

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02957-PAB-MJW

STANLEY CREIGHTON LOBATO-WRIGHT, and
TODD ANTHONY LOBATO-WRIGHT

Plaintiffs,

v.

GERRITT KOSER,

Defendant.

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that Plaintiff's Motion for Leave to File Third Amended Complaint (Docket No. 61) is DENIED.

When such a motion is brought after the deadline set forth in the Scheduling Order, the "good cause" standard under Fed. R. Civ. P. 16(b)(4) must be satisfied in addition to the "interests of justice" standard under Fed. R. Civ. P. 15(a)(2). Here, Plaintiff makes no effort to establish "good cause" other than to note that (1) Defendant requested an amendment to correct allegations that Defendant believes have been proven false through discovery, and (2) Plaintiff's motion is brought promptly after the deposition at which certain facts were discovered. To be sure, the discovery of new evidence that could not have been timely discovered through the exercise of due diligence would constitute "good cause" under Rule 16(b)(4). But none of the new allegations in the proposed Third Amended Complaint (Docket No. 61-2) fall into this category. Rather, all of the new allegations seek to reframe facts (or to reargue law) that has been part of this case from inception. Accordingly, no good cause has been established and the motion must be denied.

The Court notes that the tone and tenor of the briefing on this matter, and the degree to which both attorneys wasted time bickering over matters not relevant to the foregoing legal standards under Rules 16(b) and 15(a), fall far short of the level of professionalism the Court expects. There is some indication in the record that defense counsel is entertaining the idea of a motion for sanctions. Based on the briefing on this motion, and without prejudging the matter, the Court doubts whether it is advisable for either party to open that door.

Date: February 2, 2016
