

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

EDWARD CARRINGTON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	1:08CV119
)	
DUKE UNIVERSITY, et al.,)	
)	
Defendants.)	

ORDER

This matter is before the Court on Plaintiffs’ Motion for Leave to File an Amended Complaint [Doc. #140]. In the Motion, Plaintiffs seek leave to file a First Amended Complaint adding a new cause of action against Defendant City of Durham (“the City”) under Article I, Section 19 of the North Carolina Constitution, pursuant to the North Carolina Supreme Court’s decision in Craig v. New Hanover County Board of Education, 363 N.C. 334, 678 S.E.2d 351 (N.C. 2009). This amendment is in response to a Motion for Partial Summary Judgment [Doc. #113] filed by the City prior to discovery, seeking to dismiss Plaintiffs’ state law causes of action on the grounds of governmental immunity. After the Motion for Partial Summary Judgment was filed, the state Supreme Court issued the decision in Craig, which held that where a plaintiff’s claim is precluded by a governmental immunity defense, the plaintiff is without an “adequate remedy at state law” and can assert a claim directly under the state Constitution. See Craig, 363 N.C. at 339-40, 678 S.E.2d at 355-56. Plaintiffs’ proposed First Amended Complaint therefore seeks to add a cause of action under the state Constitution pursuant to Craig. In addition, the proposed Amended Complaint withdraws a claim for Promissory Estoppel previously asserted against Defendant Duke University.

The City has filed a Response to the Motion to Amend. In its Response, the City concedes that Plaintiffs are entitled to file the Amended Complaint as a matter of course pursuant to Federal Rule of Civil Procedure 15(a). Prior to December 1, 2009, Federal Rule of Civil Procedure 15(a) provided that a party “may amend its pleading once as a matter of course before being served with a responsive pleading.” In this case, the City has filed a Motion to Dismiss but has not yet filed a responsive pleading, and the proposed Amendment only adds a claim against the City. Defendant Covington has filed an Answer in this case, but the proposed Amendment does not add to or affect any of the claims against Defendant Covington. Therefore, because the Motion to Amend was filed prior to December 1, 2009, leave of Court was not required.¹ Moreover, the Court further concludes that even if leave of Court were required, it is appropriate to allow Plaintiffs to amend their Complaint in light of the decision of the North Carolina Supreme Court in Craig. Therefore, Plaintiffs’ Motion for Leave to file their First Amended Complaint will be granted.

As a matter of procedure, Plaintiffs will be required to file their First Amended Complaint within seven (7) days of this Order. The Court notes that because the First Amended Complaint will become the operative Complaint in this case, the previously-filed Motions to Dismiss, which sought to dismiss the prior Complaint, will be terminated as moot. All of the Defendants will be allowed to file renewed Motions to Dismiss within 21 days after the First

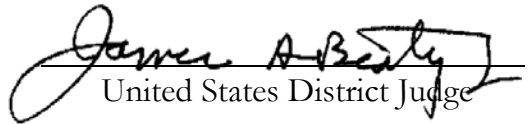
¹ Pursuant to an Amendment to Rule 15 that took effect December 1, 2009, a pleading may now be amended as a matter of course within 21 days after serving it or within 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b). Thus, leave of court is now required if a party seeks to amend a complaint more than 21 days after a motion to dismiss is filed.

Amended Complaint is filed in this case. However, in the circumstances, and in order to reduce the need for any additional briefing in this case, those renewed Motions to Dismiss should not be accompanied by any further briefing, and should instead incorporate any previous briefing by reference to the relevant docket numbers in this case, including the supplemental briefing related to the Supreme Court's decision in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), and the recently-filed Suggestion of Subsequently Decided Authority [Doc. #143]. In addition, the City may file an additional supplemental supporting memorandum not to exceed 20 pages addressing only the new matters reflected in the First Amended Complaint. A Response to the supplemental memorandum, not to exceed 20 pages, may be filed within 21 days thereafter, with a Reply not to exceed 10 pages filed 14 days later. All other Responses and Replies may be incorporated by reference, without the need for further filings or briefing related to the Motions to Dismiss. To the extent that Defendant Covington previously filed an Answer, Defendant Covington may refile that Answer in response to the Amended Complaint.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Leave to File an Amended Complaint [Doc. #140] is GRANTED, and Plaintiffs must file their First Amended Complaint within seven (7) days of this Order. IT IS FURTHER ORDERED that the previously-filed Motions to Dismiss [consolidated at Doc. #72] will be terminated as MOOT. IT IS ORDERED that Defendants may file renewed Motions to Dismiss within 21 days after the First Amended Complaint is filed, but those renewed Motions to Dismiss should not be accompanied by any further briefing, and should instead incorporate any previous briefing by reference to the relevant docket numbers in this case. IT IS FURTHER ORDERED that the City may file an

additional supplemental supporting memorandum not to exceed 20 pages addressing new matters reflected in the First Amended Complaint, and a Response to the supplemental memorandum, not to exceed 20 pages, may be filed within 21 days thereafter, with a Reply not to exceed 10 pages filed 14 days later.

This, the 16 day of February, 2010.


United States District Judge