

United States District Court
Southern District of Texas

ENTERED

January 23, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

REHMAT PEERBHAI, *et al*,

Plaintiffs,

VS.

PC PROCESSING, INC., *et al*,

Defendants.

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CIVIL ACTION NO. 2:16-CV-365

ORDER GRANTING MOTION FOR LEAVE

Plaintiffs filed this action in the 229th Judicial District Court of Duval County, Texas, against four Defendants: PC Processing, Inc. (PCPI); Cen Cal Insurance Services, LLC; CenCal Holdings, LLC; and Lindsay General Insurance Agency, LLC (Lindsay). D.E. 1-3. After Plaintiffs dismissed their claims against Lindsay, the only non-diverse defendant, Defendants removed the case to this Court. D.E. 1. On November 17, 2016, this Court denied Plaintiffs’ motion for remand and ordered Plaintiffs to amend their complaint to conform to federal pleading rules. *See* D.E. 6.

By motion filed on December 19, 2016, Plaintiffs now seek to amend their pleading, not only to conform to federal rules, but to join as a necessary party Defendant Alex J. Campos (Campos) and to add a legal theory for recovery. D.E. 20. Plaintiffs are within the deadline for amending pleadings and joining parties. D.E. 18. And motions to amend are freely granted in the interests of justice. Fed. R. Civ. P. 15(a)(2). Plaintiffs allege that Campos is a principal of current Defendants PCPI and CenCal Holdings and

was personally involved in the transactions giving rise to this action. The claims against him are based on fraud and negligent misrepresentation.

Defendants oppose the motion for leave on the basis that the new claims against Campos are untimely, made in bad faith, and the negligent misrepresentation claim is barred by limitations. While Plaintiffs could have pled their claims against Campos when they originally filed this action, the Court notes that this case has not yet been developed in discovery and significant deadlines have not passed. While Defendants claim prejudice, they have not demonstrated what prejudice adding Campos will cause. And their claim of bad faith is unsupported.

It is undisputed that negligent misrepresentation claims are subject to a two-year limitations bar.¹ According to their proposed amended complaint, Plaintiffs claim that Campos made negligent misrepresentations throughout the relationship of the parties, ending with the transfer of CenCal Insurance Services, LLC to Plaintiff, CenCal Insurance Services Inc. D.E. 20-2, ¶ 49. This transaction occurred on or about November 10, 2014. D.E. 20-3, ¶ 8. Plaintiffs further complain that they did not learn that the transaction was not as represented until December 2014, and into the early part of 2015. D.E. 27, p. 6. They plead the discovery rule. *Id.*

Given that the fraud² claims have not been challenged, the Court determines that it is in the interest of justice to permit the amended complaint, including the negligent

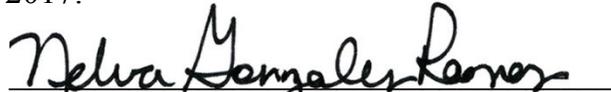
¹ See generally, Tex. Civ. Prac. & Rem. Code § 16.003(a); *Texas American Corp. v. Woodbridge Joint Venture*, 809 S.W.2d 299, 302 (Tex. Civ. App.—Fort Worth 1991, writ denied).

² Fraud claims carry a four-year limitations period. See generally, *Kansa Reinsurance Co. v. Cong. Mortg. Corp. of Texas*, 20 F.3d 1362, 1369 (5th Cir. 1994) (citing *Williams v. Khalaf*, 802 S.W.2d 651, 656–58 (Tex. 1990) and Tex.Civ.Prac. & Rem.Code Ann. § 16.004(a)(3) (Vernon 1986)).

misrepresentation claims. Rather than adjudicate the negligent misrepresentation limitations issue as a preliminary matter, the Court will permit discovery and dispositive motions in the ordinary course of the pre-trial schedule.

For these reasons, the Court GRANTS the motion for leave (D.E. 20) and instructs the Clerk to file the amended complaint (D.E. 20-2) as an independent document on the docket of this case.

ORDERED this 23rd day of January, 2017.


NELVA GONZALEZ RAMOS
UNITED STATES DISTRICT JUDGE