

1989 03:07

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

ENRIQUE AGULTO SANTOS and)
IGNACIA SANTOS,)
)
 Plaintiffs,)
)
 vs.)
)
 JESUS SANTOS and)
 NANSAY MICRONESIA,)
)
 Defendants.)

CIVIL ACTION NO. 89-1008

DECISION AND ORDER

Plaintiffs seek to amend their complaint pursuant to Rule 15(a) of the Commonwealth Rules of Civil Procedure. Rule 15(a) requires that a court freely allow amendments to the pleadings. *Foman v. Davis*, 83 S. Ct. 227 (1962). In the absence of: 1) undue delay; 2) bad faith; 3) dilatory motive; 4) prejudice to the opposing party; or 5) futility of amending the complaint, the court generally will not question the propriety of a request for amendment. *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149 (9th Cir. 1989). Though all of these factors must be considered in determining whether to allow an amendment, they do not carry equal weight. *Howey v. United States*,

481 F.2d 1187 (9th Cir. 1973). For example, the mere fact that a plaintiff could have filed his amendment sooner is not a sufficient basis for denying relief. *Hurn v. Retirement Fund Trust of Plumbing, Etc.*, 648 F.2d 1252 (9th Cir. 1981). The crucial factor is whether the delay will result in prejudice to the opposing party. *Howey v. United States, supra*.

Prejudice may be established where no justifiable excuse is given for a delay in filing an amendment and the "party seeking amendment knows or should know of the facts upon which the proposed amendment is based but fails to include them in the original complain" *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1324 (9th Cr. 1982). Such knowledge and failure to plead these claims in the original complaint constitutes a lack of due diligence. *Id.* //Therefore, where a plaintiff's motion to amend contains only new legal theories, but no new facts, prejudice can be found. *Mende v. Dun & Bradstreet, Inc.*, 670 F.2d 129 (9th Cir. 1982).

Plaintiffs sought to amend their complaint fifteen months after filing their original complaint. In their motion to amend the complaint plaintiffs concede that "[t]here are no new facts pied." Plaintiff's Reply Memorandum Supporting Motion to Amend Complaint at 2. Therefore, plaintiffs admit that nothing new has been uncovered in the course of discovery that would justify the court in indulging their desire to introduce a claim that they should have been aware of and pled at the outset.

At oral argument plaintiff's counsel argued that this claim has

only been known to him for the past seven months. However, nothing in the pleadings or in plaintiff's oral argument revealed how or at what point seven months ago this cause of action suddenly became apparent. Furthermore, if the information that formed the basis of the new cause of action was indeed discovered seven months ago, plaintiff's counsel failed to explain why the motion to amend the complaint did not occur at that time. Under either scenario, the plaintiffs have failed to explain the delay.

Allowing such an amendment at this point in the litigation would clearly prejudice the defendant. Plaintiffs claim that they are merely "clarifying their legal theory" by introducing a new cause of action for Interference With Prospective Contractual Advantage. Adding a new cause of action that has existed from the beginning of the litigation is not a "clarification." If valid grounds currently exist for pursuing such a claim, they were obviously known or should have been known to the plaintiffs when they filed their original complaint.

Such a finding is buttressed by the fact that extensive discovery would be needed to answer the new claim. Although the need for extensive additional discovery alone is not a valid basis for a finding of prejudice, where the plaintiffs offer no plausible explanation for their failure to include the allegation in their original complaint, prejudice can be found. *Genentech, Inc. v. Abbot Laboratories*, 127 F.R.D. 529 (N.D. Cal. 1989).


The plaintiff has offered no explanation for the delay in

presenting this amended cause of action. If the court allowed the amendment, defendants would be required to redepose witnesses and would be "put through the time and expense of continued litigation on a new legal theory, with the possibility of additional discovery [thus causing them] undue prejudice." *Ascon Properties, Inc. v. Mobil Oil Co.*, supra at 1161.

Furthermore, the court also fails to see any basis for the new cause of action for Interference With Prospective Contractual Advantage. Plaintiff has not cited any case law, nor could the court find any case law that would support this cause of action under these facts.

In summary, the court finds that: 1) undue delay exists because the plaintiffs have offered no explanation for the delay in filing their amended complaint; 2) defendants would be prejudiced if the court allowed an amendment at this advanced stage of the proceedings; and 3) there is no basis for a cause of action for Interference With Prospective Contractual Advantage. Therefore, plaintiff's motion to amend their complaint is DENIED.

SO ORDERED this 8 day of May, 1991.


Alexandro C. Castro, Associate Judge