

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

PAUL HOFFMAN,

Plaintiff,

v.

KARL KELZ, in his individual capacity,
THE VILLAGE OF RIB LAKE and
ARCH EXPRESS AND SURPLUS
INSURANCE COMPANY,

Defendants.

ORDER

06-C-153-C

This civil action for monetary relief under 42 U.S.C. § 1983 arises out of defendant Village of Rib Lake's failure to renew the contract of plaintiff Paul Hoffman, who had served as the village's chief of police. Plaintiff alleges that defendants Karl Kelz, Village of Rib Lake and Arch Express and Surplus Insurance Company violated his rights under the due process clause of the Fourteenth Amendment. Plaintiff filed an amended complaint on May 5, 2006, naming as defendants Kelz, Village of Rib Lake and "ABC Insurance Company." On May 10, 2006, Magistrate Judge Crocker held a preliminary pre-trial conference in which he stated that further amendments to the pleadings would be allowed only by leave of court.

On May 16, 2006, defendant Kelz filed a motion to dismiss the amended complaint; on June 7, 2006, an answer and affirmative defenses were filed on behalf of defendants Village of Rib Lake and “ABC Insurance Company, Properly Known as Arch Express and Surplus Insurance Company.” Although no proof of service of plaintiff’s first amended complaint appears in the record for “ABC Insurance Company” or “Arch Express and Surplus Insurance Company,” the insurance company did not raise as an affirmative defense to the first amended complaint insufficiency of service of process. Therefore, I will assume that defendant Arch Express and Surplus Insurance Company has waived any objection it might have had to service.

Now plaintiff has filed a second amended complaint, which appears to be identical in all respects to the first amended complaint except that all references to “ABC Insurance Company” have been replaced by Arch Express and Surplus Insurance Company. Although plaintiff did not seek leave of court before filing its second amended complaint, I will construe the second amended complaint to include a motion for leave to amend. In the interest of justice, the motion will be granted. Because the pleading contains no changes other than substitution of Arch Express and Surplus Insurance Company for “ABC Insurance Company” in the caption and body of the complaint, I will assume that the existing defendants will stand on their responses to plaintiff’s first amended complaint as their responses to the second amended complaint unless defendants file an objection within five

days of the date of this order.

ORDER

IT IS ORDERED that

1. Plaintiff Paul Hoffman's second amended complaint is construed as a motion for leave to amend and the motion to amend is GRANTED;

2. The second amended complaint is considered the operative pleading as of this date; and

3. Unless, by June 27, 2006, defendants object, I will assume they will stand on their responses to the first amended complaint and will rule on defendant Kelz's motion to dismiss.

Entered this 22nd day of June, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge