

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

KEVIN KASTEN,

Plaintiff,

v.

SAINT-GOBAIN PERFORMANCE
PLASTICS CORPORATION,

Defendant.

ORDER

07-cv-686-bbc

This civil action brought under the Fair Labor Standards Act is on remand from the Court of Appeals for the Seventh Circuit. Now before the court is plaintiff Kevin Kasten's motion to amend his complaint to include requests for (1) compensatory damages for mental anguish, emotional distress and other damages and (2) an award of punitive damages. Dkt. #200. The proposed amended complaint does not change any of the claims or allegations of the complaint. Defendant opposes the motion, contending that plaintiff's request is untimely, futile and would cause prejudice to defendant.

Whether to grant a party leave to amend its pleadings is a decision left to the district court's discretion. Hudson v. McHugh, 148 F.3d 859, 864 (7th Cir. 1998). Under Fed. R.

Civ. P. 15(a)(2), a court should freely grant a party leave to amend its pleadings “when justice so requires.” However, a request to amend may be denied on several grounds, including undue delay, undue prejudice to the party opposing the motion or futility of the amendment. Sound of Music v. Minnesota Mining and Manufacturing Co., 477 F.3d 910, 922-23 (7th Cir. 2007).

As an initial matter, I note that plaintiff’s request to amend his complaint is likely unnecessary. As the Court of Appeals for the Seventh Circuit has explained, “[p]revailing parties get the relief to which they are entitled, no matter what they ask for.” Heitmann v. City of Chicago, Illinois, 560 F.3d 642, 645 (7th Cir. 2009). Nevertheless, I will resolve the motion to avoid any confusion regarding the appropriate scope of discovery and of plaintiff’s requests for relief.

After considering plaintiff’s motion, I conclude that justice requires that plaintiff be permitted to amend his complaint. It is true, as defendant argues, that this case has been pending for more than three years. However, although plaintiff filed this case in December 2007, this court dismissed the case and granted judgment to defendant in June 2008. The case has been on appeal at the court of appeals and United States Supreme Court since then and was recently remanded in June 2011. The parties have not completed discovery on damages and trial is not scheduled until April 23, 2012. Thus, plaintiff’s request is not untimely and will not cause undue delay. Dubicz v. Commonwealth Edison Co., 377 F.3d

787, 793 n.1 (7th Cir. 2004) (“This is not the case where a plaintiff seeks to amend its complaint after the close of discovery or on the eve of trial.”)

Additionally, although defendant contends that the record does not support plaintiff’s claim for compensatory or punitive damages, plaintiff contends that defendant discharged him in retaliation for his complaints about defendant’s unlawful timekeeping practices. The court of appeals has held that a plaintiff may recover emotional distress for wrongful discharge, and it is plausible to infer from plaintiff’s allegations that he suffered emotional distress from his termination and that defendant disregarded plaintiff’s rights. Avitia v. Metropolitan Club of Chicago, Inc., 49 F.3d 1219, 1228-29 (7th Cir. 1995) (holding that emotional distress damages are available remedy in FLSA retaliation case) (citing Travis v Gary Community Mental Health Center, Inc., 921 F.2d 108, 111-12 (7th Cir. 1990) (holding that compensation for emotional distress and punitive damages is appropriate for intentional torts such as retaliatory discharge)); Shea v. Galaxie Lumber & Construction Co., 152 F.3d 729, 734-35 (7th Cir. 1998) (upholding punitive damages award in FLSA retaliation case).

Finally, I am not persuaded by defendant’s arguments that it would be prejudiced by the amendment. Defendant complains that it will have to explore a new avenue of discovery that it did not anticipate. However, in the Joint Pretrial Conference Report, dkt. #198, both parties anticipated the need for discovery on damages. Ample time remains for the parties

to obtain discovery on plaintiff's claims for compensatory and punitive damages. Therefore, plaintiff's motion will be granted.

ORDER

IT IS ORDERED that plaintiff Kevin Kasten's motion to amend his complaint, dkt. #200, is GRANTED. Plaintiff must file and serve its amended complaint by August 26, 2011.

Entered this 24th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge