

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

JAMES A. WILSON,

Plaintiff,

v.

ANGELA WILSON,

Defendant.

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C.A. No. 04C-03-031 WLW

Submitted: October 1, 2004

Decided: January 14, 2005

**ORDER**

Upon Plaintiff’s Motion to Amend Complaint. Granted.

Upon Defendant’s Motion to Dismiss. Moot.

Upon Plaintiff’s Motion for Supplement Documents. Denied.

James A. Wilson, *pro se*.

Glynis A. Gibson, Esquire of Gibson & Nowak, LLP, Dover, Delaware; attorneys for the Defendant.

WITHAM, J.

Before this Court is Plaintiff's motion for leave to amend complaint, Plaintiff's motion for supplemental documents, and Defendant's motion to dismiss. Based upon the parties' contentions and the record before this Court, it appears to the Court:

1. This action commenced when James E. Wilson ("Plaintiff") filed a complaint against Angela C. Wilson ("Defendant") seeking damages for alleged theft, fraud, and breach of contract. Defendant failed to respond to the complaint within the requisite twenty day period and a default judgment was entered in favor of Plaintiff.<sup>1</sup> On August 27, 2004, Defendant, not realizing that a default judgment had already been entered, filed a motion to dismiss Plaintiff's complaint for failure to state a claim upon which relief can be granted. Defendant subsequently filed a motion to vacate the default judgment which was granted by this Court on September 17, 2004. Plaintiff has since filed various motions with this Court including a motion for leave to file an amended complaint and a motion for supplemental documents.<sup>2</sup>

Plaintiff requests this Court to grant leave to amend his complaint in order to incorporate additional claims, increase the amount of damages sought, establish additional defenses and to change the capacity in which the action has commenced. Plaintiff contends that he has since discovered from filing the original complaint that theft damages are not recoverable in civil actions and requests this Court to allow him

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<sup>1</sup> Defendant was served with the complaint on August 3, 2004 and the default judgment was entered against the Defendant on August 25, 2004.

<sup>2</sup> Plaintiff also filed a motion requesting appointment of counsel that was denied by this Court on November 10, 2004.

to amend his complaint accordingly so that his action may be adjudicated based upon its merits. Defendant contends that Plaintiff's motion for leave to amend should be denied until the amended complaint complies with Superior Court Civil Rule 15(aa). Defendant further contends that Plaintiff's motion should be denied because the amended complaint is facially defective as it fails to state a claim upon which relief can be granted.

2. Pursuant to Superior Court Civil Rule 15(a), "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or... by leave of court or by written consent of the adverse party..."<sup>3</sup> The decision to permit or deny a party's request for leave to amend is reserved to the sound discretion of the trial judge.<sup>4</sup> However, Rule 15 was devised to facilitate cases being adjudicated based upon their merits and instructs this Court to freely grant a party's request for leave to amend when justice so requires.<sup>5</sup> In determining whether to grant a party's motion for leave to amend, this Court will balance the hardship encountered by the moving party if such motion is denied against the prejudice

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<sup>3</sup> Super. Ct. Civ. R. 15(a) provides: "(a) *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 upon the trial calendar, the party may so 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..."

<sup>4</sup> *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 72 (Del. 1993).

<sup>5</sup> Super. Ct. Civ. R. 15(a) provides: "...leave shall be freely given when justice so requires."

suffered by the adverse party if such motion is granted.<sup>6</sup>

3. Defendant has not asserted that she will suffer prejudice if Plaintiff's motion for leave to amend is granted by this Court. Instead, Defendant contends that Plaintiff's motion should be denied until the amended complaint conforms to Superior Court Civil Rule 15(aa). This section provides:

(aa) *Form of amendments.* A party serving an amended pleading shall indicate plainly in the amended pleading in what respect the amendment differs from the pleading which it amends.<sup>7</sup>

This Court concurs with Defendant that Plaintiff's amended complaint does not directly denote the amendments and therefore fails in form. Plaintiff's motion for leave to amend does however indicate that the amended complaint states additional claims, increases the amount of damages sought, establishes additional defenses and changes the capacity in which the action was commenced. Defendant cannot be said to be unduly prejudiced by Plaintiff's noncompliance with Rule 15(aa) since the amended complaint is less than two pages in length and the revisions are readily determinable from the original complaint. Because Rule 15 motions are to be granted liberally so that actions may be ultimately adjudicated based upon their merits and because Defendant is not unduly prejudiced by the form of Plaintiff's amended complaint, Plaintiff's failure to strictly comply with Rule 15(aa) will not preclude this

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<sup>6</sup> *Paul v. Chromalytics Corp.*, 343 A.2d 622, 625 (Del. Super. Ct. 1975).

<sup>7</sup> Super. Ct. Civ. R. 15(aa).

Court from granting Plaintiff's motion for leave to amend.<sup>8</sup>

Defendant also contends that this Court should deny Plaintiff's motion for leave to amend because Plaintiff's amended complaint fails to state a claim upon which relief can be granted. Subject to limited exceptions, the legal sufficiency of the pleadings should not be addressed on a motion to amend.<sup>9</sup> In the case *sub judice*, there are no facts present warranting a deviation from this rule.<sup>10</sup> Accordingly, this Court will not assess the legal sufficiency of the amended complaint in determining whether to grant or deny Plaintiff's motion for leave to amend.<sup>11</sup>

4. This Court finds that the hardship encountered by Plaintiff if this Court

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<sup>8</sup> See *Hoffman v. Siegal*, 1991 Del. Super. LEXIS 218, at \*16 (With regards to Rule 15(aa), "It is clear that Sheman did not adhere to this rule. However, in the exercise of my discretion, I refuse to dismiss the amended complaint on these grounds as I find that the failure to follow the rule in this case is de minimus....The additions to the original complaint are readily determinable, and no hardships to Hoffman will result.").

<sup>9</sup> *Woodcock v. Udell*, 97 A.2d 878, 882 (Del. Super. Ct.1953)(held that the sufficiency of the pleadings may be addressed where the motion to amend and the motion for summary judgment were argued simultaneously before the Court); *Itek Corp. v. Chicago Aerial Indus., Inc.*, 257 A.2d 232, 233 (Del. Super. Ct. 1969)(held legal sufficiency of the pleading may be ruled upon during a motion to amend where the insufficiency of the amendment is obvious on its face).

<sup>10</sup> Even if this Court were to consider the legal sufficiency of Plaintiff's amended pleadings, it appears to the Court after a cursory inspection of the amended complaint that Plaintiff has asserted at least one claim upon which relief can be granted. In any event, this Court does not find Plaintiff's amended complaint so facially deficient as to warrant consideration during Plaintiff's motion for leave to amend.

<sup>11</sup> The import of this decision does not address the substance of the allegations in the amended complaint, but merely that it would be judicially prudent to address any issues raised after the amended complaint is answered.

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denies his motion for leave to amend unequivocally outweighs any prejudice suffered by the Defendant if such motion is granted. Because this Court prefers to adjudicate cases based upon their merits and because Defendant will only suffer *de minimus* prejudice, Plaintiff's motion for leave to amend will be granted. Granting Plaintiff's motion for leave to amend also renders Defendant's pending motion to dismiss moot. If Defendant believes that Plaintiff's amended complaint fails to state a claim upon which relief may be granted, Defendant may file the appropriate motion addressing the particular claims she believes warrant dismissal.

Plaintiff has also requested this Court to allow him to supplement his complaint with a complaint filed by the Defendant against Barker's Landing, Melanie Rawley, Green Point Credit, LLC and Reed Contractor, Inc. Plaintiff contends that Defendant's complaint further establishes the existence of a power of attorney agreement. However, Plaintiff has already declared in his pleadings that the parties had a power of attorney agreement and it is therefore unnecessary to further supplement his amended complaint. Such additional evidence can be handled through discovery. Accordingly, Plaintiff's motion for supplemental documents is denied.

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Based upon the aforementioned reasons, Plaintiff's motion for leave to amend his complaint is *granted*, Defendant's motion to dismiss for failure to state a claim upon which relief may be granted is moot and Plaintiff's motion for supplemental documents is hereby *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File