

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: September 9, 2019]

CASHMAN EQUIPMENT
CORPORATION, INC.,
Plaintiffs,

v.

CARDI CORPORATION, INC.;
SAFECO INSURANCE CO., INC.;
RT GROUP, INC.; JAMES RUSSELL;
STEVEN OTTEN; CARDI
MATERIALS, LLC; SPECIALTY
DIVING SERVICES, INC.;
HALEY & ALDRICH, INC.;
Defendants,

v.

WESTERN SURETY COMPANY;
RHODE ISLAND DEPARTMENT
OF TRANSPORTATION,
Third-Party Defendants.

C.A. No. PB-2011-2488

DECISION

TAFT-CARTER, J. This case involves disputes arising out of the construction and renovations of the Sakonnet River Bridge. Defendant Cardi Corporation, Inc. (Cardi) and Cashman Equipment Corporation, Inc. (Cashman) entered into an agreement to make Cashman Cardi's subcontractor, should Cardi be awarded the Sakonnet River Bridge project by the Rhode Island Department of Transportation (RIDOT).

Before this Court for decision is Cashman's motion for leave to amend the Fourth Amended Complaint. Cashman asked for leave to amend to make the following changes to its

complaint: (1) remove Count XVII (Tortious Interference with Prospective Business Relations directed against Cardi); (2) remove Count XXIX (estoppel) as directed at Cardi and RT Group, Inc. (RTG); and, (3) add a count of negligence directed at RIDOT.

I

Standard of Review

Pursuant to Rule 15(a) of the Rhode Island Superior Court Rules of Civil Procedure, a party may “amend the party’s pleading . . . by leave of court . . . and leave shall be freely given when justice so requires.” Super. R. Civ. P. 15(a). The Rhode Island Supreme Court has “‘consistently held that trial justices should liberally allow amendments to the pleadings.’” *Lomastro v. Iacovelli*, 56 A.3d 92, 95 (R.I. 2012) (quoting *Medeiros v. Cornwall*, 911 A.2d 251, 253 (R.I. 2006)). Furthermore, “‘amendments to pleadings are to be allowed with great liberality absent a showing of extreme prejudice’ and the burden of demonstrating extreme prejudice lies on the party opposing the motion.” *Id.* (quoting *Kuczer v. City of Woonsocket*, 472 A.2d 300, 301 (R.I. 1984)). The Rhode Island Supreme Court has stated that its “liberal interpretation of Rule 15(a) encourages the allowance of amendments in order to facilitate the resolution of disputes on their merits rather than on blind adherence to procedural technicalities.” *Wachsberger v. Pepper*, 583 A.2d 77, 78 (R.I. 1990) (citing *Inleasing Corp. v. Jessup*, 475 A.2d 989, 992 (R.I. 1984)).

However, “[a]n addition of a new claim close to trial when discovery is essentially complete and trial strategy already planned invariably delays the resolution of a case, and delay itself may be considered prejudicial . . . especially where excessive delay has already occurred.” *Faerber v. Cavanagh*, 568 A.2d 326, 330 (R.I. 1990) (quoting *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 139 (1st Cir. 1985)). Therefore, “[w]ith respect to undue delay, . . . when ‘a considerable period of time has passed between the filing of the complaint and the motion to

amend, *courts have placed the burden upon the movant* to show some valid reason for his neglect and delay.’” *Id.* at 329 (quoting *Carter v. Supermarkets General Corp.*, 684 F.2d 187, 192 (1st Cir. 1982) (emphasis added)).

II

Analysis

Cashman “seeks to assert a direct claim against RIDOT for negligence related to its approval of RTG, Russel [sic] and Otten as the engineering firm and/or engineers to design the marine cofferdams at Piers 4, 5, and 6.” Cashman claims that it became clear from at least seven depositions which took place over the course of discovery, that RIDOT was allegedly “negligent in its due diligence” relative to whether the engineers hired to design the marine cofferdams at issue in this case met RIDOT’s specified job requirements. Based on the testimony provided by various deponents, Cashman now asks this Court to grant it leave to amend its fourth amended complaint to include a count of negligence against RIDOT. Due to RIDOT’s ongoing involvement in this case as a defendant, Cashman asserts that RIDOT cannot claim extreme prejudice if the motion to amend is granted because RIDOT has been present at all hearings, proceedings, and depositions related to this case.

According to RIDOT, this Court must deny the motion to amend because the claim against RIDOT is barred by the statute of limitations and the law of the case doctrine, and because the State did not and does not owe a duty to Cashman. Additionally, RTG, Steven Otten, and James Russell contend that the motion must be denied because the claim against RIDOT is barred by the statute of limitations pursuant to Section 37-13.1-1(a). Finally, all parties opposing this motion assert it would cause them extreme prejudice if this motion to amend were granted.

First, “‘amendments to pleadings are to be allowed with great liberality absent a showing of extreme prejudice’ and the burden of demonstrating extreme prejudice lies on the party opposing the motion.” *Lomastro*, 56 A.3d at 95 (quoting *Kuczer*, 472 A.2d at 301). According to RIDOT in its memorandum, it would be “severely prejudiced” if the Court were to grant the motion to amend since RIDOT “has not had the opportunity to do any discovery on the issues surrounding the cofferdam design and the experience of RTG since this Litigation began 9 years ago.” Additionally, RTG, Steven Otten, and James Russell claim they too would suffer serious prejudice if this motion is granted because it has not cross-examined any of the State’s witnesses for a claim “the grounds upon which. . . were well known to counsel five or more years ago.”

In support of its motion, Cashman relies on depositions—the majority of which took place between 2011 and 2014, and one of which took place in 2019. Cashman claims RIDOT will be in no way prejudiced by the amended complaint because “RIDOT has been present and actively participated in every deposition, hearing, proceeding and activity related to this litigation.” However, according to RIDOT,

“[s]ince Cardi was the only party that had brought suit against the State, there was no real opportunity to this point for the State to do any discovery on the cofferdam litigation between Cashman, Cardi, RTG, and [Specialty Diving Services, Inc.]. The State had no opportunity to inquire during the 70+ depositions over 9 years about the cofferdam issues, nor did it have the opportunity to inquire about the qualifications issue.” RIDOT Mem. at 10.

This case was originally filed in the Rhode Island Superior Court in 2011. According to Cashman, with the exception of one deposition in 2019, all discovery which led to Cashman’s current request to amend the complaint was completed at least five years ago. This case was set to go to trial mere months from the date of filing of Cashman’s motion to amend. *See Faerber*, 568 A.2d at 329 (denying plaintiff’s motion to amend to add counterclaim twelve years after the

initial filing of the complaint); *see also Harodite Indus., Inc. v. Warren Elec. Corp.*, 24 A.3d 514, 531 (R.I. 2011) (quoting *RICO Corp. v. Town of Exeter*, 836 A.2d 212, 218 (R.I. 2003)) (“At the same time, it should also be borne in mind that we have explicitly observed that ‘the risk of substantial prejudice generally increases with the passage of time’”). Cashman provided no reasoning for its delay in amending the complaint to add this claim against RIDOT and simply claims RIDOT will be in no way prejudiced because it was “present” at the depositions over the past nine years. *See Harodite Indus., Inc.*, 24 A.3d at 532 (denying plaintiff’s motion to amend in part because plaintiff’s own brief suggested it could have amended complaint almost two years earlier).

At this late stage in the litigation, Cashman’s justification is not enough to convince this Court to grant Cashman’s motion to amend. RIDOT would experience serious prejudice should this motion be allowed, and Cashman has failed to provide any reason why this motion to amend was not filed earlier. *See Faerber*, 568 A.2d at 329 (quoting *Carter*, 684 F.2d at 192) (“when ‘a considerable period of time has passed between the filing of the complaint and the motion to amend, *courts have placed the burden upon the movant* to show some valid reason for his neglect and delay’”) (emphasis added).

III

Conclusion

For the foregoing reasons, Cashman’s motion for leave to file amend its fourth amended complaint is denied in part as to the count of negligence directed at RIDOT and granted in part as to the request to remove Count XVII (Tortious Interference with Prospective Business Relations directed against Cardi and Count XXIX (estoppel) as directed at Cardi and RTG. Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

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CASE NO: PB-2011-2488

COURT: Providence County Superior Court

DATE DECISION FILED: September 9, 2019

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

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For Defendant: *SEE ATTACHED LIST

Cashman Equipment Corporation, Inc.

vs.

Cardi Corporation, Inc., et al.

vs.

Western Surety Company, et al.

C.A. No. PB-2011-2488

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