

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
ROGER VELEZ, on behalf of himself and)
all similarly situated former America West)
Pilots, and LEONIDAS, LLC,)
)
Defendants.)

**BRIEF IN SUPPORT OF
PLAINTIFF’S MOTION FOR LEAVE
TO AMEND THE COMPLAINT OR IN
ALTERNATIVE, TO SUPPLEMENT
THE COMPLAINT**

Pursuant to Local Rule 7.1(c), plaintiff US Airline Pilots Association (“USAPA” or “the Association”) submits this Brief in Support of its Motion for Leave to Amend the Complaint, or in the alternative, to Supplement the Complaint.

INTRODUCTION

This matter was commenced on September 16, 2014 in the Superior Court of North Carolina, General Court of Justice Division, Mecklenburg County. On October 16, 2014, defendants Leonidas, LLC (“Leonidas”) and Roger Velez (“Velez”) (collectively the “defendants”) removed the action on the grounds that this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) based on diversity of citizenship and amount in controversy exceeding \$75,000. Defendants also removed on the ground that because, in their view, plaintiff’s claims arise under the Railway Labor Act and the Labor Management Reporting and Disclosure Act, this Court has original federal question jurisdiction pursuant to 28 U.S.C. 1331.

On October 23, 2014, defendants moved to dismiss this action for lack of personal jurisdiction. Docs. 7, 8. Defendant Leonidas also moved to dismiss for failure to state a claim. Doc. 8. On November 17, 2014, plaintiff moved to remand this action back to the Superior Court of North Carolina on the grounds that none of the alleged grounds for removal are present.¹ Doc. 19. On November 24, 2014, plaintiff cross-moved for jurisdictional discovery. Doc. 22. All of these motions are now before the Court. Contemporaneously with the filing of this motion and memorandum, plaintiff has filed a Request for Hearing on all the pending motions.

STATEMENT OF RELEVANT AND NEW FACTS²

This action is against defendants Roger Velez, on behalf of himself and all similarly situated former America West pilots, and Leonidas, Inc., and seeks a declaration as to the validity of certain actions taken by the duly elected National Officers of the Association pursuant to their constitutional authority as provided for in USAPA's Constitution and Bylaws. Specifically, plaintiff seeks declarations affirming the validity of the National Officers' determinations: (1) that there exists a need for collective legal action on behalf of US Airways pilots, such that their decision to defer dissolution was a proper, valid, and enforceable exercise of their constitutional authority, and consistent with the Constitution and Bylaws of USAPA; and (2) to defer distribution of assets once dissolution was deferred, such that their decision was as a proper, valid, and enforceable exercise of their constitutional authority and consistent with the

¹ Plaintiff's motion to remand involves "no arduous inquiry" and as such "both expedition and sensitivity to state court's coequal stature should impel . . . [this Court] to dispose of that issue first." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574. 587-88, 119 S.Ct. 1563, 1572 (1999).).

² Plaintiff respectfully refers the Court to its briefs submitted in support of its motion to remand (Doc. 20), in opposition to the motions to dismiss (Doc. 21), and in support of its cross-motion for jurisdictional discovery (Doc. 21) for a full recitation of the relevant facts.

Constitution and Bylaws of USAPA. USAPA also seeks an order declaring the provisions in the USAPA Constitution and Bylaws providing for deferral of dissolution, and deferral of asset distribution are proper, valid, and enforceable. Doc. 1-1, p. 18.

This action seeks a declaratory judgment affirming the validity of these actions in part because of the history of contentious litigation that exists between USAPA and a group of US Airways pilots who had formerly been employed by America West Airlines, Inc. (the “West Pilots”) before the 2005 merger of US Airways and America West. *Id.*, at ¶14. The litigation includes two protracted and expensive duty of fair representation lawsuits against USAPA filed by defendant Velez, among several other individual class representatives, and assisted, supported and funded by defendant Leonidas. *Id.* USAPA prevailed in both lawsuits.

In June, 2014, Leonidas threatened yet another lawsuit against USAPA regarding distribution of USAPA’s assets in the event USAPA is decertified as the bargaining representative of the former US Airways pilots.³ *Id.*, at ¶16. In September, 2014, Velez sent a letter to USAPA and its National Officers demanding that USAPA take certain actions, including the immediate dissolution of USAPA, and the immediate distribution of USAPA’s assets. *Id.*, at ¶15. These threats adversely impact USAPA’s ability to protect and promote the interests of its members as provided for in its Constitution and Bylaws. Since the commencement of this action, defendants, through their counsel, have continued to challenge the determinations of USAPA and its National Officers to defer USAPA’s dissolution and distribution of its assets. In letters to USAPA in December, 2014, and January, 2015, defendants, through their counsel, have made additional demands upon USAPA and/or its National Officers, including, *inter alia*, not using West Pilots’ dues to fund or support the East Pilots in seniority integration proceedings;

³ USAPA has since been decertified as the bargaining representative for the pilots of US Airways.

immediate distribution of USAPA's assets; payment of the West Pilots' expenses related to the seniority list integration proceedings; and an accounting of the money that was paid into the USAPA treasury by or on behalf of "West Pilots" by virtue of a 0.5% dues increase and distribution of such funds to "West Pilots". See Proposed Amended and/or Supplemental Complaint, ¶79, annexed to the instant motion as Exhibit "A"; Exhibits "D" and "E" to Proposed Amended and/or Supplemental Complaint. In these communications, the West Pilots objected to USAPA's use of assets in its treasury for payment of expenses relating to ongoing litigation, including *Addington*, on the grounds that such litigation is not "collective legal action on behalf of the pilot group" and payment of expenses of the USAPA Merger Committee to the exclusion of other committees.

USAPA has not acceded to the additional demands and objections made by West Pilots for reasons grounded upon the interpretation and application of various provisions of the USAPA Constitution and Bylaws, including but not limited to provisions relating to the dissolution of the Association and its deferral, deferral of distribution of USAPA assets, the meaning of the terms "collective legal action on behalf of the pilot group", as used in Article I, Section 3 of the USAPA Constitution, the objectives of the Association as set forth in Article I, Section 8 of the USAPA Constitution, and the dues increase in the event of merger (as provided for in subdivision "F" of Article II, Section 5 of the USAPA Constitution and Bylaws).

The additional demands and objections set out in the December 2014 and January 2015 communications arise out of and are related to defendants' opposition to, and rejection of, the interpretation and application of various provisions of the USAPA Constitution and Bylaws, including but not limited to provisions relating to the dissolution of the Association and its deferral, deferral of distribution of USAPA assets, the meaning of the terms "collective legal

action on behalf of the pilot group”, as used in Article I, Section 3 of the USAPA Constitution, the objectives of the Association as set forth in Article I, Section 8 of the USAPA Constitution, and the dues increase in the event of merger (as provided for in subdivision “F” of Article II, Section 5 of the USAPA Constitution and Bylaws).

USAPA seeks to amend the complaint, or in the alternative, supplement the complaint to include two additional causes of actions that directly relate to the new demands and objections made by West Pilots in their December and January communications.

ARGUMENT

POINT I

ALL RELEVANT CONSIDERATIONS MILITATE IN FAVOR OF GRANTING THE MOTION TO AMEND

Pursuant to Federal Rules of Civil Procedure Rule 15(a)(2), a court “should freely give leave” to amend the complaint “when justice so requires.” Fed.R.Civ.P. 15(a)(2). “The law is well settled ‘that leave to amend a pleading should be denied *only when* the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.’” *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999) (quoting *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir.1986)). Indeed, “a lack of prejudice would alone ordinarily warrant granting leave to amend and that mere delay absent any resulting prejudice or evidence of dilatoriness was not sufficient justification for denial.” *Ward Electronics Service, Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987) (citing *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir.1980)).

Consistent with the federal rule and the well settled law, USAPA should be granted leave to amend the complaint. The amendment will not delay the proceedings as this litigation is still in its initial stages, and no discovery has been exchanged. There is no bad faith on USAPA’s part

in seeking the amendment as it relates to new demands and objections made by defendants subsequent to the filing of this litigation, which, like the matters raised in the complaint, also arise out of and relate directly to the National Officers' decisions to defer dissolution and distribution of assets. Nor is the amendment futile as the new allegations and causes of action relate to determinations made by USAPA and its National Officers pursuant to their constitutional authority and consistent with the USAPA Constitution and Bylaws. Similar to the original causes of actions, determining the validity of the National Officers' actions with respect to the additional causes of action set out in the proposed amended complaint – relating to payment of merger-related expenses and disposition of a merger-related dues increase -- do not raise federal questions. Finally, amendment will not prejudice the defendants. Discovery has not commenced, and plaintiffs seek amendment to address new demands and objections made by West Pilots, and as such defendants are fully aware of the events giving rise to the proposed amendment. Leave to amend the complaint is appropriate and is consistent with the “liberal reading of . . . [Rule 15(a)’s] direction for ‘free’ allowance.” *Ward Electronics Service, Inc.*, 819 F.2d at 497.

POINT II

IN THE ALTERNATIVE, LEAVE SHOULD BE GRANTED TO SUPPLEMENT THE COMPLAINT

In the alternative, plaintiff should be granted leave to supplement the complaint to add facts relating to the new demands and objections made by the West Pilots subsequent to the filing of the instant action, and to add two causes of actions that relate to those new demands and objections. *See Ramsay Group, Inc. v. EGS Intern., Inc.*, 208 F.R.D. 559, 562 (W.D.N.C. 2002) (“A supplemental pleading may . . . be used to add additional facts or events relating to liability

or to change the relief requested.”) (quoting 3 *Moore’s Federal Practice* § 15.30 (Matthew Bender 3d ed.)).

Federal Rules of Civil Procedure Rule 15(d) permits “a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed.R.Civ.P. 15(d). “A supplemental pleading differs from an amended pleading because it relates to matters occurring subsequent to the filing of the initial complaint.” *Franks v. Ross*, 313 F.3d 184, 198 n. 15 (4th Cir. 2002) (citing Fed.R.Civ.P. 15(d)). The distinction is of little significance “because the standards used by a district court in ruling on a motion to amend or on a motion to supplement are nearly identical. In either situation, leave should be freely granted, and should be denied only where ‘good reason exists ..., such as prejudice to the defendants.’” *Franks*, 313 F.3d at 198 n. 15 (quoting *Walker v. United Parcel Serv.*, 240 F.3d 1268, 1278 (10th Cir.2001)).

The rule “is a useful device, enabling a court to award complete relief, or more nearly complete relief, in one action, and to avoid the cost, delay and waste of separate actions which must be separately tried and prosecuted. So useful they are and of such service in the efficient administration of justice that they ought to be allowed as of course, unless some particular reason for disallowing them appears, though the court has the unquestioned right to impose terms upon their allowance when fairness appears to require them.” *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 28-29 (4th Cir. 1963).

Supplementing the complaint is appropriate for the same reasons that granting plaintiff leave to amend the complaint is appropriate. There is no bad faith on plaintiff’s part, and supplementing the complaint is not futile and will not prejudice defendants.

CONCLUSION

For the reasons set forth above, USAPA's Motion for Leave to Amend the Complaint, or in the Alternative, to Supplement the Complaint should be granted in its entirety.

Respectfully submitted this 11th day of February, 2015.

TIN FULTON WALKER & OWEN

s/ John Gresham

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT, OR IN THE ALTERNATIVE, TO SUPPLEMENT THE COMPLAINT with the Clerk of the Court using the CM/ECF system, and that notification pursuant to the CM/ECF system will be sent to:

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This the 11th day of February, 2015.

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