

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 06-12475  
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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MARCH 16, 2007 THOMAS K. KAHN CLERK
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D. C. Docket No. 04-00059-CV-HLM-4

DUVALL CHEMICALS, INC.,

Plaintiff-Appellant,

versus

OSTERMAN & COMPANY, INC.,  
D.b.a. Osterman Trading,

Defendant-Third-Party-  
Plaintiff-Cross-Claimant-  
Appellee.

SAXON FIBERS, LLC.,

Defendant-Counter-Defendant-  
Appellee,

versus

G. ROSS ROGERS,  
GERALD T. LEONARD,

Third-Party-Defendants.

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Appeal from the United States District Court  
for the Northern District of Georgia  
\_\_\_\_\_

**(March 16, 2007)**

Before BIRCH and PRYOR, Circuit Judges, and COVINGTON,\* District Judge.

PER CURIAM:

Duvall Chemicals, Inc., appeals the district court's: (1) grant of Osterman & Company, Inc.'s motions for summary judgment; (2) denial of Duvall's motion for summary judgment; and (3) denial of Duvall's motion to amend. The Court reviews de novo the denial or grant of a motion for summary judgment. Holloman v. Mail-Well Corp., 443 F.3d 832, 836 (11th Cir. 2006). The denial of a motion to amend is reviewed for abuse of discretion. Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001). After careful review, we affirm.

In a three-count complaint filed against Osterman, Duvall brought claims for fraud and deceit (count I), attorney's fees (count II), and punitive damages (count III). Duvall's claims stem from allegations that Osterman fraudulently drew on a letter of credit.

Osterman moved for summary judgment on counts I and III. Subsequent to the filing of Osterman's motions, Duvall moved to amend its complaint to include a fourth claim. Additionally, Duvall moved for summary judgment on counts I and II. As noted, the Court granted Osterman's motions for summary judgment

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\* The Honorable Virginia M. Hernandez Covington, United States District Judge for the Middle District of Florida, sitting by designation.

and denied Duvall's motion for summary judgment and motion to amend.

The motion to amend was filed after the deadline to amend prescribed in the district court's scheduling order, without any explanation for its tardiness.

Consequently, the Court cannot find that, in denying the motion to amend, the district court abused its discretion. See Sosa v. Airprint Sys., Inc., 133 F.3d 1417, 1419 (11th Cir. 1998). Thus, the Court affirms the denial of the motion to amend.

The Court also affirms the district court's grant of Osterman's motions for summary judgment and denial of Duvall's motion for summary judgment.

Duvall's fraud and deceit claim fails as a matter of law because Duvall has not established a triable issue of fact regarding the falsity of the representations that Osterman made to Regions in drawing on the letter of credit. Duvall's other two claims were derivative of the fraud and deceit claim. As such, the district court's grant of summary judgment on those claims was also proper. For the foregoing reasons, the district court's grant of Osterman's motions for summary judgment, denial of Duvall's motion for summary judgment, and denial of Duvall's motion to amend are all affirmed.

**AFFIRMED.**