

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BARRY AVIATION, INC.,

Plaintiff,

v.

LAND O'LAKES MUNICIPAL
AIRPORT COMMISSION, TOWN OF
LAND O'LAKES WISCONSIN,
RICHARD PETERSON, individually
and as a Land O'Lakes Supervisor,
HENRY MITCHELL, individually and
as a Land O'Lakes Town Supervisor,
MICHAEL STOPCZYNSKI SR.,
individually and as a Land O'Lakes
Town Supervisor, RONALD RAMESH,
individually and as a Land O'Lakes Town
Supervisor, KARL KERSCHER, individually
and as an Airport Commission Official, and
JAMES A. BATES,

Defendants.

ORDER

02-C-0635-C

Plaintiff Barry Aviation, Inc. filed a first amended complaint in September 2004, after the Court of Appeals for the Seventh Circuit had reversed this court's grant of defendants' motion to dismiss its original complaint without leave to amend. Defendants filed a motion

to dismiss the first amended complaint. Three weeks later, instead of filing a brief in response to defendants' motion, plaintiff filed a motion for leave to file a second amended complaint, so as "to address certain issues raised by Defendants in their recent Motion to Dismiss Plaintiff's First Amended Complaint." Plt.'s Mot. for Leave to Amend, dkt. #68, at 1. One would think that plaintiff might have figured out how to file an adequate complaint in this case by this time. Apparently, it is still figuring.

Although I question plaintiff's ability to set out a claim against defendants, the Court of Appeals for the Seventh Circuit has made it plain that plaintiff must be allowed such an opportunity. Barry Aviation v. Land O'Lakes Municipal Airport Comm'n, No. 03-2605 (7th Cir. July 26, 2004). Therefore, I will grant plaintiff's motion.

ORDER

IT IS ORDERED that plaintiff Barry Aviation, Inc.'s motion for leave to file a second amended complaint is GRANTED. The second amended complaint is considered served as of today's date. Defendants may have 20 days from the date of this order in which to serve

and file their responsive pleadings.

Entered this 1st day of December, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge