

ANALYSIS

The Hotel Defendants have moved for leave to amend their crossclaims against Memphis Pool and SBCS. (ECF No. 86.) Courts should “freely give leave [to amend the pleadings] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962); accord *McCray v. Carter*, 571 F. App’x 392, 399 (6th Cir. 2014).

The Hotel Defendants’ motion was filed by the deadline established in the Scheduling Order for amending the pleadings. (See ECF No. 75.) Thus, the Court does not find undue delay, bad faith, or dilatory motive to be present. SBCS claims that the amendment would be futile. (ECF No. 87 at PageID 590.) But this Court is not persuaded that the proposed amendment would be futile. For example, the proposed amendment adds claims for negligence against SBCS and Memphis Pool which allege enough facts from which one could draw an inference that SBCS and Memphis Pool were negligent. Plus the proposed Amended Crossclaim alleges that *Legionella* bacteria was found in close proximity to the hotel’s pool and hot tub. This suggests to the Court that it is at least plausible that the bacteria was also present in the pool or hot tub at the time Plaintiff was a guest at the hotel. Accordingly, the Court finds that the Hotel Defendants’ proposed amendments would not be futile.

In light of this Order, SBCS’s Motion for Judgment on the Pleadings against the Hotel Defendants (ECF No. 54) is DENIED WITHOUT PREJUDICE AS MOOT. SBCS will be allowed to move to dismiss the Amended Crossclaims after they are filed.

CONCLUSION

For these reasons, Defendants/Cross Claimants Guest House at Graceland LLC and Pyramid Tennessee Management LLC Motion for Leave to Amend is GRANTED.

Defendant/Cross Defendant Santa Barbra Control Systems' Motion for Judgment on the Pleadings against Plaintiff Guest House at Graceland LLC and Pyramid Tennessee Management LLC is DENIED WITHOUT PREJUDICE.

SO ORDERED, this 18th day of December, 2018.

s/Thomas L. Parker

THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE