

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION

|                                |   |                            |
|--------------------------------|---|----------------------------|
| ROBERT E. SPENCER,             | ) |                            |
|                                | ) |                            |
| Plaintiff,                     | ) |                            |
|                                | ) |                            |
| v.                             | ) | Case No. 16-05083-CV-SW-RK |
|                                | ) |                            |
| BARTON COUNTY AMBULANCE        | ) |                            |
| DISTRICT, LEISA BLANCHARD,     | ) |                            |
| PAUL STEBBINS, CHERYL WOOD,    | ) |                            |
| JOE FRANCIES and CRAIG LEHMAN, | ) |                            |
|                                | ) |                            |
| Defendants.                    | ) |                            |

**ORDER (1) GRANTING MOTION FOR LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIMS AND (2) FINDING AS MOOT PLAINTIFF’S MOTION TO DISMISS COUNTERCLAIMS AND PLAINTIFF’S MOTION TO STRIKE DEFENSES**

Pending are (1) Plaintiff’s Motion to Dismiss Counterclaims, (2) Plaintiff’s Motion to Strike Affirmative Defenses, and (3) Defendant Barton County Ambulance District’s (“BCAD”) Motion for Leave to File Amended Answer and Counterclaims. As discussed below, BCAD’s Motion, (doc. 47), is **GRANTED**, which renders Plaintiff’s motions (docs. 19 and 40), **MOOT**.

**Background**

Plaintiff filed a four-count Complaint on July 18, 2016, seeking damages from BCAD and five of BCAD’s Board Members. (Doc. 1.) On August 17, 2016, BCAD filed an Answer to Plaintiff’s Complaint that included Affirmative Defenses and Counterclaims. (Doc. 7.) On September 6, 2016, Plaintiff filed his First Amended Complaint, (doc. 22), and BCAD filed an Answer to the First Amended Complaint. (Doc. 30.)

Plaintiff then filed two motions. First, he filed a Motion to Dismiss, (doc. 19), which asks the Court to dismiss BCAD’s Counterclaims. Then, he filed a Motion to Strike, (doc. 40), which asks the Court to strike some of BCAD’s Affirmative Defenses.

After the briefing on Plaintiff’s motions was completed, BCAD filed its Motion for Leave to File Amended Answer and Counterclaims. (Doc. 47.) Some of the amendments are intended to address issues Plaintiff has raised in his two motions. (Doc. 47 at 2-3.) Plaintiff has not responded to BCAD’s motion, and the time for doing so has passed. See Local Rule 7.0(c)(2).

### **Discussion**

The Court begins by considering BCAD's motion. A party is permitted to amend its pleadings with leave of court, and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Court concludes BCAD should be granted the opportunity it requests to address the issues raised in Plaintiff's motions. This conclusion is reinforced by the fact that (1) Plaintiff has not opposed the request and (2) BCAD's motion was filed within the time limits set in the Scheduling Order. (Doc. 26, ¶ 2.) Therefore, BCAD's Motion for Leave to File Amended Answer and Counterclaims is granted.

Plaintiff's motions are directed to BCAD's current pleading, and are rendered moot by the Amended Answer and Counterclaims. *See Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002). Of course, Plaintiff is free to evaluate whether his arguments should be re-asserted in a new motion after the amended pleading is filed.

### **Conclusion**

BCAD's Motion for Leave to File Amended Answer and Counterclaims, (doc. 47), is **GRANTED**, and BCAD shall have three business days to electronically file its Amended Answer and Counterclaims. Plaintiff's Motion to Dismiss Counterclaims, (doc. 19), and Motion to Strike Affirmative Defenses, (Doc. 40), are **DENIED as moot**.

**IT IS SO ORDERED.**

s/ Roseann A. Ketchmark  
ROSEANN A. KETCHMARK, JUDGE  
UNITED STATES DISTRICT COURT

DATED: January 5, 2017