By the order of the court, Judge David A Wiseman

FOR PUBLICATION

E-FILED
CNMI SUPERIOR COURT
E-filed: Apr 22 2014 04:35PM
Clerk Review: N/A
Filing ID: 55331802
Case Number: 11-0090-CV
N/A

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

VICENTE M. DELEON GUERRERO, et al., **Plaintiffs,** **v.** **JOSEPH J. IACOPINO,** **Defendant.**	**CRIMINAL ACTION NO. 11-0090** **ORDER DENYING PLAINTIFF'S MOTION TO FILE A THIRD AMENDED COMPLAINT**

INTRODUCTION

THIS MATTER came before the Court for a hearing on April 10, 2014, on Plaintiff's Motion for leave to file a Third Amended Complaint ("TAC"). Defendant Iacopino ("Defendant") was represented by Robert O'Connor, Esq. Plaintiff Vicente M. Deleon Guerrero was represented by Victorino Torres, Esq., and Plaintiff Chazrae S. Deleon Guerrero was represented by Robert Myers, Esq. After hearing the parties' arguments and reviewing the written submissions, the Court **DENIES** Plaintiffs' Motion to file a TAC for the following reasons.

BACKGROUND

Before delving into the merits of Plaintiffs' Motion, the Court finds it necessary to outline the procedural history of this case in an effort to document the several opportunities Plaintiffs have had to amend their complaint.

A. Initial Complaint

Plaintiffs first filed their initial complaint ("Complaint") against Defendant on April 4, 2011, alleging legal malpractice, breach of fiduciary duty, breach of contract, and breach of duty of loyalty, as well as a claim for punitive damages. After the Honorable Judge Kenneth Govendo's recusal was filed on September 26, 2011, the case was assigned to this Court on October 13, 2011.

On May 18, 2011, the previously named defendants, Colin M. Thompson, Gilbert Birnbrich, and Thompson Law Office, LLC, filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Commonwealth Rules of Civil Procedure, on the ground that Plaintiffs failed to plead sufficient facts adequate to survive a motion to dismiss. Subsequently, on August 3, 2011, Defendant also filed a Motion to Dismiss Plaintiffs' Complaint on the grounds that it failed to adequately plead factual allegations in support of the elements of causation and damages, which are essential to each claim and cause of action.

On February 22, 2013, this Court addressed the motions of both parties in a single order, which granted the previously named Defendants' May 18, 2011 Motion to Dismiss as to all counts, as well as Defendant Iacopino's August 3, 2011 Motion to Dismiss as to Counts 1 and 3 — legal malpractice based upon professional negligence and breach of contract. The remaining causes of action – Counts 2, 4, and 5 – involved legal malpractice based upon breach of fiduciary duty, breach of duty of loyalty, and punitive damages, respectively.

B. First Amended Complaint

Subsequently, the remaining parties stipulated that Plaintiffs file a First Amended Complaint ("FAC") on or before April 8, 2013. Plaintiffs did so on April 9, 2013, alleging the remaining causes of action and adding a fourth cause of action, alleging a Consumer Protection Act Violation based upon unfair or deceptive business practice. The Court then set a trial for February 3, 2014 at a hearing held on April 10, 2013.

On May 23, 2013, Defendant filed a Motion to Dismiss Plaintiffs' FAC on the grounds that Plaintiffs failed to include any allegations from which it could be reasonably inferred that Defendant's acts caused any damage to Plaintiffs, which is an essential element of each cause of action asserted in Plaintiffs' FAC. On October 11, 2013, this Court granted Defendant's Motion to Dismiss, and granted Plaintiffs 5 calendar days to file an amended complaint.

C. Second Amended Complaint

On October 16, 2013, Plaintiffs filed a Second Amended Complaint ("SAC"), which retained all the causes of action alleged in the FAC, albeit with further factual support as to what Plaintiffs claim are the damages caused by Defendant's alleged acts.

On October 22, 2013, Defendant filed a Motion to Dismiss Plaintiffs' SAC, alleging that while Plaintiffs had corrected the previously ruled upon defects as to factual support for damages, the numerous injuries Plaintiffs claim Defendant's alleged acts caused were without merit and not actionable such that relief could be granted. Furthermore, on November 18, 2013, Defendant filed a Motion for Summary Judgment on the grounds that Plaintiffs' claims must be proven by expert testimony – which is necessary due to their nature as an attorney-client dispute – and Plaintiffs disclosed no expert witnesses within the time they were ordered to do so by the Court.[1]

On December 5, 2013, this Court denied Defendant's Motion to Dismiss as to the remaining Counts – Counts 1, 2, and 3 – yet granted Defendant's motion as to the Consumer Protection Act violation as to Plaintiffs Vicente and Nadine, and denied as to the same cause of action as to Chazrae.

In the aforementioned Order, the Court clearly and plainly declined to give any leave to amend. The Court acknowledged that while Rule 15(a) provides that, after the first appropriate amended pleading, a party may further amend its complaint if the Court finds that justice so requires. *See* NMI R. Civ. P. 15(a). However, the Court reasoned that no further leave to amend would be given as this was Plaintiffs' Second Amended Complaint, meaning Plaintiffs had two previous opportunities to tailor their complaint to the factual support provided and the requirements of the law.

D. Stipulations to Continue Trial

On February 26, 2013, the Court set a case management conference for April 11, 2013. On May 7, 2013, following the case management hearing previously set, the Court issued an Order setting the trial date for February 3, 2014. On January 17, 2014, the parties stipulated and the Court ordered the trial date to be continued from February 3, 2014, to June 9, 2014, due to various discovery issues.

---

[1] An Order ruling on Defendant's Motion for Summary Judgment is forthcoming by the Court.

E. Motion for Leave to File Third Amended Complaint

Lastly, on March 3, 2014, Plaintiffs filed the present Motion for leave to file a Third Amended Complaint ("TAC"). Plaintiffs Ben and Nadine allege that, based upon the Promissory Note received by their counsel on February 25, 2014, justice requires that Ben and Nadine be allowed to amend the complaint to reallege a violation of the Consumer Protection Act – a cause of action the Court dismissed in its December 5, 2013 Order – under a separate and unique theory pursuant to 4 CMC § 5105(gg) "Inserting an unconscionable provision in a contract." (Pl.'s Mot., at 2.)

Defendant filed an Opposition on March 17, 2014, arguing that: (1) discovery has concluded, the motion cut-off date of April 2, 2014 has passed, and trial is looming; (2) Plaintiffs have known about this precise issue for years, but chose to add this particular theory of liability too late, as it is time-barred by the applicable statute of limitations; and (3) allowing Plaintiffs leave to amend for a third time, just before trial, would only cause undue disruption and further delay, as well as prejudice to Defendant. (Def.'s Opp., at 1-2.)

Plaintiffs filed a Reply on March 31, 2014, disputing that the proposed CPA violation is not barred by the applicable statute of limitations for a variety of reasons, and that no undue delay because Plaintiffs have "consistently alleged a violation of the CPA." (Pl.'s Reply, at 2-3, 7-8.) Plaintiffs further allege that the facts the proposed CPA violation is based upon are "something that the Defendant was fully aware of since he drafted the Promissory note, knew of the CPA claims and they cannot now claim to be [sic] surprise." (*Id.* at 8.)

LEGAL STANDARD

The standard for courts granting parties leave to amend their legally insufficient pleadings is traditionally liberal and generously construed. *See United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). However, this is not to say that leave to amend is automatic, but rather is in the sole discretion of the trial court. As such, Rule 15 of the NMI Rules of Civil Procedure provides that "[a] party may amend the party's pleading once as a matter of course . . . [o]therwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." NMI R. Civ. Pro. 15(a).

Specifically, courts outside of the Commonwealth have established a multi-factor test to determine whether leave should be granted in the interest of justice. "Leave to amend need not be granted when the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile." *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006); *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999).

DISCUSSION

Having detailed the protracted history of the present case, the Court will now address each of the issues raised by the parties in turn.

I. PREJUDICE TO DEFENDANT

First, Defendant alleges that he will be prejudiced if the Court grants Plaintiffs leave to amend their complaint for the third time.

Defendant argues that: (1) the April 2, 2014 deadline for dispositive motions has already passed, so he would be unable to file any motion to dismiss or summary judgment on grounds related to the permitted amendment; (2) even if the Court granted Plaintiffs' motion immediately upon hearing it on April 10, 2014, and the TAC was deemed filed and served immediately, Defendant would have until April 23, 2014 to respond, pursuant to Rule 15(a) (ten working days from service of an amended complaint); (3) assuming the Court extends the filing deadline for dispositive motions, any motion filed by Defendant would not be heard until May 23, 2014, pursuant to the regular 30 working days of Rule 6(d)(1), which is merely two weeks before trial set on June 9, 2014; (4) the involved parties should be preparing for trial on a clear and known set of issues, rather than disputing what the issues in the case should be; (5) any "telescoping" of these set periods by special order would be at the expense of due preparation and consideration of the merits of the issues, which would be unjustly and unnecessarily prejudicial to Defendant; and (6) allowing the proposed amendment would change the whole posture and nature of the case. (Def.'s Opp., at 10-11.)

In their reply, Plaintiffs argue that Defendant does not dispute that Plaintiffs recently received the above mentioned Promissory Note on February 25, 2014, and that Defendant has not articulated any true undue prejudice because Defendant was in possession of the information from the start of litigation

in this matter. (Pl.'s Reply, at 7.) Further, Plaintiffs argue that Defendant was fully aware of Plaintiffs' CPA claims and cannot now claim the issue to be a surprise just before trial. (*Id.* at 8.)

The Court acknowledges that the discovery period has closed and that trial has been set. To that extent, the Court agrees that allowing Plaintiffs to amend their complaint for a third time, especially when considering the extended history of this case and the previous two opportunities the Court has given Plaintiffs to amend their complaint, would unduly prejudice Defendant by raising new theories just before trial, which Defendant would then have to both potentially litigate by dispositive motions – as Defendant has done at every stage of amendment of the Complaint – and prepare to attack at trial. *See Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) ("Putting the defendants 'through the time and expense of continued litigation on a new theory . . . would be manifestly unfair and unduly prejudicial.'") (quoting *Troxel Mfg. Co. v. Schwinn Bicycle Co.*, 489 F.2d 968, 971 (6th Cir. 1973), *cert. denied*, 416 U.S. 939, 40 L. Ed. 2d 290, 94 S. Ct. 1942 (1974)).

Furthermore, it cannot be said that Defendant must have been fully aware of Plaintiffs' CPA claims because Defendant was in possession of the Promissory Note mentioned above. Defendant could be considered on notice that Plaintiffs' intended to include a CPA claim as of the filing of their FAC, which included a cause of action claiming a violation of the CPA based upon unfair or deceptive business practices, as Defendant was successful in dismissing the same cause of action as against Plaintiffs Ben and Nadine. However, there was no indication that Plaintiffs' intended to employ the novel theory of the existence of an unconscionable contract provision until the filing of the present motion, after numerous dispositive motions were filed by Defendant. Thus, Defendant would have to quickly and diligently prepare a defense to the new theory less than two months before trial, as well as potentially file, serve, and seek resolution on any dispositive motions warranted as a result of the proposed amendment.

In conclusion, to allow Plaintiffs to amend their complaint to add a new theory to their case less than two months before trial would be unfairly prejudicial to Defendant.

II. UNDUE DELAY

Second, Defendant alleges that undue delay would result if the Court allowed Plaintiffs to amend their complaint for a third time less than two months before trial.

Defendant argues that Plaintiffs' claim of unfamiliarity with the issue raised by the proposed amendment until receiving the Promissory Note on February 25, 2014 is without merit. Defendant alleges that Plaintiffs' counsel "manifestly knew about it well before February 25, since he produced an e-mail with the same provision as an exhibit at [Defendant's] deposition . . . and questioned [Defendant] about it, noting on the record that he had received [it] from Mr. O'Connor." (Def.'s Opp., at 11.) Further, Defendant argues that even if the Court granted Plaintiffs' motion immediately upon hearing it on April 10, 2014, and the TAC was deemed filed and served immediately, Defendant would have until April 23, 2014 to respond, pursuant to Rule 15(a) (ten working days from service of an amended complaint). Thus, any dispositive motion filed by Defendant would not be heard until May 23, 2014 – pursuant to the regular 30 working days of Rule 6(d)(1) -- merely two weeks before trial set on June 9, 2014. (*Id.* at 10.)

In response, Plaintiffs claim that no undue delay exists because Plaintiff has consistently alleged a violation of the CPA, and that Defendant has been fully aware of the facts supporting the CPA claims since drafting the Promissory Note mentioned above. (Pl.'s Reply, at 7-8.)

Courts have found that the key facts in evaluating the delay issue is whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading. *E.g., E.E.O.C. v. Boeing Co.*, 843 F.2d 1213, 1222 (9th Cir.), *cert. denied*, 488 U.S. 889 (1988); *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1324 (9th Cir.), *vacated on other grounds*, 459 U.S. 810 (1982). Courts have also considered whether the moving party otherwise justified their delay in moving to file an amended complaint. *See, e.g.*, *Parker v. Joe Lujan Enters., Inc.*, 848 F.2d 118, 121 (9th Cir. 1988) (affirming lower court's denial of motion to amend in part on ground of undue delay despite appellant claiming he was unaware of newly discovered evidence because he waited five weeks to file his motion for leave to amend); *Kates v. Crocker Nat'l Bank*, 776 F.2d 1396, 1398 (9th Cir. 1985).

Here, Plaintiffs surely knew or should have known they would raise the theory of unconscionable contract provisions in relation to the Promissory Note mentioned above, a vital piece of evidence upon which a large portion of the theory of the case is based. Further, Plaintiffs claim they have only just received the Promissory Note pursuant to discovery on February 25, 2014, and filed the present motion a week later on March 3, 2014. While this delay in filing the motion is not as egregious

as that in *Parker*, the fact remains that the contract provisions at issue were known to the Plaintiffs for some time before they had received the document via discovery.

Thus, the Court finds that allowing Plaintiffs to amend their complaint for a third time to add a new theory of which they had previous knowledge would cause undue delay of the matter, which has been set for trial in less than two months' time.

III. FUTILITY

Third, Defendant claims that allowing Plaintiffs to file a third amended complaint is futile because the proposed amendment is time-barred by the applicable statute of limitations, and that the contract provision at issue was not unconscionable in view of the totality of the circumstances.

A. Statute of Limitations

Defendant argues that the proposed Consumer Protection claim would ultimately be dismissed because Plaintiffs have exceeded the four-year statute of limitations period under 4 CMC § 5110. In support of this argument, Defendant claims that the cause of action Plaintiffs seek to assert accrues, for purposes of the statute of limitations, as soon as the allegedly unconscionable provision was inserted — in this case, no later than September 13, 2007, or more than six years ago. (Def.'s Opp., at 3.)

1. Relation-Back Doctrine

First, Plaintiffs claim that the CPA claim would not be time-barred pursuant to the "relation back" doctrine of Rule 15. The relation back doctrine provides that an amendment of a pleading relates back to the date of the original pleading when "the claim . . . asserted in the amendment arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings. . . ." *See* NMI R. Civ. Pro. Rule 15(c)(2).

Here, Plaintiffs argue that they have claimed violations of Defendant's duty of care, standard of care, and a breach of his fiduciary duty since the inception of the case, and thus the amendment arose out of the same transaction those allegations are based upon. (Pl.'s Reply, at 2.) Plaintiffs further allege that Defendant has been on notice of the CPA claims since at least the filing of the First Amended Complaint on April 9, 2013.

The Court disagrees. While Defendant has in fact been on notice of Plaintiffs' CPA claims since the first amendment was filed and served, the FAC was filed nearly six years after the claim accrued.

These CPA claims would "relate back" to the initial Complaint if they arose out of the same transaction or occurrence set for in the original pleadings. However, the Court finds that the original Complaint fleetingly mentions the loan made to Plaintiffs Ben and Nadine, claiming that Defendant "[bought] the case so that Plaintiffs will not seek other lawyers." (Compl., at 11-12.) Thus, while the proposed amendment to add additional CPA claims would relate back to the FAC, as the factual allegations of the CPA violations of the proposed amendment would mirror that of the CPA claims in the FAC, the FAC was still filed nearly six years after the claim accrued.

In conclusion, the Court finds that although the relation back doctrine applies to the proposed amendment, Plaintiffs' proposed CPA claim is time-barred by the applicable statute of limitations.

2. Discovery Rule

Second, Plaintiffs argue that the discovery rule applies in the present case, effectively shifting the date their claim accrued according to when they received relevant discovery.

The discovery rule establishes that a cause of action accrues when the Plaintiff discovers or should have discovered through the exercise of reasonable care and diligence the facts establishing the elements necessary to prove their case. *See Hughes v. Mahaney & Higgins*, 821 S.W.2d 154, 157 (Tex. 1991); *Willis v. Maverick*, 760 S.W.2d 642, 646 (Tex. 1988).

Here, Plaintiffs claim they could not have reasonably discovered the existence of their claim during the period they were represented by their attorney "who represented that he will protect and advance the Plaintiffs' interest." (Pl.'s Reply, at 2.) Plaintiffs further claim that the proposed cause of action would accrue when the Plaintiffs requested their entire original files on May 17, 2010. (Decl. of Vicente Deleon Guerrero ¶ 8.) However, the Court finds that Plaintiffs should have discovered the existence of the proposed CPA claim based upon unconscionability of a provision in a contract that they themselves signed, and not relied on discovery of original case files from Defendant. Plaintiffs knew the loan Defendant provided to Ben and Nadine would be one of the bases of their malpractice claims against Defendant, and thus were put on notice of that particular cause of action when they signed the loan agreement on or around September 2007.

Thus, the Court finds that the discovery rule does not operate to move the date of accrual to such time as Plaintiffs received the physical promissory note or their original files in the underlying case.

3. Equitable Tolling in Malpractice Cases

Third, Plaintiffs claim that equitable tolling would apply during the time Defendant was representing Plaintiffs and arguably continue until Defendant provides the files as requested. (Pl.'s Reply, at 3.) Equitable tolling suspends the running of the statute of limitations in legal malpractice cases "when an attorney commits malpractice in the prosecution or defense of a claim that results in litigation . . . until all appeals on the underlying claim are exhausted." *Hughes*, 821 S.W.2d at 157.

Here, the Court is unaware of any ongoing appeals in the underlying suit, which was settled out of court. Thus, as settlements cannot be appealed, and the underlying case has reached its final disposition, the Court finds that equitable tolling does not apply in this case, and does not operate to toll the statute of limitations until Plaintiffs get their files back from Defendant.

4. Statutory Tolling

Lastly, Plaintiffs argue that under 7 CMC § 2508, the statute of limitations would not begin to run until the Defendant "returned" to the Commonwealth, as Plaintiffs allege that Defendant has been absent from the Commonwealth for over five years since he began representing Plaintiffs. (Pl.'s Reply, at 3; *see* Declaration of Vicente Deleon Guerrero ¶ 3.)

The Commonwealth's tolling statute provides that where a defendant departs from the Commonwealth and resides outside of the Commonwealth, "the time of absence shall be excluded in determining the time limit for commencement of the action." 7 CMC § 2508. However, the Court finds that while Defendant may have left the Commonwealth, and the tolling statute may apply, the fact remains that undue delay and prejudice would occur if the Court allowed Plaintiffs to amend their complaint for the third time on the eve of trial.

B. Unconscionability

Moreover, Defendant claims the proposed amendment is futile because no unconscionability – procedural or substantive – exists in this case.

To be unconscionable, a contract provision must be both substantively and procedurally unconscionable:

> The majority of courts . . . have held that a showing of some measure of both procedural and substantive unconscionability is required, and courts are to employ

> a balancing test looking at the totality of the circumstances to determine whether a particular provision is unconscionable and unenforceable.

Strand v. U.S. Bank Nat. Ass'n ND, 693 N.W.2d 918, 922-23 (N.D. 2005). Further an unconscionable agreement is "[a]n agreement that no promisor with any sense, and not under a delusion, would make, and that no honest and fair promisee would accept." BLACK'S LAW DICTIONARY 54 (7th ed. 2000).

Defendant argues that the provision at issue in this case is far from one that "no promisor with any sense" would agree to, and that it is not a contract of adhesion, but rather an individualized negotiated agreement. (Def.'s Opp., at 4.) Further, Defendant claims that the acceleration clause at issue "bears none of the 'classic hallmarks of procedural unconscionability' such as 'inequality of bargaining power, oppression, surprise, lack of negotiation of terms, a preprinted standard form contract, and a take-it-or-leave-it transaction.'" *Strand*, 693 N.W.2d at 924. (Def.'s Opp., at 5.) Moreover, Defendant takes the position that Plaintiffs were at least equal in bargaining power to Defendant, as Plaintiff Ben was negotiating simultaneously with two different lawyers for representation in the underlying case, and even after hiring Defendant, felt that he could easily return to the other lawyer if he wished. (Def.'s Opp., at 5, n.3; *see* Ex. A, at 115.)

The Court agrees that the provision is not in fine print or masked in legalese, and is clearly and plainly set forth in a one-page document. However, although the Court agrees that the bargaining power in negotiating the acceleration provision may have unfairly disadvantaged Plaintiffs, unequal bargaining power alone is not sufficient to establish unconscionability. *See generally* RESTATEMENT (SECOND) OF CONTRACTS § 208, cmt. d. In addition, Plaintiffs could have sought representation from any of the dozens of attorneys in the CNMI, as well as a loan for their trip from the numerous banking institutions available. Thus, the Court does not find the acceleration clause to be procedurally unconscionable.

As far as substantive unconscionability, Defendant claims that "[a]cceleration clauses are routine and have been upheld repeatedly against arguments that they are unconscionable penalties." *Banus v. Citigroup Global Markets, Inc.*, 757 F. Supp. 2d 394, 401 (S.D.N.Y. 2010). Further, Defendant claims that the clause is not substantively unconscionable because it is substantiated by the fact that "if [Defendant] were to lose the case, he would also lose his security for repayment of the loan." *See Bank of America, N.A. v. Jill P. Mitchell Living Trust*, 822 F. Supp. 2d 505, 528 (D. Md. 2011 (holding that

"a good faith belief that the prospect of payment is impaired" constitutes a reasonable justification). (Def.'s Opp., at 5.) However, Plaintiffs point out the fact that the cases Defendant uses for support are strictly creditor-debtor relationships dealing with banking institutions, as opposed to attorney-client relationships, as here. (Pl.'s Reply, at 6.) The Court agrees that these case are inapposite as to attorney-client relationships. However, the mere fact that Defendant was acting as a creditor with his client does not in and of itself create substantive unconscionability. The acceleration clause at issue was merely to secure Plaintiffs' repayment of the loan Defendant provided, and was not substantively unconscionable when considering the totality of the circumstances.

Thus, the Court finds no procedural or substantive unconscionability for the purposes of this futility analysis. In conclusion, the Court reiterates that while there may be some merit to Plaintiffs' proposed claim, and there is a possibility it may not be time-barred by the applicable statute of limitations, any merit is outweighed by the undue delay and prejudice that would befall Defendant should the Court allow Plaintiffs to amend their complaint for a third time just weeks before trial.

IV. BAD FAITH

Lastly, Defendant alleges that facts already discovered directly refute the cause of action in the proposed amendment, based upon the sworn testimony of Plaintiffs taken less than a week before the present motion was filed. Defendant asserts that in light of the facts discovered in sworn testimony, Plaintiffs' request to add this particular cause of action could only be in bad faith.

Plaintiff Nadine testified that she felt like Defendant was "looking out for [her] best interests" during the case, that she did not get "mad or disappointed" with him until after the case had already settled and she was "having difficulty getting Chazrae's money" from the protected account he had set up for it. *See* O'Connor Decl., Ex. B, at 136, 178. Nadine also testified that during the entire underlying case, the provision at issue never caused her any problems or concerns. *Id.* at 110-14. Defendant claims that since these sworn testimonies were taken less than a week before the present motion was filed, it could only have been made in bad faith.

Here, while the Court hesitates to find bad faith on the part of Plaintiffs, Plaintiffs have not disputed this fact in their reply to Defendant's opposition. However, the Court does not believe the present motion was made in bad faith, even when considering the facts mentioned above. Nothing

Nadine testified to could be taken as meaning that a motion to file a third amended complaint would be made for the purposes of delay or bad faith.

Thus, while the Court refuses to affirmatively find bad faith in this instance, it acknowledges the aforementioned prejudice and delay that would result should the Court grant Plaintiffs' motion.

CONCLUSION

In view of the foregoing, the Court finds that this not a case in which justice requires the Court to provide a third opportunity for a party to tailor their complaint just weeks before trial, especially when considered in the light of the two previous opportunities in which Plaintiffs' elected to allege a closely related theory of liability.

As such, Plaintiffs' Motion for leave to file a Third Amended Complaint is hereby **DENIED**.

SO ORDERED this 22nd day of April 2014,

/ s /

David A. Wiseman, Associate Judge

By the order of the court, Judge David A Wiseman

FOR PUBLICATION

E-FILED
CNMI SUPERIOR COURT
E-filed: Apr 23 2014 11:17AM
Clerk Review: N/A
Filing ID: 55338221
Case Number: 11-0090-CV
N/A

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

VICENTE M. DELEON GUERRERO, et. al.,	**CIVIL ACTION NO. 11-0090**
Plaintiffs,	
v.	**ERRATA ORDER**
JOSEPH J. IACOPINO,	
Defendant.	

The Court is hereby correcting the Order Denying Plaintiff's Motion to File a Third Amended Complaint filed on April 22, 2014.

IT IS HEREBY ORDERED that the Order Denying Plaintiff's Motion to File a Third Amended Complaint dated April 22, 2014 is amended to read *Civil Action No. 11-0090* on page 1 between line 7 and 8 in lieu of Criminal Case No. 11-0090. The published opinion shall reflect this change.

SO ORDERED this 23rd day of April, 2014,

/ s /
David A. Wiseman, Associate Judge