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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENERAL FIDELITY INSURANCE
COMPANY,

Plaintiff,

v.

QUANTA SPECIALTY LINES INSURANCE
COMPANY; BELLA VISTA ESTATES;
LAUREL TREE HOMES, INC.; DAVID
DYCK; LAMBETH CONSTRUCTION OF
CALIFORNIA, INC.; LAMBETH
CONSTRUCTION, INC.; RENE DIAZ;
MONICA DIAZ; DAVID BELTRAN; ALMA
BELTRAN; QUANTA
INDEMNITY COMPANY; LAMBETH
CONSTRUCTION, LLC; NORMA AGUILAR;
JESSE AGUILAR; TONY ADAYAN, JR.;
JOSEPH TORRES; BRENDA TORRES;
RICARDO ZARAGOZA; MARIA ZARAGOZA;
JOSE LUIS ZEPEDA; ISIAS PACHECO;
MARGARITA PAULINO; RICARDO BUSTOS
TAPIA; ANDRES TORRES; GABRIEL
TOVAR; MARIA ZONIA TOVAR;
FRANCISCO VARGAS; PAULINO VAZQUEZ;
ROBERTO VARGAS; LORIANE ZAMORA;
NORMA ZUNIGA; GABRIEL TAMEZ; JESUS
M. VILLAGRANA; ARACELI VILLAGRANA;
JOSE ZUL,

Defendants.

AND RELATED CROSS-CLAIMS AND
COUNTER-CLAIMS.

No. 1:14-cv-01325-JAM-GSA

**ORDER DENYING DEFENDANTS'
MOTIONS FOR LEAVE TO AMEND**

1 Currently before the Court are two motions.¹ The first is
2 brought by Defendant and Cross-Defendant Bella Vista Estates
3 ("Bella Vista") (Doc. #88) seeking leave to file amended
4 pleadings. The second is brought by Defendant and Cross-
5 Defendant Laurel Tree Homes, Inc. ("Laurel Tree") (Doc. #89) also
6 seeking leave to file an amended pleading. Defendant, Counter-
7 Claimant, and Cross-Claimant Quanta Indemnity Company ("Quanta")
8 and Plaintiff and Counter-Defendant General Fidelity Insurance
9 Company ("Fidelity") each filed separate oppositions (Doc. #90,
10 91, respectively). Bella Vista and Laurel Tree filed a joint
11 Reply (Doc. #95).

12
13 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

14 This matter is an insurance coverage action in which
15 Fidelity and Quanta are seeking a judicial determination that
16 they have no defense or indemnity obligations under their
17 respective commercial general liability insurance policies (in
18 which Bella Vista and Laurel Tree are named) in connection with
19 two underlying state actions. The first action was entitled
20 Ruben Betancourt, et al. v. Bella Vista Estates, et al. ("the
21 Betancourt action"), and the second was entitled Rene Diaz, et
22 al. v. Bella Vista Estates, et al. ("the Diaz Action"). Both of
23 these suits were filed in Fresno County Superior Court by
24 homeowners for alleged construction defects. Bella Vista and
25 Laurel Tree were named as defendants in each action.

26
27 ¹ The motions were determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for August 19, 2015.

1 Fidelity initiated this action in August 2014 (Doc. #1) and
2 filed the First Amended Complaint ("FAC") (Doc. #17) on October
3 7, 2014. Quanta filed an answer, a cross-claim against Bella
4 Vista and Laurel Tree (among others) and a counter-claim against
5 Fidelity (Doc. #29). Bella Vista and Laurel Tree filed a joint
6 answer (Doc. #36) to the FAC and a joint answer (Doc. #37) to
7 Quanta's cross-claim through their original counsel, Jeffrey
8 Wall. According to Bella Vista and Laurel Tree, they retained
9 West Corzine, LLP and Ian Corzine to associate in as co-counsel
10 for them on January 9, 2015. Bella Vista MTA at p. 5; Laurel
11 Tree MTA at p. 5.

12 On February 27, 2015, the parties filed a Joint Scheduling
13 Report (Doc. #84). In it, Bella Vista and Laurel Tree indicated
14 they expected to amend their answers and to file cross/counter
15 claims against the other parties. The Court issued a Pretrial
16 Scheduling Order (Doc. #85) on March 3, 2015, indicating there
17 would be no further amendments to pleadings "except with leave of
18 court, good cause having been shown."

19 The current motions were filed on May 29, 2015.
20

21 II. OPINION

22 A. Legal Standard

23 Bella Vista and Laurel Tree (collectively "the Moving
24 Parties") seek leave to amend their pleadings. In both motions,
25 the Moving Parties rely on the standard set out in Federal Rule
26 of Civil Procedure 15(a)(2), which provides: "[A] party may amend
27 its pleading only with the opposing party's written consent or
28 the court's leave. The court should freely give leave when

1 justice so requires." However, the Court has already issued a
2 pretrial scheduling order in this matter in accordance with
3 Federal Rule of Civil Procedure 16(b)(1).

4 Although "Rule 15(a) liberally allows for amendments to
5 pleadings," Coleman v. Quaker Oats Co., 232 F.3d 1271,
6 1294 (9th Cir. 2000), that policy does not apply after
7 a district court has issued "a pretrial scheduling
8 order that established a timetable for amending the
9 pleadings, and the deadline [has] expired." Id.
10 Rather, under those circumstances, parties seeking to
11 amend their [pleadings] "must show good cause for not
12 having amended their complaints before the time
13 specified in the scheduling order expired." Id.
14 (citing Johnson v. Mammoth Recreations Inc., 975 F.2d
15 604, 608-09 (9th Cir. 1992)); see also Aliota v. Town
16 of Lisbon, 651 F.3d 715, 719-20 (7th Cir. 2011)
17 (identifying the majority of circuit courts that "apply
18 the heightened good-cause standard of Rule 16(b)(4)
19 before considering whether the requirements of Rule
20 15(a)(2) were satisfied."). "This standard 'primarily
21 considers the diligence of the party seeking the
22 amendment.'" Id. (quoting Johnson, 975 F.2d at 609).

23 Robert Half Int'l Inc. v. Ainsworth, No. 14CV2481-WQH DHB, 2015
24 WL 4662429, at *15 (S.D. Cal. 2015). Accordingly, the Court will
25 apply the standards established by Federal Rule of Civil
26 Procedure 16(b)(4).

27 B. Discussion

28 Bella Vista seeks to file a First Amended Answer in response
to the FAC, including a counterclaim against Fidelity, a cross-
claim against Quanta and a third-party complaint against North
American Capacity Insurance Company, Financial Pacific Insurance
Company, and American Safety Indemnity Company (the latter three
collectively "proposed Third-Party Defendants") (Exhibit F to Ian
Corzine Declaration, Doc. #88-1), alleging the following causes
of action: (1) Breach of the Covenant of Good Faith and Fair
Dealing; (2) Breach of Contract; (3) Declaratory Relief;
(4) Equitable Indemnity; and, (5) Contribution and Apportionment

1 of Fault. It also seeks to file a First Amended Answer (Exh. G
2 to Corzine Decl., Doc. #88-1) in response to Quanta's cross-
3 claim.

4 Laurel Tree seeks leave to amend its answer to the FAC and
5 its answer to Quanta's cross-claim. Laurel Tree MTA at p. 4;
6 Exh. H and I (respectively) to Corzine Decl. (Doc. #89-1).

7 The Moving Parties contend they have good cause for these
8 proposed amendments and request the Court grant them leave.
9 Bella MTA at p. 4; Laurel Tree MTA at pp. 6-7. Bella Vista
10 argues it did not discover the basis for the proposed claims
11 until after new counsel, Ian Corzine of West Corzine, LLP,
12 associated in as co-counsel. In addition, new counsel for both
13 Bella Vista and Laurel Tree determined that the previous answers
14 to Fidelity's and Quanta's claims were "insufficiently specific."

15 In its Opposition, Fidelity contends the Moving Parties have
16 not established good cause for allowing amendment and the
17 addition of parties at this late date. Fidelity Opp. at pp. 10-
18 11. Fidelity points to the sparse explanation provided in both
19 motions as to why good cause exists to support amendment of
20 pleadings at this late date or why the Moving Parties could not
21 determine they had viable claims at an earlier date, specifically
22 contending that "Bella Vista and Laurel Tree [have] not raised a
23 single fact or circumstances that [they] did not know or was not
24 knowable with diligence before the date agreed to by the parties
25 to amend the pleadings." Id. at p. 15.

26 In its separate Opposition, Quanta also challenges Bella
27 Vista's contention that good cause has been shown to allow
28 amendment to the pleadings. Quanta Opp. at pp. 10-11.

1 The Court agrees that the moving parties too casually gloss
2 over their burden to establish that the pretrial schedule could
3 not reasonably be met despite their *diligence*. See Zivkovic v.
4 S. California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002)
5 (quoting Johnson, at 609.). In its motion, Bella Vista
6 specifically contends: "Good cause underlying this motion is
7 Bella Vista's confirmation that its carriers . . . have
8 wrongfully refused to defend it in the ongoing construction
9 defect actions despite the fact that a potential for coverage
10 existed for each of the insurers' policies." Bella Vista MTA at
11 p. 7. For its motion, Laurel Tree contends: "Good cause
12 underlying this motion is counsel's determination that the
13 previously-filed answers were insufficiently specific and failed
14 to include necessary affirmative defenses." Laurel Tree MTA at
15 p. 7. Neither of these assertions provides any explanation for
16 why Bella Vista and Laurel Tree could not have made these
17 amendments months ago. They simply assert in a conclusory
18 fashion that good cause exists because they believe they have
19 viable claims and the Court should therefore grant their motions.

20 It is clear from the Joint Scheduling Report that as early
21 as February the Moving Parties had the intention to amend the
22 parties' respective pleadings and to assert new claims on Bella
23 Vista's behalf. JSR at p. 8. They presented to the Court that
24 their counsel would move for leave to so amend within ten days.
25 JSR at p. 2. However, it was not until 91 days later that the
26 current motions were filed and with little explanation for the
27 delay. This does not support a finding of diligence. See Sako
28 v. Wells Fargo Bank, Nat. Ass'n, No. 14CV1034-GPC JMA, 2015 WL

1 5022326, at *2 (S.D. Cal. 2015) ("Courts have held that waiting
2 two months after discovering new facts to bring a motion to amend
3 does not constitute diligence under Rule 16.").

4 The Moving Parties attempt to bolster their arguments in the
5 joint Reply (Doc. #95). In it, they argue their representations
6 in the Joint Scheduling Report did not guarantee a motion would
7 be filed in ten days, but rather set forth their "reasonable
8 expectation that such a request to amend would be forthcoming by
9 [that deadline]." Reply at p. 4. The Moving Parties also argue
10 their communications with the proposed Third-Party Defendants did
11 not reveal the basis for new claims until, at the earliest, March
12 2015. They contend they were further delayed when they ran into
13 difficulty obtaining the consent of the other parties to amend.
14 The Court is not persuaded by these arguments and as pointed out
15 by Fidelity in its Opposition, the Court's Scheduling Order
16 precluded amendments "without leave of court."

17 This case was initiated over a year ago. The Moving
18 Parties' initial answers to the FAC and Quanta's cross-claim were
19 filed over five months before these motions were filed. The Diaz
20 action was filed over 20 months ago, and the Betancourt action
21 was filed over seven years ago. There are dozens of parties with
22 a stake in the outcome of this litigation. The Court finds the
23 Moving Parties have not established they were diligent in seeking
24 to amend their pleadings -- amendments that would not only
25 possibly delay the proceedings but introduce several new parties
26 and various new claims at this late date. The Court hereby
27 DENIES Bella Vista's and Laurel Tree's requests for leave
28 pursuant to Federal Rule of Civil Procedure 16.

1 Because the Court so finds, it need not address Fidelity and
2 Quanta's additional arguments regarding the futility and bad
3 faith of Bella Vista's counterclaims, cross-claims, and third-
4 party complaint.

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III. ORDER

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For the reasons set forth above, the Court DENIES Bella Vista's and Laurel Tree's Motions for Leave to File Amended Pleadings.

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IT IS SO ORDERED.

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Dated: September 22, 2015

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE