

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

MADISON BOARDWALK, LLC,

Plaintiff,

v.

OMEGA COMMERCIAL FINANCE CORP.,
JON S. CUMMINGS, IV and
VON C. CUMMINGS,

Defendants.

ORDER

13-cv-288-bbc

In this diversity civil action, plaintiff Madison Boardwalk, Inc. has been awarded summary judgment on its breach of contract claim. The parties are proceeding to trial on the issue of damages with respect to the contract claim and on the merits of plaintiff's fraudulent trade practices claim against defendants Omega Commercial Finance Corp., Jon S. Cummings, IV and Von C. Cummings and its misrepresentation claim against Von C. Cummings. Trial is scheduled for September 29, 2014. Now before the court is defendant Omega's motion for leave to amend its answer to add a counterclaim. Dkt. #67. (Because the other two defendants did not join Omega's motion, I will refer to Omega as "defendant" for the remainder of this order.) Because defendant has delayed nduly in bringing this motion and granting it would unfairly prejudice plaintiff, it will be denied.

OPINION

Defendant asks the court for leave to amend its pleadings to add a counterclaim that plaintiff committed fraud by representing that its agreement with a third party was in good standing when it was not, and this representation induced defendant to enter into its agreement with plaintiff. Defendant says it learned the material facts about plaintiff's alleged misrepresentation only a few days before it filed its motion, when plaintiff produced documents responsive to its "First Request for Production."

At this stage in the proceedings, amendments to the pleadings are governed by Fed. R. Civ. P. 15(a)(2), which states that courts shall "freely" give leave to amend so long as justice requires it. However, "[d]istrict courts have broad discretion to deny leave to amend where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, unfair prejudice to the defendants, or where the amendment would be futile." Hukic v. Aurora Loan Services, 588 F.3d 420, 432 (7th Cir. 2009).

Plaintiff filed this case in April 2013; defendant filed its motion for leave to amend on August 1, 2014, more than four months after the dispositive motions deadline of March 14, 2014 had passed and more than a month after summary judgment was entered on June 23, 2014. Trial is set to begin September 29, 2014. Defendant says that it could not have filed its motion sooner because it learned of plaintiff's alleged fraud on July 26, 2014, when plaintiff produced documents responsive to its discovery request. (Plaintiff says it responded on July 21, 2014.) However, defendant did not request the relevant discovery until June 19, 2014. Defendant does not explain why it waited until well after the dispositive motion

deadline and only a few months before trial to submit its *first* request for a production of documents from plaintiff. There is no excuse for such delay. Cf. Hukic, 588 F.3d at 432 (party's delay in discovering publicly available information did not justify delay in requesting leave to amend complaint). Furthermore, it would be unfairly prejudicial to ask plaintiff to prepare to defend against a counterclaim of fraud at trial just a few weeks away. Ferguson v. Roberts, 11 F.3d 696, 706-07 (7th Cir. 1993). Accordingly, defendant's motion will be denied.

ORDER

IT IS ORDERED that defendant Omega Commercial Financial Corp.'s motion for leave to amend its answer to add a counterclaim, dkt. #67, is DENIED.

Entered this 18th day of August, 2014.

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