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SUPERIOR COURT OF NEW JERSEY
CAPE MAY-LAW DIVISION

CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

Stacey L. Williams,

Plaintiff

v.

City of Pleasantville et als ,

Defendants

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:
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:
:

Civil Action

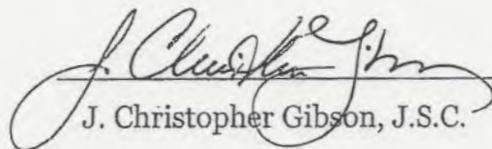
DOCKET NO.: CPM L 655-13

Order

THIS MATTER having come before the Court on motion filed by Plaintiff for leave to file an amended Complaint; and the Court having heard argument and considered the papers submitted; and for good cause shown;

IT IS ON THIS 13th day of August, 2015 ORDERED that

1. Plaintiff's motion to amend the complaint is granted.
2. Plaintiff's request to extend the discovery period one hundred twenty (120) days until December 13, 2015 is granted.
3. FURTHER ORDERED that a copy of this Order be served on all parties within five (5) days.


J. Christopher Gibson, J.S.C.

Memorandum of Decision is attached.

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COMMITTEE ON OPINIONS

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BY: _____

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CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

TO: Sebastian B. Ionno, Esquire
IONNO HIGBEE
140 South Broadway, Suite 5
Pitman, NJ 08071

CASE: Stacey L. Williams v City of Pleasantville et als
DOCKET NO. ATL 655-13

NATURE OF APPLICATION: PLAINTIFF'S MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

MEMORANDUM OF DECISION ON MOTION

NATURE AND BACKGROUND OF MOTION

The complaint in this matter was filed on February 2, 2013. The discovery end date was February 15, 2015. Plaintiff now moves for leave to file an amended complaint.

The Court has carefully and thoroughly reviewed the moving papers and attached exhibits submitted by the parties with this motion.

LEGAL ANALYSIS

R. 4:9-1 permits a party to amend a pleading by leave of court, "which shall be freely given in the interest of justice." R. 4:9-1. Leave to amend a complaint should be granted liberally, without consideration of the ultimate merits. Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 500-01 (2006);

Kernan v. One Washington Park, 154 N.J. 437, 456 (1998); Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 475 (App. Div. 2001).

MOVANT'S POSITION

Plaintiff provides that during depositions in this matter it was discovered that after Plaintiff made her complaint of a hostile work environment that some level of investigation was conducted by Captain Melendez who prepared a report that was issued to the Chief of Police, then Chief Comeaux. The subject report purportedly detailed the findings of Plaintiff's complaint and recommended in part discipline against the harasser Officer Wright. Plaintiff asserts that the report is now unable to be located and has not been provided in discovery.

Plaintiff contends that the report is vital to her claims as it shows that discipline was recommended yet none was imposed. Further, the report is relevant to the affirmative defenses in this matter regarding adequate policies and whether they adequately remediated and repudiated the allegations. Plaintiff requests leave to amend the complaint to include additional claims for intentional and negligent spoliation of evidence.

OPPOSITION

Defendant submits that Plaintiff incorrectly characterizes the new asserted claim as "intentional and negligent spoliation of evidence." Defendant contends that no such cause of action exists and research did not reveal any cases using that phrase. Defendant asserts that Plaintiff is seeking to add a claim for intentional and negligent spoliation of evidence.

Defendant provides that our Supreme Court noted the following:

we are constrained to comment that spoliation claims, as between parties to a particular litigation, are technically claims for fraudulent concealment. . . . Because they continue to be a type of fraud claim, we have not in the past recognized, and we do not now recognize, any separate tort for negligent spoliation.

Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 122 n.6 (2008).

Consequently, Defendant contends that Plaintiff's application to add a claim for negligent spoliation seeks to assert a cause of action not recognized by our courts and should be denied.

With regard to a claim for intentional spoliation, Defendant contends that Plaintiff cannot satisfy the elements of intentional spoliation which our Supreme Court defined as a claim for fraudulent concealment of evidence. Defendant submits the following as the elements that need to be established to sustain a claim for fraudulent concealment in the context of spoliation:

- (1) That defendant in the fraudulent concealment action had a legal obligation to disclose evidence in connection with an existing or pending litigation;
- (2) That the evidence was material to the litigation;
- (3) That plaintiff could not reasonably have obtained access to the evidence from another source;
- (4) That defendant intentionally withheld, altered or destroyed the evidence with purpose to disrupt the litigation;
- (5) That plaintiff was damaged in the underlying action by having to rely on an evidential record

that did not contain the evidence defendant concealed.

Id. at 118, quoting, Rosenblit v. Zimmerman, 166 N.J. 391, 406-07 (2001).

Defendant submits that the document was created in August 2011 and given to Chief Comeaux. See Melendez Dep. 82:21-84:15 attached as Defendant's Exhibit "A." Defendant contends that the litigation had not yet begun in this matter and there was no pending litigation and therefore the creation and misplacement of the document was disclosed in connection with the current lawsuit.

Next, Defendant contends that the document was a factual recitation of a meeting and no recommendations were made in it. See Melendez Dep. 82:21-84:15. Defendant provides that Plaintiff disputes telling the investigating officers that she did not want to report the alleged harassment, however a document created prior to the meeting states that plaintiff did make such statements. See Report attached as Defendant's Exhibit "B." Consequently, Defendant maintains that the missing document is not material to the litigation.

Third, Defendant asserts that Plaintiff participated in the meeting and can testify as to what happened. Defendant contends that a report of the meeting will not change that testimony regardless of what the report might have contained

Fourth, Defendant argues that there is no fact from which a jury could infer that the defendant "intentionally withheld, altered or destroyed" the

document. Defendant asserts that Cpt. Melendez, Sgt. Moore, Cpt. Ruiz, and Chief Commaeux all admit it existed. Defendant maintains that Plaintiff can point to nothing to indicate that the document was intentionally lost.

Finally, Defendant contends that Plaintiff cannot show that she was damaged by the absence of the document. Defendant asserts that if the missing document in fact prejudices Defendant as it purportedly states that Plaintiff she did not want to press the issue of alleged harassment and did not want Officer Wright disciplined.

Defendant maintains that there is nothing to indicate that Defendant acted intentionally with regard to the loss of the document. Defendant notes that the language used by our Supreme Court requires Plaintiff to prove all of the elements of the cause of action. Defendant notes that denial of the within application would not prevent Plaintiff from seeking an adverse inference charge at the time of trial.

DISCUSSION

The Court finds that the Plaintiff is entitled to the relief requested pursuant to R. 4:9-1.

The Court notes that leave to amend a complaint should be granted liberally, without consideration of the ultimate merits. Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 500-01 (2006); Kernan v. One Washington Park, 154 N.J. 437, 456 (1998); Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 475 (App. Div. 2001).

Plaintiff seeks leave to file an amended complaint in order to add a second count averring that

Defendants have intentionally and/or negligently withheld, altered, and/or destroyed the report with the purpose of disrupting the litigation and have not produced same in discovery despite requests for same and upon information and belief the memo would support Plaintiff's claims that Officer Wright's actions violated Pleasantville's anti-discrimination policy as well as the New Jersey Law Against Discrimination.

See Proposed amended complaint attached as Plaintiff's Exhibit "2."

Our Supreme Court noted that

spoliation claims, as between parties to a particular litigation, are technically claims for fraudulent concealment. . . . Because they continue to be a type of fraud claim, we have not in the past recognized, and we do not now recognize, any separate tort for negligent spoliation.

Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 122 n.6 (2008). The Court therefore notes that Plaintiff cannot state a claim for "negligent spoliation" as our Supreme Court has not recognized such a claim and Plaintiff did not provide support for same.

Claims for fraudulent concealment which our Supreme Court equated to intentional spoliation require a showing of the following:

- (1) That defendant in the fraudulent concealment action had a legal obligation to disclose evidence in connection with an existing or pending litigation;
- (2) That the evidence was material to the litigation;
- (3) That plaintiff could not reasonably have obtained access to the evidence from another source;

- (4) That defendant intentionally withheld, altered or destroyed the evidence with purpose to disrupt the litigation;
- (5) That plaintiff was damaged in the underlying action by having to rely on an evidential record that did not contain the evidence defendant concealed.

Id. at 118, quoting, Rosenblit v. Zimmerman, 166 N.J. 391, 406-07 (2001).

Based upon the liberal standards for leave to amend the complaint, Plaintiff does not need to prove the elements to be able to plead a cause of action. Defendant's argument in opposition to the within motion are based solely on Plaintiff's inability to prove the claim. This Court is not concerned with the ultimate merits of the claim. See Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 500-01 (2006).

Finally, the Court notes that the parties had several motions pending on the return of the within motion for leave to amend the complaint heard on June 26, 2015. Subsequently, the Court has received a consent order withdrawing the other pending motions except for the within motion for leave to amend and Plaintiff's counsel's motion to be relieved as counsel. Finally, the Court also notes that Plaintiff requested a one hundred twenty (120) day extension of the discovery period in order to permit the parties the necessary discovery time going forward. No party objected to Plaintiff's request. The Court finds that good cause exists pursuant to R. 4:24-1(c) to extend the discovery period.

Accordingly, Plaintiff's request for leave to amend the complaint is granted. The discovery period will be extended one hundred twenty (120) days to December 13, 2015.

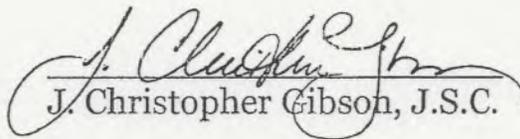
CONCLUSION

The motion is opposed. Motions for leave to amend the complaint should be granted freely in the interests of justice. R. 4:9-1. Plaintiff's motion to amend the complaint is granted.

The parties also establish good cause to extend the discovery period pursuant to R. 4:24-1(c) to extend the discovery period. Plaintiff's request to extend the discovery period one hundred twenty (120) days until December 13, 2015 is granted.

An appropriate form of Order has been executed. Conformed copies of that Order will accompany this Memorandum of Decision.

August 13, 2015


J. Christopher Gibson, J.S.C.