

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

ALBERT SNYDER,
Plaintiff

v.

FRED W. PHELPS, SR.,
JOHN DOES, JANE DOES, and
WESTBORO BAPTIST CHURCH, INC.
Defendants

Civil Action No. 06-CV-1389 RDB

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO JOIN PARTIES AND
AMEND THE PLEADINGS**

The Plaintiff files this Brief in Support of his Motion to Join Parties and Amend the Pleadings and incorporates that Motion herein by reference.

I. PROCEDURAL HISTORY

Plaintiff initiated this action on June 5, 2006. Thereafter, Defendants were eventually served and filed a Motion to Dismiss. Defendants' Motion to Dismiss was denied. After that denial, the Court conducted a scheduling conference and issued a Scheduling Order. Thereafter, Plaintiff served written discovery on Defendants and Defendants subsequently responded.

In relevant part, Defendants disclosed the names of the "John and Jane Does" identified in the Complaint. In addition, Defendants disclosed the individual that reviewed, approved or authored the alleged defamatory statements repeated on the www.godhatesfags.com webpage and alleged in the Complaint. This Motion seeks to, in general, identify the "John and Jane Does."

On December 22, 2006, Plaintiff filed a Motion to Enlarge Time to Join Parties and Amend the Pleadings and that Motion was granted. The deadline to file Motions Join

Parties or to Amend the Pleadings is February 5, 2007. Therefore, the within motion is filed within the Court Ordered deadlines.

II. ARGUMENT

The law in the Fourth Circuit concerning leave to amend is overwhelmingly clear. Under Federal Rule of Civil Procedure 15(a), leave to amend a pleading “shall be freely given when justice so requires.” Fed. R. Civ.P. 15(a). The Supreme Court has declared that “this mandate is to be heeded.” Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). The law is well settled “that leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.” Johnson v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986). Delay alone is an insufficient reason to deny leave to amend. See id. Rather, the delay must be accompanied by prejudice, bad faith, or futility. See id.” Edwards v. City of Goldsboro, 178 F.3d 231, 242 (4th Cir. 1999).

Where, as here, there has been no delay, prejudice or bad faith, leave to amend should be freely granted. As a matter of law, there can be no claim of futility. Defendants have already filed a Motion to Dismiss under nearly identical allegations. Therefore, the Amended Complaint will also survive a Motion to Dismiss.

III. CONCLUSION

Plaintiff respectfully requests that this Honorable Court grant the Motion to Join Parties and Amend the Pleadings.

BARLEY SNYDER LLC

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