice on the non-moving party, the Court of Appeals for the Third Circuit has instructed that the trial court "focus on the hardship to the defendants if the amendment were permitted." Cureton, 252 F.3d at 273. Hardship may be demonstrated if a proposed amendment would result in additional discovery, cost and preparation to defend against new facts or new theories. Id. The Court of Appeals has also advised that delay may become undue and/or prejudicial when a movant has had previous opportunities to amend a complaint and offers no explanation for failing to amend the complaint sooner. USX Corp. v. Barnhart, 395 F.3d 161 (3d Cir. 2004).

In this case, after hearing oral argument with respect to the motion, the Court does not believe that DIA has unduly delayed adding these claims to its complaint, or that SEPTA will suffer a hardship if the amendment is permitted. When questioned as to the reason for the timing of the proposed amendment, counsel for DIA explained that although DIA was aware that some work on the subject SEPTA line had been proceeding, DIA did not know the nature of the renovations because the actual work was obscured by barriers. Certainly, SEPTA had not actually publicized the nature of the work or communicated with DIA or its counsel concerning the work. DIA further stated that it discovered the nature of the modifications only seven to ten days before it moved for leave to file the amended complaint, after reviewing documents secured through discovery in the

litigation that described the modifications that were to take place.

Cognizant that under well-established case law undue prejudice to SEPTA should be the Court's primary inquiry here – and expecting SEPTA to be equally aware of the governing legal standards inasmuch as SEPTA had elected to oppose the amendment – the Court made repeated inquiry of SEPTA during oral argument as to in what manner prejudice would be visited upon SEPTA if the Court granted leave for the amended pleading. SEPTA's response was to reiterate its frustration as expressed in its opposition papers, namely, that DIA's addition of new aspects to its claim creates a "moving target" so as to increase SEPTA's defense obligations. When pressed for some specific prejudice, SEPTA did not articulate anything more particular than the "moving target" refrain. In an effort to prompt perhaps more in-depth consideration, the Court inquired as to whether the proposed new claim would otherwise run afoul of a statute of limitations or repose, if it implicated a different statutory or regulatory scheme than that already at issue in the case, if it would prolong discovery or if it would add prohibitive defense expense to the case. Not only did SEPTA fail to identify any such potential prejudice in response to the Court's invitations,³ but DIA's counsel assured the Court and opposing counsel on the record that DIA would seek no additional discovery from SEPTA as a result of the proposed amendment and was prepared to state that DIA had no documents or information to produce itself in discovery about the new allegations other than a single new exhibit it proposes to include with the Fourth Amended Complaint, an exhibit that SEPTA already has.

While the Court does not want to encourage amendments seriatim and believes these parties

³ The only specific additional effort SEPTA pointed to as flowing from the proposed additional allegations was the probability of SEPTA choosing to pose "contention interrogatories" to DIA on the new allegations.

would be well served by focusing their energies on addressing matters of substance at a brisker pace and with less acrimony, the Court is not persuaded that the additional ADA claims included in the Fourth Amended Complaint would cause SEPTA to suffer substantial or undue prejudice. The basis of the additional claim, that SEPTA has initiated modifications to transit stop entrances that DIA alleges trigger an obligation under the ADA, is by no means a new theory in this case. Rather, SEPTA has long been aware of DIA's arguments in that regard. The addition of one more transit stop entrance will not cause this case to run off the track or necessitate so much additional discovery as to effect substantial prejudice, inasmuch as SEPTA itself has been aware of the nature of the modifications to the entrances that are being added to the Fourth Amended Complaint and therefore will not likely have to engage in lengthy additional discovery. Indeed, DIA has already assured SEPTA and the Court that it foresees no additional discovery by reason of the amendment. Because the Court finds (1) that DIA has apparently acted promptly to seek the requested leave, (2) SEPTA will not be unduly prejudiced by allowing DIA to file its Fourth Amended Complaint, and (3) preventing the amendment would likely only prompt DIA to file a new suit premised upon the very same claims contained in the amendment, the motion will be granted. An appropriate Order follows.

/S/
Gene E.K. Pratter
United States District Judge

February 15, 2005

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Plaintiff,	:	
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TRANSPORTATION AUTHORITY	:	
and	:	
THE CITY OF PHILADELPHIA,	:	
	:	
Defendants	:	03-CV-1577

ORDER

AND NOW, this 15th day of February, 2005, upon consideration of the Motion for Leave to File a Fourth Amended Complaint of Disabled in Action (Docket No. 74), the response thereto (Docket No. 77), and after oral argument on the motion on February 11, 2005, it is hereby ORDERED that the motion is GRANTED. Disabled in Action is directed to file its Fourth Amended Complaint on or before February 18, 2005.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE