

2004 WL 2009366
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United States District Court,
D. Delaware.

Edwin GONZALEZ, Donna Ann Minor, Kara Pietrowicz and Alberina Ziemba, Plaintiffs,

v.

COMCAST CORPORATION, a Pennsylvania corporation, Comcast Cablevision of Willow Grove, a Pennsylvania corporation, Comcast Cable Communications, Inc., a Delaware corporation, Suzane Keenan, Allen R. Peddrick, Richard Germano, James Sullivan, E. Mark Connell, Dina Galeotafiore, Al Calhoun, Steve Trevison, Philip Annone, John McGowan, Vincent Johnson, and Michael A. Doyle, Defendants.

No. Civ.A. 03-445-KAJ. | Aug. 25, 2004.

Attorneys and Law Firms

Victor F. Battaglia, Sr., Biggs & Battaglia, Wilmington, DE, for Plaintiffs.

William M. Kelleher, Ballard, Spahr, Andrews & Ingersoll, LLP, Wilmington, DE, for Defendants.

Opinion

MEMORANDUM ORDER

JORDAN, J.

*1 On June 10, 2004, the plaintiffs filed a Motion for Leave to File a Second Amended Complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure. (Docket Item ["D.I."] 165; the "Motion.") The plaintiffs seek to add Melanie Penna as a defendant (*id.* at 3) and to assert three additional claims based on Delaware state law, including claims for fraud and deceit (*id.* at 33-34), *prima facie* tort (*id.* at 34-35), and civil conspiracy (*id.* at 35-37).

Rule 16 of the Federal Rules of Civil Procedure provides that a pretrial scheduling order "shall not be modified except upon a showing of *good cause* and by leave of the district judge...." Fed.R.Civ.P. 16(b) (emphasis added). A scheduling order was issued in this case on August 19, 2003 and required that all motions to join other parties and to amend or supplement the pleadings be filed on or before December 1, 2003. (D.I. 31 at 2.) The plaintiffs' Motion was filed on June 10, 2004, over seven months after that deadline. To grant the plaintiffs' Motion would also require substantial changes in other deadlines set forth in the scheduling order, including the trial date. Therefore, under Rule 16, the plaintiffs are required to show good cause why their Motion should be granted and such changes made.

The plaintiffs make several arguments in support of their Motion. None of them, however, establishes or even attempts to establish the good cause required for modifying the deadlines in the scheduling order. "Properly construed, 'good cause' means that scheduling deadlines cannot be met despite a party's diligent efforts." *Dilmar Oil Co. V. Federated Mut. Ins. Co.*, 986 F.Supp. 959, 980 (D.S.C.1997), *aff'd* 129 F.3d 116 (4th Cir.1997) (citing 6A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice and Procedure § 1522.1 at 230-31 (2d ed.1990)). Instead of focusing on why, despite diligent effort, plaintiffs could not have asserted their motion at an earlier time, within the scheduling order guidelines, the plaintiffs focus on why they believe the defendants will not be unduly prejudiced if their Motion is granted (D.I. 173 at 1-7) and why adding three more state law claims is not futile (D.I. 173 at 7-9). These arguments do not establish good cause, as defined above, for this remarkably late motion for leave to amend.

The untimeliness of the plaintiffs' Motion is also emphasized by the fact that I have already ruled on a summary judgment motion made by the defendants. (D.I.185.) Granting the plaintiffs' Motion, which was filed after the discovery deadline and only three months before the joint proposed final pretrial order is due on September 22, 2004 (D.I. 188 at 1) would indeed be unduly prejudicial to the defendants.

Gonzalez v. Comcast Corp., Not Reported in F.Supp.2d (2004)

Accordingly, IT IS HEREBY ORDERED that the plaintiffs' Motion (D.I.165) is DENIED.