IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DARLENE MARIE ARCHIBALD,

Plaintiff,

v.

ASPIRUS, INC.,
ASPIRUS VNA HOME HEALTH, INC.,
ASPIRUS VNA EXTENDED CARE, INC.
and BARBARA MOSKONAS AUSTIN,

Defendants.

OPINION AND ORDER

10-cv-558-bbc

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In this civil suit for damages, plaintiff Darlene Marie Archibald contends that defendants Aspirus, Inc., Aspirus VNA Home Health, Inc., Aspirus VNA Extended Care, Inc. and Barbara Moskonus Austin violated her rights under Title VII of the Civil Rights Act by terminating her on the basis of her religion. Additionally, plaintiff contends that defendants violated Wisconsin tort law by intentionally interfering with her at will employment contract. Now before the court is defendants' motion for leave to amend their answer to include a statute of limitations defense to plaintiff's state law claim.

I conclude that defendants did not unduly delay, act in bad faith or act with a dilatory

motive in seeking to amend their answer. Also, I conclude that allowing the amendment will not cause undue prejudice to plaintiff. Therefore, I will grant defendants' motion.

There have been several versions of the complaint in this case. Plaintiff filed an initial 68-page complaint on September 28, 2010. The complaint contained several claims, including a claim for intentional interference with an at will employment contract. After defendants filed a motion to dismiss, plaintiff filed a 71-page amended complaint on January 14, 2011. Defendants filed another motion to dismiss, which was granted in part. On May 5, 2011, plaintiff filed a second amended complaint and, as directed by the court, limited that complaint to six pages. Defendants answered the second amended complaint on May 12, 2011. However, plaintiff had failed to attach exhibits to her second amended complaint, so she filed a third amended complaint containing those exhibits. Defendants were not required to file an answer to the third amended complaint. Although each of plaintiff's complaints contained a claim for intentional interference with her employment contract, neither defendants' motions to dismiss nor their answer included a statute of limitations defense to that claim. On August 10, 2011, defendants filed the present motion for leave to amend their answer to include the statute of limitations defense.

Under Fed. R. Civ. P. 15(a)(2) defendants can amend their answer only with plaintiff's written consent or leave of court. Courts should "freely give leave [to amend] when justice so requires." "'The terms of [Rule 15], however, do not mandate that leave be

granted in every case.'" Airborne Beepers & Video, Inc. v. AT&T Mobility LLC, 499 F.3d 663, 666 (7th Cir. 2007) (quoting Park v. City of Chicago, 297 F.3d 606, 612 (7th Cir. 2002)). The "decision to grant or deny a motion for leave to file an amended pleading is 'a matter purely within the sound discretion of the district court.'" Guise v. BWM Mortgage, LLC, 377 F.3d 795, 801 (7th Cir. 2004) (quoting J.D. Marshall International, Inc. v. Redstart, Inc., 935 F.2d 815, 819 (7th Cir. 1991)). Courts should deny leave to amend in some situations, including those in which there is evidence of "'undue delay, bad faith or dilatory motive on 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 [or] futility of amendment.'" J.D. Marshall International, 935 F.2d at 819 (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)).

Plaintiff does not contend that defendants have acted in bad faith or with a dilatory motive. Thus, the only questions are whether defendants have unduly delayed and whether plaintiff will suffer undue prejudice if the motion is granted.

Plaintiff contends that there has been undue delay because defendants had several previous opportunities to amend their answer but failed to do so. Defendants concede that the only reason they did not include a statute of limitations defense earlier was their own inadvertence. I agree with plaintiff that defendants should have reviewed their pleadings more carefully and should have sought leave to amend earlier. However, I conclude that

defendants' mistake is forgivable and that their requested amendment was not unduly delayed. The pleadings in this case have been unusually complicated. The first two complaints were extraordinarily long, requiring defendants to file two motions to dismiss. The second amended complaint lacked the supporting documents, requiring yet another complaint. Although defendants waited to file the present motion to amend until approximately two and a half months after plaintiff filed the third amended complaint, the motion was filed more than one month before the dispositive motions deadline and more than six months before the trial date. Given the procedural history and current schedule in this case, defendants' request was not unduly delayed.

Moreover, delay alone is an insufficient basis for denying a motion to amend. Perrian v. O'Grady, 958 F.2d 192, 194 (7th Cir. 1992). A significant delay combined with prejudice to plaintiff may be sufficient reason to deny defendants' motion to amend. However, I am not persuaded that plaintiff will be unduly prejudiced if I grant defendants' motion for leave to amend the answer. Plaintiff contends that she would have conducted discovery differently if she had been aware of the statute of limitations defense. In particular, she would have sought additional written discovery requests and would have deposed more witnesses. However, plaintiff has not provided any specific details about how she would have changed the order of discovery, which additional witnesses she would have deposed or, most important, why she would be unable to conduct such discovery at this stage. The period for

discovery does not end until January 20, 2012, and trial is not until February 21, 2012. Thus, any potential prejudice to plaintiff can be cured by allowing additional discovery on the statute of limitations issue. If plaintiff has reached the limits on the quantity of written discovery requests, she may seek relief from the court. Finally, to the extent that plaintiff is arguing that she will be inconvenienced by having to conduct discovery she did not anticipate, such inconvenience does not rise to the level of undue prejudice.

In sum, there is no evidence of undue delay by defendants or undue prejudice to plaintiff that defendants' motion for leave to amend their answer be granted.

ORDER

IT IS ORDERED that the motion for leave to file an amended answer, dkt. #91, filed by defendants Aspirus, Inc., Aspirus VNA Home Health, Inc., Aspirus VNA Extended Care, Inc. and Barbara Moskonas Austin is GRANTED. Defendants' amended answer is deemed filed as of today's date.

Entered this 15th day of September, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge