

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:11CV617-FDW-DSC

MARY B. RUDOLPH, et al.,
Plaintiffs,
v.
BEACON INDEPENDENT LIVING
LLC, et al.,
Defendants.

MEMORANDUM AND
ORDER

THIS MATTER is before the Court on "Defendants Beacon Independent Living, LLC and Bruce Bleiman's Motion for Leave to Amend Answer and Memorandum in Support Thereof," Doc. 50, filed February 15, 2012 and the parties' associated briefs, Docs. 52 and 54.

This matter was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A), and this Motion is now ripe for the Court's consideration.

Having carefully considered the parties' arguments, the record, and the applicable authority, the Court will grant Defendants Beacon Independent Living, LLC and Bruce Bleiman's Motion for Leave to Amend Answer.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 5, 2011, Plaintiffs filed their original Complaint, Doc. 1. On December 20, 2011, Plaintiffs filed an Amended Complaint, Doc. 19. Defendants Beacon Independent Living, LLC and Bruce Bleiman (collectively "Defendants") filed their original Answer, Doc. 42, on January 17, 2012.

On January 23, 2012, the Court entered an Order, Doc. 45, granting in part and denying in part Plaintiffs' Motion for Preliminary Injunction, Doc. 22. On February 1, 2012, the Court entered

a Case Management Order, Doc. 47, assigning this case to the fast case management track and setting a trial date of July 9, 2012. The Order also stated that “[a]ny motion for leave to join additional parties or otherwise to amend the pleadings shall be filed by February 15, 2012.” Id. at 6.

Defendants seek leave of Court to file an Amended Answer and Counterclaims that would add two new counterclaim Defendants, Dr. George Raad and Robert Rudolph, as well as counterclaims for fraud, breach of fiduciary duty/constructive fraud, unfair and deceptive trade practices and quantum meruit/unjust enrichment.

Plaintiffs argue that the Motion should be denied because the amended answer is prejudicial to them, filed in bad faith, and futile. Plaintiffs also contend that Defendants failed to confer with counsel before filing the Motion. In response, Defendants argue that the Motion was timely filed, is not prejudicial and asserts valid counterclaims. Defendants admit that they did not confer with Plaintiffs’ counsel prior to filing the Motion due to time limitations under the fast track scheduling order. Defendants’ counsel contacted opposing counsel on the morning following the filing of the Motion.

## II. DISCUSSION

Federal Rule of Civil Procedure 15(a) provides in relevant part that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Fourth Circuit has stated that “under Rule 15(a) leave to amend shall be given freely, absent bad faith, undue prejudice to the opposing party, or futility of amendment.” U.S. v. Pittman, 209 F.3d 314, 317 (4th Cir. 2000). Further, “the grant or denial of an opportunity to amend is within the discretion of the District Court.” Pittston Co. v. U.S., 199 F.3d 694, 705 (4th Cir. 1999).

Applying those legal principles to the record in this case, and expressing no opinion as to the merits of Defendants' counterclaims, the Court finds that the proposed amendment should be allowed. The Court finds that Defendants sought leave to amend within the prescribed time period under the Court's Case Management Order. Plaintiffs are not unduly prejudiced by the proposed amendment. Further, the Court finds that the proposed amendment is offered in good faith and that the amendment is not futile. Therefore, the Court will grant Defendants' Motion to Amend.

### **III. ORDER**

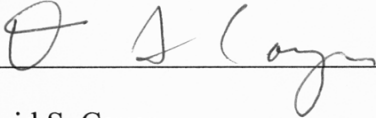
#### **NOW, THEREFORE, IT IS ORDERED**

1. "Defendants Beacon Independent Living, LLC and Bruce Bleiman's Motion for Leave to Amend Answer and Memorandum in Support Thereof," Doc. 50, is **GRANTED**, and Defendants shall file an Amended Answer and Counterclaims on or before March 21, 2012.

2. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties; and to the Honorable Frank D. Whitney.

**SO ORDERED.**

Signed: March 14, 2012

  
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David S. Cayer  
United States Magistrate Judge

