

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

ARTHUR WAYNE LYNCH

PLAINTIFF

v.

CIVIL ACTION NO. 3:00CV-323-S

LEAR SEATING CORP., et al.

DEFENDANTS

MEMORANDUM OPINION

This matter is before us on the motion of the plaintiff, Arthur Wayne Lynch (“Lynch”), for leave to file a second amended complaint. Lynch seeks to join as a defendant DJ & Associates, Inc. Should joinder of DJ & Associates be permitted, complete diversity between the parties would no longer exist, and this court could no longer exercise subject matter jurisdiction. 28 U.S.C. § 1447 (e). The matter having been fully briefed, it is now ripe for review.

BACKGROUND

Lynch filed suit in Jefferson Circuit Court against Lear Seating Corporation (“Lear”) for failure to honor the settlement of a workers compensation claim filed by Lynch against Lear. *See* V. Compl., DN 1, at ¶ 10. Lynch claims that as a result of Lear’s actions, he was wrongfully forced to choose between resigning his employment with Lear or being fired. *See id.* at ¶ 16. Lear removed the matter to this court on June 7, 2000 based on the complete diversity of the parties. *See* Notice of Removal, DN 1, at ¶ 5.

In April of 2001, Julie Carroll (“Carroll”) was deposed. Carroll was at all relevant times an on-site adjuster for Lear’s workers compensation claims. Prior to her deposition, Lynch claims to have reasonably believed that Carroll was a Lear employee. *See* Mot. to Am., DN 55, at 1, 2. Lynch contends that at her deposition, Carroll stated that she was, in fact, an employee of DJ & Associates which had contracted with Lear to provide it with an on-site claims adjuster. *See id.* Approximately

one month after Carroll's deposition, Lear filed its motion for summary judgment. *See* DN 51. Two weeks later, six weeks after Carroll's deposition, Lynch filed this motion to file a second amended complaint joining DJ & Associates, a Kentucky corporation, as a defendant. *See* DN 55.

Lear opposes Lynch's motion to file a second amended complaint on two grounds. First, Lear claims joinder of DJ & Associates is improper pursuant to 28 U.S.C. § 1447 (e). Second, Lear maintains that Lynch seeks to join DJ & Associates for an improper purpose and that pursuant to the doctrine of fraudulent joinder, Lynch's motion should be denied. *See* Def.'s Resp., DN 57, at 4-11.

DISCUSSION

Pursuant to 28 U.S.C. § 1447 (e), it is within the discretion of the district court to permit a plaintiff to "join additional defendants whose joinder would destroy subject matter jurisdiction." Courts use various factors to determine whether joinder of a nondiverse party is proper. *See, e.g., Hensgens v. Deere and Co.*, 833 F.2d 1179, 1182 (5th Cir. 1987); *McIntyre v. Codman & Shurtleff, Inc.*, 103 F.R.D. 619, 621-22 (S.D.N.Y. 1984). These factors include "1) the extent to which the purpose of the amendment is to defeat federal jurisdiction, 2) whether plaintiff has been dilatory in asking for amendment, 3) whether plaintiff will be significantly injured if amendment is not allowed, and 4) other equitable considerations." *Hensgens*, 833 F.2d at 1182. Essentially, joinder of a nondiverse party after removal is permissible if such joinder would be fair. *See Jones v. Woodmen Acc. & Life Co.*, 112 F.Supp.2d 676, 680 (N.D. Ohio 2000) (citations omitted).

Lynch's motion will be denied for several reasons. First, we find that the motion appears to have been filed for the purpose of defeating federal jurisdiction. Lynch filed his motion to amend almost immediately after Lear filed its motion for summary judgment. Also, Lynch's proposed amendment states that D & J is liable as Carroll's employer. Nevertheless, it states that "Julie Carroll was acting within the scope of her responsibilities as an agent for Defendant Lear."

Therefore, regardless of the employment relationship between Carroll and D & J, it is clear that D & J's joinder is unnecessary for Lynch to obtain complete relief for the injuries he alleges.

Second, Lynch learned of Carroll's employment status at least six weeks prior to filing his motion to amend. While this fact alone may not indicate that Lynch was "dilatory" in filing his motion to amend, its combination with the timing of Lear's motion for summary judgment is suspect.

Third, as indicated above, Lynch will not be harmed by our denial of his motion to amend his complaint joining D & J. The basis of all of Lynch's claims is Lear's alleged failure to comply with the parties' settlement terms and its alleged retaliatory actions. D & J's liability, if any, for these claims would be as Lear's agent. Therefore, liability would ultimately rest with Lear even if D & J were joined. Given the advanced stage of the litigation, D & J's joinder would not enhance Lynch's ability to recover and may prejudice the other parties.

Given the above, we will deny Lynch's motion to file a second amended complaint to the extent it joins D & J as a defendant. In all other respects, Lynch's motion will be granted pursuant to 28 U.S.C. § 1447 (e). A separate order will be entered this date in accordance with this opinion.

This ____ day of _____, 2001.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

Motion having been made, and the court being otherwise sufficiently advised, and for the reasons set forth in the accompanying memorandum opinion, **IT IS HEREBY ORDERED AND ADJUDGED** that the motion of the plaintiff, Arthur Wayne Lynch (“Lynch”), to file a second amended complaint is **DENIED** to the extent that Lynch may not join D & J Associates as a defendant. Lynch’s motion is otherwise **GRANTED**, and that portion of the Second Amended Complaint submitted by Lynch on June 1, 2001, *see* DN 55, is hereby deemed filed of record as of the date of entry of this Order.

IT IS SO ORDERED this _____ day of _____, 2001.

CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record