

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Town of Wolfeboro

v.

Civil No. 12-cv-130-JD

Wright-Pierce

O R D E R

After problems developed with its new wastewater disposal system, the Town of Wolfeboro brought suit against Wright-Pierce, the engineer for the project. Wolfeboro now moves for leave to amend its complaint to add claims of violation of the New Hampshire Consumer Protection Act, fraud, fraudulent misrepresentation, and gross negligence. Wright-Pierce objects to the motion for leave to amend.

Discussion

Wolfeboro moves to amend its complaint under the liberal standard provided by Federal Rule of Civil Procedure 15(a)(2). The deadline for amending the pleadings, in the scheduling order, was November 30, 2012. Wright-Pierce contends that Wolfeboro cannot show good cause, under Federal Rule of Civil Procedure 16(b)(4), to modify the scheduling order.

In general, leave to amend should be freely given unless the proposed amendment would be futile or is the result of undue

delay or bad faith. Calderon-serra v. Wilmington Tr. Co., --- F.3d ---, 2013 WL 1715518, *4 (1st Cir. Apr. 22, 2013). When, as here, the plaintiff seeks leave to amend the complaint after the scheduling order deadline, the plaintiff also must show good cause to modify the scheduling order. Fed. R. Civ. P. 16(b)(4); Somascan, Inc. v. Phillips Med. Sys. Nederland, B.V., --- F.3d ---, 2013 WL 1715568, *1 (1st Cir. Apr. 22, 2013). Good cause, for purposes of amending a scheduling order, "focuses on the diligence (or lack thereof) of the moving party more than it does on any prejudice to the party-opponent." Id. (internal quotation marks omitted).

Because Wolfeboro moves for leave to amend the complaint after the scheduling order deadline has passed, the good cause standard under Rule 16(b)(4) applies. Wolfeboro did not address that standard in its motion. Therefore, Wolfeboro has not shown good cause to modify the scheduling order to consider the proposed amendment.

Conclusion

For the foregoing reasons, the plaintiff's motion for leave to amend (document no. 23) is denied without prejudice to file a properly supported motion.

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

May 9, 2013

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