

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

TERRI BEAL,

Plaintiff,

v.

WYNDHAM VACATION RESORTS, INC.,

Defendant.

ORDER

12-cv-274-bbc

In this civil action for monetary relief, plaintiff Terri Beal asserts several claims against defendant Wyndham Vacation Resorts, Inc. under federal and state debt collection laws. Now before the court is the parties' joint motion for an extension of time to file dispositive motions, dkt. #39, on the ground that plaintiff has been too ill to attend a deposition. I will grant this motion and move the dispositive motion deadline to March 8, 2013.

Also before the court are defendant's motions to file an amended answer to add and clarify certain affirmative defenses. Dkt. ##34, 40. Because defendant is seeking to amend its answer outside the deadline set in the preliminary pretrial conference order, dkt. #23, defendant must seek leave of the court. Fed. R. Civ. P. 15(a)(2). Under Rule 15(a)(2), courts should "freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). However, this right is not absolute, Brunt v. Service Employees International Union, 284 F.3d 715,

720 (7th Cir. 2002), and can be denied for undue delay, bad faith, dilatory motive, prejudice or futility. Indiana Funeral Directors Insurance Trust v. Trustmark Insurance Corp., 347 F.3d 652, 655 (7th Cir. 2003).

In its first motion, defendant seeks to add the affirmative defenses of “express consent to call” and “qualified privilege.” In its second motion, defendant seeks to alter its statute of limitations defense. Defendant’s current answer states that, “[p]ortions of Plaintiff’s Wisconsin Consumer Act claim are barred by the applicable statute of limitations.” Defendant wishes to amend its answer to state that, “[s]ome of Plaintiff’s claims are barred by the applicable statute of limitations.” Plaintiff responded to defendant’s first motion, stating that she does not oppose defendant’s additions of the “express consent to call” and “qualified privilege” defenses, so long as defendant is required to immediately provide plaintiff an amended response to plaintiff’s Interrogatory No. 5, in which plaintiff asked defendant to identify the factual bases for its defenses. Plaintiff has not responded to defendant’s most recent request to alter its statute of limitations defense.

I will grant defendant’s motions. Plaintiff does not oppose the first request and although plaintiff did not respond yet to the second request, I can think of no reason why she would be unduly prejudiced by the statute of limitations amendment. Plaintiff was on notice already that defendant was asserting a statute of limitations defense grounded on the dates on which defendant placed telephone calls to plaintiff. Additionally, because I am extending the deadline for dispositive motions, the parties will have additional time to conduct discovery regarding these defenses. Finally, I will grant plaintiff’s request that

defendant be required to amend its response to plaintiff's interrogatory request and identify the factual bases for its newly asserted and amended affirmative defenses. Defendant should provide its amended response to plaintiff by February 15, 2013.

ORDER

IT IS ORDERED that

1. The parties' joint stipulation for an extension of time to file dispositive motions, dkt. #39, is GRANTED. The dispositive motions deadline is extended to March 8, 2013.
2. Defendant Wyndham Vacation Resorts, Inc.'s motions for leave to amend its answer, dkt. ##34, 40, are GRANTED. Defendant must provide amended responses to plaintiff Terri Beal's Interrogatory No. 5 by February 15, 2013.

Entered this 11th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge