

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

-----  
JO ETTA and MICHAEL LEDGERWOOD,

Plaintiffs,

v.

TELESTEPS AB, DIAL INDUSTRIAL  
SALES, INC. and HARTFORD  
PROPERTY & CASUALTY,

Defendants.  
-----

ORDER

04-C-200-C

This action arises out of an accident in which plaintiff Jo Etta Ledgerwood fell off a ladder referred to as a “Telesteps” ladder, which plaintiff alleges was manufactured and distributed by defendants Telesteps AB and Dial Industrial Sales, Inc. The case was filed originally in the Circuit Court for Dane County. Defendant Dial removed it to this court pursuant to 28 U.S.C. §§ 1441 and 1332. Now before the court is plaintiffs’ motion to amend their complaint to add a new party, Hullsteg AB, a Swedish corporation allegedly in the business of manufacturing and distributing the Telesteps ladder at issue in this case, and defendant Telesteps’s motion to dismiss pursuant to Fed 12(b)(2) for lack of subject matter jurisdiction. Plaintiffs’ motion to amend will be granted and defendant Telesteps’s motion

to dismiss will be denied as moot.

A. Motion to Amend Complaint

At the outset I note that plaintiffs filed their motion to amend on June 30, 2004, the last day to amend under the deadline set out in the pretrial conference order. PPTC Rpt., dkt. #9, at 2. Accordingly, their motion falls under the liberal standards of Fed. R. Civ. P. 15(a) and not the more stringent “good cause” showing required under Rule 16(b) for motions to amend preliminary pretrial conference orders. In addition, I note that I am construing plaintiffs’ motion as excluding the claims against defendant Telesteps AB raised in the amended complaint in light of the fact that the parties have stipulated to its dismissal since the time plaintiffs filed their motion to amend.

Fed. R. Civ. P. 15(a) states that “a party may amend [its] pleading once as a matter of course at any time before a responsive pleading is served” and that otherwise amendments are permissible “only by leave of court or by written consent of the adverse party.” Because defendants have answered plaintiffs’ complaint and have not stipulated to the amendment, plaintiffs must obtain leave of the court. Rule 15(a) states expressly that “leave shall be freely given when justice so requires.” The Court of Appeals for the Seventh Circuit has enumerated four conditions that justify denying a motion to amend: undue delay; dilatory motive on the part of the movant; repeated failure to cure previous deficiencies; and futility

of the amendment, Cognitest Corporation v. Riverside Publishing Company, 107 F.3d 493, 499 (7th Cir. 1997), as well as undue prejudice to the opposing party. Samuels v. Wilder, 871 F.2d 1346, 1351 (7th Cir. 1989). None of these conditions appear to be present in this instance. Defendants have not raised any objections to the amendment. Accordingly, plaintiffs' motion to amend their complaint is GRANTED.

B. Motion to Dismiss for Lack of Personal Jurisdiction

Defendant Telesteps's motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) will be DENIED as moot. Since the motion was filed, the parties have stipulated to the dismissal defendant Telesteps without prejudice and without costs. This stipulation was approved by the court in an order dated July 12, 2004.

Entered this 19th day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge