

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARIM KOUBRITI,

Plaintiff,

Case No: 07-13678

v

Hon. MARIANNE O. BATTANI

RICHARD CONVERTINO,
MICHAEL THOMAS and
HARRY RAYMOND SMITH,
Jointly and Severally
and in their Individual Capacities,

Defendants.

BEN M. GONEK (P43716)
BEN M. GONEK, P.C.
Attorney for Plaintiff
615 Griswold Street
1300 Ford Building
Detroit, Michigan 48226
(313) 963-3377

ROBERT S. MULLEN (P54827)
Attorney for Defendant Convertino
800 Starkweather Street
Plymouth, Michigan 48170
(734) 455-2700

THOMAS W. KRAMER (P25252)
MATTHEW F. LEITMAN (P48999)
GERALD J. GLEESON, II (P53568)
DAVID D. O'BRIEN (P65532)
Miller, Canfield, Paddock & Stone, PLC
Attorneys for Defendant Harry R. Smith
840 W. Long Lake Road, Suite 200
Troy, Michigan 48098
(248) 879-2000

RICHARD L. SWICK
Attorney for Michael Thomas
1225 Eye Street, NW, Suite 1290
Washington, D.C. 20005
(202) 842-0300

MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT

NOW COMES Plaintiff, KARIM KOUBRITI, by and through his attorney, BEN M. GONEK and states the following in support of his Motion for Leave to File a First Amended Complaint:

1. On August 30, 2007, Plaintiff filed his complaint in the above captioned matter against Defendants alleging violations of the Fourth and Fourteenth Amendments and 42 U.S.C. § 1983 based on Defendants' malicious prosecution of Plaintiff.

2. All the Defendants have filed Rule 12(b)(b) Motions seeking dismissal of the complaint in lieu of filing an answer to the Complaint.

3. Specifically, Plaintiff seeks to amend his complaint to properly plead the Fourteenth Amendment claim Plaintiff has against the named Defendants. (See Exhibit A, Proposed First Amended Complaint).

4. Pursuant to Federal Rule of Civil Procedure 15(a), a party may amend his Complaint by leave of court and such leave "shall be freely given when justice so requires."

5. For the reasons specified in the attached supporting brief, Plaintiff's request for an amendment to his complaint is timely and should be granted where no party will be prejudiced and the amendment is timely.

6. Plaintiff sought concurrence with Defendants in this matter, and such was denied.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant his Motion for Leave to File a First Amended Complaint.

Respectfully submitted by:

s/ Ben M. Gonek
BEN M. GONEK (P43716)
Attorneys for Plaintiff
1300 Ford Building
615 Griswold Street
Detroit, Michigan 48226
(313) 963-3377
bgonek@aol.com

Dated: January 28, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARIM KOUBRITI,

Plaintiff,

Case No: 07-13678

v

Hon. MARIANNE O. BATTANI

RICHARD CONVERTINO,
MICHAEL THOMAS and
HARRY RAYMOND SMITH,
Jointly and Severally
and in their Individual Capacities,

Defendants.

BEN M. GONEK (P43716)
BEN M. GONEK, P.C.
Attorney for Plaintiff
615 Griswold Street
1300 Ford Building
Detroit, Michigan 48226
(313) 963-3377

ROBERT S. MULLEN (P54827)
Attorney for Defendant Convertino
800 Starkweather Street
Plymouth, Michigan 48170
(734) 455-2700

THOMAS W. KRAMER (P25252)
MATTHEW F. LEITMAN (P48999)
GERALD J. GLEESON, II (P53568)
DAVID D. O'BRIEN (P65532)
Miller, Canfield, Paddock & Stone, PLC
Attorneys for Defendant Harry R. Smith
840 W. Long Lake Road, Suite 200
Troy, Michigan 48098
(248) 879-2000

RICHARD L. SWICK
Attorney for Michael Thomas
1225 Eye Street, NW, Suite 1290
Washington, D.C. 20005
(202) 842-0300

**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

TABLE OF CONTENTS

Table of Contentsii

Table of Authoritiesiii

Question Presentediv

Introduction1

Argument1

 I. Plaintiff Should Be Allowed to Amend His Complaint1

Relief Requested2

TABLE OF AUTHORITIES

United States Supreme Court

Foman v. Davis, 371 U.S. 178; 83 S.Ct. 227; 9 L.Ed.2d. 222 (1962)2

United States Circuit Courts

Tefft v. Seward, 689 F.2d 637 (6th Cir.1982)1

Federal Statutes

42 U.S.C. § 19831

Amendments to the Constitution of the United States of America

U.S. Const. Amend. IV1

U.S. Const. Amend. XIV1

Federal Rules of Civil Procedure

Fed.R.Civ.P. 15(a)1

QUESTION PRESENTED

I. Should Plaintiff Be Allowed to Amend His Complaint?

Plaintiff answers “Yes.”

Defendants answer “No.”

INTRODUCTION

Plaintiff filed his original complaint on August 30, 2007, alleging violations of the Fourth and Fourteenth Amendments and 42 U.S.C. § 1983 based on Defendants' malicious prosecution. In lieu of filing an answer to the complaint, all of the Defendants have moved to dismiss Plaintiff's complaint pursuant to Rule 12(b)(6). Plaintiff is now seeking leave of the Court to properly plead a Fourteenth Amendment violation against the named Defendants.

ARGUMENT

I. Plaintiff Should Be Allowed to Amend His Complaint.

Pursuant to Fed.R.Civ.P 15(a), a party may amend its Complaint by leave of the court, and such leave to amend shall be freely given when justice so requires. The Federal Rules of Civil Procedure provide for a liberal policy of permitting amendments to ensure that claims are adjudicated on their merits. *Tefft v. Seward*, 689 F.2d 637, 639 (6th Cir.1982). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman v. Davis*, 371 U.S. 178, 182; 83 S.Ct. 227; 9 L.Ed.2d. 222 (1962).

Generally, a motion to amend a complaint should only be denied for a limited number of particularized reasons, such as: (1) undue delay, (2) bad faith or dilatory motive on the part of the moveant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, or (5) futility of the amendment. *Foman*, 371 U.S. at 182.

None of these factors are present in the instant case. Plaintiff has not acted with undue delay, bad faith, or dilatory motive in bringing this motion for leave to amend, nor has he made any previous attempts to amend the complaint. Moreover, Defendants will suffer no undue prejudice if Plaintiff is allowed to amend his complaint only to name the additional officer involved in the arrest of Plaintiff, and allowing Plaintiff to amend his complaint would certainly not be futile where this information has come to light through discovery. (See Exhibit A, Proposed First Amended Complaint).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant his Motion for Leave to File a First Amended Complaint.

Respectfully submitted by:

s/ Ben M. Gonek
BEN M. GONEK (P43716)
Attorneys for Plaintiff
1300 Ford Building
615 Griswold Street
Detroit, Michigan 48226
(313) 963-3377
bgonek@aol.com

Dated: January 28, 2008

CERTIFICATE OF SERVICE

BEN M. GONEK hereby states that on the 28th day of January 2008, he caused the foregoing *Motion for Leave to File First Amended Complaint* to be filed electronically with the United States District Court and that copies were forwarded to all counsel of record using the ECF system.

s/ Ben M. Gonek
BEN M. GONEK (P43716)