

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CYNTHIA DU BOIS

CIVIL ACTION

VERSUS

NO. 18-10436

BOARD OF CONTROL, ST. JOHN
THE BAPTIST PARISH LIBRARY

SECTION "I" (2)

ORDER AND REASONS ON MOTION

Plaintiff's Motion for Leave to File Out of Time Pleading, Record Doc. No. 35, is before me. In actuality, this is a motion to amend plaintiff's complaint. Local Rule 7.5 requires that a memorandum in opposition to a motion must be filed no later than eight (8) days before the noticed submission date. No memorandum in opposition has been received. Accordingly, this motion is deemed to be unopposed, and it is GRANTED for that reason.

Although the deadline for amendment of pleadings has lapsed, Record Doc. No. 19, defendant has not opposed the motion on that or any other ground. In any event, good cause under Fed. R. Civ. P. 16(b)(4) to permit the late amendment appears established. The acceptable explanation for the late filing is recent discovery of the grounds for amendment. The amendment appears important and non-futile because, although the Louisiana Supreme Court has explicitly held that no cause of action exists for negligent spoliation of evidence, intentional spoliation of evidence is a viable cause of action recognized by Louisiana courts. Reynolds v. Bordelon, 172 So. 3d 589, 600 (La. 6/30/15); Fiveash v. Pat O'Brien's Bar, Inc., 201 So. 3d 912, 918 (La. App. 4 Cir. 9/14/16); Danna v. Ritz-Carlton Hotel Co., LLC, 213 So. 3d 26, 37 (La. App. 4 Cir. 5/11/16); Tomlinson v. Landmark Am. Ins. Co.,

192 So. 3d 153, 159 (La. App. 4 Cir. 3/23/16). Plaintiff has pled sufficient facts to state a cause of action for intentional spoliation of evidence. Record Doc. No. 35-3 at pp. 4–5. Adequate time before the trial date remains for defendant to address the new claim, so that prejudice should be undue, and no trial continuance appears necessary.

New Orleans, Louisiana, this 6th day of May, 2019.



JOSEPH C. WILKINSON, JR.
UNITED STATES MAGISTRATE JUDGE