

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Terence D. Walsh and :
Helen Lavin, :
Plaintiffs, :
 : Case No. 3:05cv530 (JBA)
v. :
 :
National Grange Mutual :
Insurance Company, :
Defendant. :

Ruling on Plaintiffs' Motion to Amend Complaint [Doc. # 13]

Plaintiffs Terence D. Walsh and Helen Lavin filed their Complaint in this action on March 28, 2005, asserting claims including breach of contract and breach of the implied covenant of good faith and fair dealing against defendant National Grange Mutual Insurance Company for allegedly failing to compensate plaintiffs for fire damage to their house under plaintiffs' insurance contract with defendant. See Complaint [Doc. # 1]. Plaintiffs filed an Amended Complaint on April 6, 2005 to correct dates in two paragraphs of the original Complaint. See Amended Complaint [Doc. # 4]. Defendant filed its answer on April 18, 2005. See Answer [Doc. # 6].

Subsequently, on July 29, 2005, plaintiff filed the instant Motion to Amend to include an additional allegation in the First Count of the Amended Complaint (breach of contract). See Motion to Amend [Doc. # 13]. Plaintiffs seek to add the following allegation to their claim for breach of contract: "Because the

plaintiffs brought this action to secure their legal rights, National Grange refused to negotiate with plaintiffs." See Proposed Second Amended Complaint [Doc. # 13, Attachment], ¶ 14. Defendant objects to plaintiffs' proposed amendment. See Def's Objection [Doc. # 15]. For the reasons that follow, plaintiffs' Motion to Amend is GRANTED.

I. STANDARD

After a responsive pleading has been filed, "a party may amend [its] pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). "Parties are generally allowed to amend their pleadings absent bad faith or prejudice." Commander Oil Corp. v. Barlo Equip. Corp., 215 F.3d 321, 333 (2d Cir. 2000) (internal citation omitted). In exercising its broad discretion in this regard, the Court takes into account considerations of undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment. See Local 802 Associated Musicians of Greater New York v. Parker Meridien Hotel, 145 F.3d 85, 89 (2d Cir. 1998) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)); see also United States, for and on behalf of Maritime Admin. v. Cont'l Ill. Nat'l Bank & Trust Co., 889 F.2d 1248, 1254 (2d Cir.

1989) (discretion of the Court with regard to motions seeking leave to amend "must be exercised in terms of a justifying reason or reasons consonant with the liberalizing spirit of the Federal Rules") (internal quotations and citations omitted).

II. DISCUSSION

Defendant argues that plaintiffs' proposed amendment is untimely as the Motion to Amend was filed more than four months after plaintiffs instituted this action, futile because the previous complaint complies with the short and plain statement requirement of Federal Rule of Civil Procedure 8, and that thus plaintiffs will suffer no prejudice as a result of the denial of their motion whereas defendant will suffer prejudice if the amendment is allowed because the allegation is irrelevant and inflammatory. See Def's Objection at 2. Defendant also denies the allegation itself, contending that it has continued to process the plaintiffs' claim even after the commencement of this action, and argues that any evidence in support of the allegation would be inadmissible as post-litigation negotiation pursuant to Federal Rule of Evidence 408. See id. at 2-3.

Plaintiffs' Motion to Amend was made within the time set in the Court's scheduling order for the filing of amended pleadings, see [Doc. # 12], and plaintiffs' only previous amendment consisted of minor corrections made as of right shortly after the filing of the initial complaint. While there may not be any need

for the amendment, as defendant acknowledges that plaintiffs' current breach of contract claim complies with the requirements of Federal Rule of Civil Procedure 8, defendant makes no showing it will be prejudiced if the amendment is allowed. The complaint is not ordinarily a trial exhibit, and plaintiffs will have the burden of proving their breach of contract claim at trial.¹ Defendant alleges no bad faith or dilatory motive on the part of plaintiffs in seeking this amendment. Thus, in keeping with the principle that leave to amend will be "freely given,"² the Court concludes that the relevant factors weigh in favor of allowing the amendment and thus plaintiffs' Motion to Amend will be granted.

III. CONCLUSION

For the foregoing reasons, plaintiffs' Motion to Amend [Doc.

¹ With respect to defendant's claim that any evidence concerning plaintiffs' proposed amendment would not be admissible at trial pursuant to Federal Rule of Evidence 408, this position is appropriately asserted in the Joint Trial Memorandum, based on specific items of proffered evidence.

² See Fed. R. Civ. P. 15(a); Foman v. Davis, 371 U.S. 178, 181 (1962) ("In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the party of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, be 'freely given.'" (emphasis added).

13] is GRANTED. The clerk is directed to docket plaintiffs' Second Amended Complaint, see [Doc. # 13, Attachment].

IT IS SO ORDERED.

/s/ _____
Janet Bond Arterton
United States District Judge

Dated at New Haven, Connecticut this 29th day of December, 2005.