

IN THE COURT OF COMMON PLEAS,
ADAMS COUNTY, OHIO
GENERAL DIVISION

FILED
ADAMS COUNTY
CLERK OF COURTS
2023 DEC 15 AM 10:48

SHAWN D. COOLEY, et al.,

Case No. 2023-0069

Plaintiffs,

v.

Judge Jerry McBride

JOSEPH EDGAR FOREMAN,
A/K/A AFROMAN, et al.

Defendants.

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR LEAVE TO AMEND COUNTERCLAIMS**

Now come Plaintiffs Shawn D. Cooley, Justin Cooley, Michael D. Estep, Shawn S. Grooms, Brian Newland, Lisa Phillips, and Randolph L. Walters, Jr. ("Plaintiffs"), by and through counsel, and respectfully oppose Defendants' undeveloped and unsupported Motion for Leave to Amend. For purposes of this Memorandum in Opposition, Plaintiffs only oppose Defendants' request to amend the counterclaims. Any opposition of Plaintiffs to Defendants' request to amend their answer will be filed separately.

Plaintiffs filed their First Amended Complaint on May 10, 2023. Defendants filed their Answer and Counterclaim on October 27, 2023. Thereafter, Plaintiffs timely filed their Answer to Defendants' counterclaims on November 22, 2023. The Ohio Civil Rules permit parties to amend as a right 28-days after service of a responsive pleading. See Oh. Civ. R. 15. Without any explanation, Defendants are seeking leave of court to amend both their answer and counterclaims. Their request is unsupported by law or any specific facts.



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Generally, while courts will freely grant leave to amend where justice requires, Defendants have offered no justification or cause for their request to amend. *State ex rel. Jeffers v. Athens Cnty Comm'r*, 2016-Ohio-8119, ¶ 64 (Ct. App.) (“Although Civ.R. 15(A) provides that leave of court shall be freely given when justice so requires, there is no absolute or unlimited right to amend a complaint.”). Typically, when a party seeks leave of court to amend their claims, they attach a proposed amended complaint and seek leave *instanter*. *See id.* Otherwise, parties typically describe the amendments they seek to make. *See id.* However, Defendants did not attach any proposed Amended Answer and Counterclaim. Defendants also did not describe what, if any, claims would be added, modified, or removed, or whether parties would be added or removed. Defendants merely refer to “new causes of action against the Plaintiffs [sp.]” that they must pursue, devoid of any reasoning behind what new counterclaims may be sought or why they were not pursued originally. Given this overwhelming lack of information, Plaintiffs are unable to assess whether Defendants’ requested amendments would be redundant, futile, serve to delay, or otherwise result in prejudice to Plaintiffs.

Courts generally hold that “[w]here a [party] fails to make a prima facie showing of support for new matters sought to be pleaded, a trial court acts within its discretion to deny a motion to amend the pleading.” *Id.* (citing *Wilmington Steel Products, Inc. v. Cleveland Elec. Illuminating Co.*, 60 Ohio St.3d 120, 573 N.E.2d 622 (1991); *Townsend v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 11 AP-672, 2012-Ohio-2945, ¶ 34). The requirement to provide support for a request for leave to amend is to ensure that the proposed amendment is not a delaying tactic or one which would cause prejudice to the opposing party. *See id.* (additional citations omitted). Despite this requirement, the only explanation offered by Defendants for their request is that “the interest of justice” requires “that all claims of the parties may be freely and totally adjudicated.” This



averment does not describe any proposed amendments, nor does it give any insight as to whether and how the unidentified amendments would further the causes of this action without prejudice to Plaintiffs.

Given Defendants' complete lack of any information regarding their request to amend their counterclaims, nor any cause for doing so, Plaintiffs respectfully request this Court deny Defendants' request to amend their counterclaims.

Respectfully submitted,

/s/ David Moser

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CERTIFICATE OF SERVICE

This certifies that a true and accurate copy of the foregoing **Opposition to Defendants Motion for Leave to Amend** was served by email, this XX day of December 2023, upon the following:

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