

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION

CORNERSTONE WRECKER  
SALES, INC.,

Plaintiff,

vs.

BOWER SERVICES, INC.; and  
PARKS CHEVROLET, INC.,

Defendants.

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No. 3:08cv00178 SWW

ORDER

Without filed objection, and considering the liberal nature of Fed.R.Civ.P. 15, the motion [doc.#21] of plaintiff, Cornerstone Wrecker Sales, Inc., for leave to file an amended complaint in order to name an additional defendant is hereby granted.

Also before the Court is a motion [doc.#17] of separate defendant, Parks Chevrolet, Inc., to dismiss for lack of personal jurisdiction. Plaintiff has responded in opposition to defendant's motion, stating *inter alia* that additional discovery is needed on the issue of personal jurisdiction.

To survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must state sufficient specific facts in the complaint to support a reasonable inference that the defendant can be subjected to jurisdiction within the state. *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1072 (8<sup>th</sup> Cir. 2004) (citation and internal quotation marks omitted). Once jurisdiction has been controverted or denied, the plaintiff has the burden of proving such facts. *Id.* The plaintiff's prima facie showing must be tested, not by the pleadings alone, but by the affidavits and exhibits presented with the motions and in opposition thereto. *Id.*

Although defendant denies that further discovery is needed, this Court, having considered

plaintiff's arguments and also considering that an additional defendant will be brought into this action, will permit plaintiff forty-five (45) days from the date of entry of this Order in which to conduct discovery on the issue of personal jurisdiction. In this respect, defendant's motion to dismiss for lack of personal jurisdiction is denied without prejudice. Defendant(s) may refile this motion in the same or revised manner following the expiration of the 45-day period for conducting discovery on personal jurisdiction.

IT IS SO ORDERED this 2<sup>nd</sup> day of April 2009.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE