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.	)	**REPLY 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 Reply 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 (LMRDA"), this Court has original federal question jurisdiction pursuant to 28 U.S.C. 1331.

ARGUMENT

POINT I

DEFENDANTS HAVE FAILED TO REBUT THE SHOWING THAT LEAVE TO AMEND AND/OR SUPPLEMENT SHOULD BE GRANTED

In its moving papers, plaintiff demonstrated that the factors relevant to the consideration of a motion for leave to amend and/or supplement have been satisfied here: the proposed amendment pertains to matters that arose after the complaint was filed (i.e. additional claims and demands interposed by defendants), all of which arise out of and relate to the matters encompassed in the complaint and there is no prejudice to defendants (for, among other considerations, discovery has not commenced, and plaintiffs seek amendment to address new demands and objections made by or on behalf of defendants, so that they are fully aware of these events). Plaintiff cited *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)), stating, "[t]he 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.'"

In response, defendants do not assert that the amendment is prejudicial (i.e. will prejudice the preparation of their case), but rather attempt to make a contorted argument for futility and bad faith by seeking to delve into the merits of the claims in the declaratory judgment action, which is wholly inappropriate at this time and in this context. This opposition fails for a number of reasons.

It bears observing at the outset that a major component of defendants' opposition to the motion to amend is their attempt to tar USAPA and burden the Court's determination of this simple application with wholly irrelevant matters. Literally Exhibit "1" in this regard is

defendants' introduction of the January, 2015 decision of the Preliminary Arbitration Board (Doc. 36-1), doubtlessly put forward by defendants as a means of highlighting the long-standing disputes between USAPA and the West Pilot faction that Velez claims to represent.

However, this argument supports the granting of the motion, rather than advancing any basis to deny it. Defendants' interjection of this material only serves to underscore the importance of addressing these subsequent events (as well as the demands on USAPA that arose out of these events) that arise out of and are related to the events and matters that formed the basis for the complaint in a unified and rational manner in this declaratory judgment action.

As to defendants' argument on bad faith and futility, not only does it raise the irrelevant considerations discussed immediately above, it also unduly burdens the Court with arguments that go the merits of the case, as if this was briefing on a motion for summary judgment, not for leave to amend. Thus, at pages 4 and 5 of their Response (Doc. 36), defendants go into various provisions of the USAPA Constitution and Bylaws in the course of arguing that USAPA should have done this, that, or the other thing, or should not have done this, that, or the other thing. Defendants take issue with actions taken by USAPA based upon their view and interpretation of the Constitution and Bylaws (including the terms "collective legal representation") that obviously differ with the view and interpretation taken by USAPA. Defendants argue the merits of their position.

However, the merits of the parties' respective positions on the proper interpretation of the USAPA Constitution and Bylaws and related legal matters are not before the Court on this motion. As the court stated in *Burns v. AAF-McQuay, Inc.*, 980 F. Supp. 175, 179 (W.D. Va. 1997) *aff'd*, 166 F.3d 292 (4th Cir. 1999),

> A motion to amend a complaint is not held to the summary judgment standard defendant implicitly invokes by arguing the sufficiency of the evidence, but rather

> only to that of a motion to dismiss under Fed.R.Civ.P. 12(b)(6). [citations omitted]. As the Fourth Circuit stated in *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir.1980), "Unless a proposed amendment may clearly be seen to be futile because of substantive or procedural considerations, ... conjecture about the merits of the litigation should not enter into the decision whether to allow amendment."

Needless to say, USAPA disagrees with defendants as to the merits of their interpretation of the various constitutional provisions in issue, whether USAPA is acting and has acted in compliance with same, among other issues. It is sufficient for purposes of the amendment of this declaratory judgment complaint that plaintiff has *alleged* (and defendants do not deny) that events and matters that are sought to be added by way of the amendment arise out of and are related to the Association's determinations alleged in the complaint and their powers under the USAPA Constitution, also as alleged in the complaint. See, e.g. proposed amended complaint (Doc. 33-1) at ¶¶ 80-81. As in a motion to dismiss a complaint, these allegations of nexus must be accepted as true, thus concluding the inquiry as to the merits of a proposed amended pleading appropriate to determination of a motion for leave to amend under Rule 15.

Similarly inappropriate are defendants' arguments concerning the LMRDA and whether that federal statute confers jurisdiction over the declaratory judgment action. Doc. 36 at 5-6. Once again defendants are briefing a different matter – the motion to remand – as to which the briefing has already closed and is *sub judice.*

It is again worth noting that defendants' opposition – adverting, as it does, to various provisions of the USAPA Constitution and Bylaws -- serves to underscore not only the appropriateness of the amendment, but also the need to have these additional disputes that arise out of differing viewpoints as to the USAPA Constitution and Bylaws adjudicated in an unified and orderly manner. Defendants' overheated fulminations aside, that is all that is sought in the motion. Defendants' arguments actually advance the cause of granting the motion.

Finally, an amendment is not prejudicial just because it will result in additional claims that defendants have to address. "An amendment is not prejudicial, by contrast, if it merely adds an additional theory of recovery to the facts already pled and is offered before any discovery has occurred. *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir.1980) ("Because defendant was from the outset made fully aware of the events giving rise to the action, an allowance of the amendment could not in any way prejudice the preparation of the defendant's case.") *Laber v. Harvey*, 438 F.3d 404, 426-27 (4th Cir. 2006). The quotation for *Davis* is particularly apt; obviously defendants here were aware of the events giving rise to the additional claims, that is, *their* additional demands upon USAPA and objections to USAPA's actions and inactions interposed subsequent to the date the complaint was filed.

CONCLUSION

For the reasons set forth above and those argued in the Brief in Support of the Motion (Doc. 33-2) 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 12th day of March, 2015.

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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 12th day of March, 2015.

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