

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Craig B. Shaffer**

Civil Action No.: 08-cv-02801-CMA-CBS
Date: April 21, 2009

FTR - Reporter Deck - Courtroom A402
Courtroom Deputy: Linda Kahoe

MARY Di GIALLONARDO,
Plaintiff,

Damon Davis
Nicholas W. Mayle

v.

JFC AUTOMOTIVE RENTAL GROUP, LLC,
et al.,
Defendants.

Steven M. Gutierrez
Wayne Warren Williams

COURTROOM MINUTES/MINUTE ORDER

HEARING: TELEPHONIC MOTION HEARING

Court in session: 9:10 a.m.

Court calls case. Appearances of counsel.

Discussion and arguments regarding the pending motions: Defendant's Motion to Dismiss (doc. #21, filed 2/25/2009) and Plaintiff's Motion to Amend Complaint (doc. #26, filed 3/24/2009). The court has reviewed the motions and the Defendants' oppositions to the Motion to Amend Complaint.

The court discusses relevant case law related to denying a Motion to Amend.

The court discusses legal remedies that Defendants may pursue if counsel believes the Plaintiff has vexatiously and wrongfully multiplied the costs of litigation.

The court suggests that Defendants not oppose the Motion to Amend and states that the lack of opposition would not prejudice their right to seek relief under Rule 12. Mr. Williams states he will not object to the Motion to Amend. Mr. Gutierrez states he is not opposed to withdrawing his opposition to the amendment based on the idea that it doesn't prejudice his clients' rights to move to dismiss. Mr. Gutierrez states he will file a Motion to Dismiss.

Mr. Williams wishes to be permitted to recover fees for responding to the vexatious complaint. The court states that counsel may file a separate motion, and suggests that counsel review relevant case law under §1927 as to what constitutes vexatiousness.

The court grants the Motion to Amend without prejudice as to the Defendant's right to file appropriate motions under Rule 12. The court is not expressing an opinion about, or making any rulings with respect to the efficacy or merits of the arguments raised in Defendants' opposition.

The Scheduling Conference remains set for April 28, 2009. In the context of the Scheduling Conference, the court will consider any arguments which Defendants raise as to the merits or efficiencies of bifurcated discovery.

The court states that in view of granting the Motion to Amend, the current Motion to Dismiss seeking to dismiss claims that are no longer in this lawsuit would seem to be moot. Counsel agree. Mr. Williams agrees with the exception of seeking costs and fees asserted in his Motion to Dismiss.

For reasons as stated on the record, it is

ORDERED: Plaintiff's Motion to Amend Complaint (doc. #26, filed 3/24/2009) is GRANTED WITHOUT PREJUDICE as to the Defendants' right to file appropriate motions under Rule 12. The Amended Complaint is deemed filed as of today's date. The Scheduling Conference remains set for April 28, 2009 at 11:30 a.m. In the context of the Scheduling Conference, the court will consider any arguments which Defendants raise as to the merits or efficiencies of bifurcated discovery.

HEARING CONCLUDED.

Court in recess: 9:42 a.m.

Total time in court: 00:32

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