

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

MASCHMEYER CONCRETE
COMPANY OF FLORIDA,

Plaintiff,

v.

Case No. 6:15-cv-912-Orl-37KRS

AMERICAN SOUTHERN INSURANCE
COMPANY,

Defendant.

ORDER

This cause is before the Court on the following:

1. Defendant's Motion to Dismiss Plaintiff's Complaint and Incorporated Memorandum of Law (Doc. 7), filed June 10, 2015;
2. Plaintiffs' Response to Defendant's Motion to Dismiss Plaintiff's Complaint and Memorandum of Law in Support Thereof (Doc. 10), filed June 17, 2015;
and
3. Plaintiff's Motion for Leave to Amend Complaint (Doc. 29), filed July 21, 2015.

BACKGROUND

On April 30, 2015, Plaintiff initiated this action in state court seeking to recover the proceeds of a construction payment bond. (Doc. 2.) Based on diversity jurisdiction, Defendant removed the action to this Court (Doc. 1), and it then filed a Motion to Dismiss Plaintiff's Complaint (Doc. 7). Plaintiff filed a Response (Doc. 10), Defendant filed a Reply (Doc. 21), and Plaintiff then filed a Motion to Amend its Complaint (Doc. 29).

DISCUSSION

Because Plaintiff did not amend its Complaint on or before July 6, 2015, it cannot amend now absent Defendant's written consent or leave of the Court (see Fed. R. Civ. P. 15(a)(2)), and Defendant did not provide its written consent (see Doc. 29). See also Fed. R. Civ. P. 15(a)(1)(B) (permitting amendment "as a matter of course" if filed 21 days after the defendant files a motion under Rule 12(b)). The Court must grant such leave freely "when justice so requires." See Fed. R. Civ. P. 15(a)(2). Indeed, the U.S. Court of Appeals for the Eleventh Circuit instructs that courts must give plaintiffs "at least one chance to amend." See *Patel v. Diplomat 1419VA Hotels, LLC*, No. 14-10948, 2015 WL 3482932, at *1 (11th Cir. June 3, 2015) (reversing dismissal of action and remanding to permit amendment of the complaint). Plaintiff has not previously amended its Complaint, and this action is not far advanced such that an amendment would prejudice Defendant or delay the proceedings. Accordingly, the Court finds that the Motion to Amend is due to be granted.

CONCLUSION

Accordingly, it is hereby **ORDERED AND ADJUDGED**:

1. Plaintiff's Motion for Leave to Amend Complaint (Doc. 29) is **GRANTED**, and Plaintiff is **DIRECTED** to file its Amended Complaint by **July 24, 2015**.
2. Defendant's Motion to Dismiss Plaintiff's Complaint and Incorporated Memorandum of Law (Doc. 7) is **DENIED AS MOOT**.

DONE AND ORDERED in Chambers in Orlando, Florida, on July 22, 2015.




ROY B. DALTON JR.
United States District Judge

Copies:

Counsel of Record