

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

THOMAS GUSMANO,

Plaintiff,

vs.

Case No. 2014-2084-CB

SHELBY-MACOMB LEASING COMPANY, LLC,
SHELBY-MACOMB DIAGNOSTIC CENTER, P.L.C.,
ASSOCIATED INTERNISTS OF MACOMB, P.C.,
and ANTONIO MORREALE, III, M.D.,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for leave to amend its complaint. Defendants have filed a response and requests that the motion be denied.

Facts and Procedural History

This is a dispute arising as the result of a failed business venture in the health care industry. Plaintiff invested in Defendant Shelby-Macomb Leasing Company, LLC (“Defendant Leasing”), a company formed to lease medical equipment to Defendant Shelby-Macomb Diagnostic Center (“Defendant Center”). The venture ultimately failed and Defendant Leasing sold its equipment to cover its debts.

On May 23, 2014, Plaintiff filed his complaint in this matter asserting claims for: an accounting (Count I); minority member oppression (Count II); breach of fiduciary duties (Count III); fraudulent misrepresentation (Count IV); and unjust enrichment (Count V). Allegedly as a result of Defendants’ discovery responses, Plaintiff now seeks leave to file a first amended complaint to add claim for conversion and breach of a guaranty, and to add additional parties.

While Defendants do not contest Plaintiff's request to add additional parties, they oppose Plaintiff's request to add his conversion and breach of guaranty claims.

Arguments and Analysis

MCR 2.118(A)(2) provides that leave to amend a pleading shall be freely given when justice so requires. A motion to amend ordinarily should be granted, unless one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, and (5) futility of amendment. *Sands Appliance Services, Inc v Wilson*, 463 Mich 231, 239-240; 615 NW2d 241 (2000). Delay alone does not justify denying a motion to amend, but a court may deny a motion to amend if the delay was in bad faith or if the opposing party suffered actual prejudice as a result. *Franchino v Franchino*, 263 Mich App 172, 191; 687 NW2d 620 (2004).

Defendants contend that Plaintiff's two new proposed claims are futile. While a trial court should freely grant leave to amend when justice so requires, leave should be denied where amending the complaint would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

While the merits of Plaintiff's "new" claims will be determined at a later stage of this case, after reviewing Plaintiff's proposed amended complaint the Court is convinced that Plaintiff has sufficiently plead its claims. Consequently, Plaintiff's motion must be granted.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion for leave to file an amended complaint is GRANTED. This *Opinion and Order* does not resolve the last claim and does not close the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: January 9, 2015

JCF/sr

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