2016 WL 11395254 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Suffolk County
Joanne MINICH & others,[***]
v.
Luis S. SPENCER & others.[***]
No. SUCV201500278.
October 7, 2016.

Memorandum of Decision and Order on Plaintiffs' Motion for Leave to Amend Their Complaint

Paul D. Wilson, Judge.

***1** Plaintiffs, three severely mentally ill individuals,[4] allege that they were secluded and restrained unnecessarily and for prolonged periods at Bridgewater State Hospital ("Bridgewater") where they were civilly committed. Claiming that the seclusion and restraint violated their state and federal rights, they commenced this lawsuit against the Commonwealth, the Department of Correction ("DOC"), former DOC Commissioner Luis S. Spencer ("Spencer"), and former Bridgewater Superintendent Robert Murphy ("Murphy") (collectively, "defendants")[5] seeking damages for violations of 42 U.S.C. § 1983 (Count I), G.L. c. 123, § 21 (Count II), and the Americans with Disabilities Act ("ADA") and the Rehabilitation Act (Count IV); and seeking declaratory judgments for violations of G.L. c. 123, § 21, and the Massachusetts Declaration of Rights (Count III), and for violations of the ADA and the Rehabilitation Act (Count V). Before me is the Plaintiffs' motion to amend their complaint to add class action allegations. Defendant oppose this motion.

Leave to amend shall be given when justice so requires. Mass. R. Civ. P. 15(a); see *Foman* v. *Davis*, 371 U.S. 178, 182 (1962). Nonetheless, a motion to amend invokes the judge's discretion, *Pielech* v. *Massasoit Greyhound, Inc*., 441 Mass. 188, 197-198 (2004), and the court can deny a motion to amend if there is good reason to do so. *Lipsitt* v. *Plaud*, 466 Mass. 240, 254 (2013). Defendants assert three such reasons: undue delay, undue prejudice to the opposing party, and futility of amendment. See *Vakil* v. *Vakil*, 450 Mass. 411, 417 (2008).

Defendants correctly note that this case was filed early in 2015, and that the tracking order deadline for motions to amend has long since passed. However, Plaintiffs have not been dilatory. Defendants' responsive pleading was a lengthy and complex motion to dismiss. Through no fault of the parties, that motion was not scheduled for argument for some months, because of the press of business in Suffolk Superior Court, and because this case has been specially assigned to me (at the request of the parties) and therefore sometimes must follow me to other counties. While sitting in a different county, I heard oral argument on the motion to dismiss in February 2016, and issued my decision denying that motion in large part (although not entirely) on May 12, 2016. The complexity of the claims of Plaintiffs, and of the defenses raised by Defendants, is indicated by the fact that my decision on the motion to dismiss is 40 pages long.

At the heart of Plaintiff's case is their claim that Defendants violated G.L. c. 123, § 21, the statute that limits when and how Defendants can physically restrain and seclude Plaintiffs. Defendants moved to dismiss that central claim, arguing, among other things, that the legislature had not intended there to be private enforcement of that statute. There is little authority on that topic. In my decision on Defendants' motion to dismiss, I found that there was a private right of action. It was reasonable for Plaintiffs to await my decision on the motion to dismiss before seeking leave to file class action allegations. Indeed, had my decision on the motion to dismiss been different, Plaintiffs' caution would have saved legal

expense for all parties. Plaintiffs filed this motion for leave to amend reasonably promptly after my decision on the motion to dismiss, and, thus, in timely fashion.[6]

***2** Nor will amendment cause undue prejudice to Defendants. Because of the delay in resolving the motion to amend, this case is still at an early stage. The parties have undertaken little or no discovery. Therefore the addition of the class action allegations will not require that discovery be redone.

Finally, Defendants suggest that amendment would be futile, because Plaintiffs will not be able to satisfy at least two of the requirements imposed on class representatives in Mass. R. Civ. P. 23(a). Pointing out that Plaintiffs allege that they were subject to physical restraint far more often than other class members, Defendants contend that they will not be able to satisfy the "typicality" requirement. Defendants may well ultimately prevail in this argument. However, that argument is more appropriately considered at the time that Plaintiffs move for class certification, after discovery has established how often Plaintiffs and other class members have been subject subjected to seclusion and restraint, and after the parties have fully briefed the implications of those facts for the typicality analysis.

Defendants also argue that Plaintiffs can not satisfy the "adequate representation" standard, because they have settled their damages claims against the private healthcare company and the clinicians it employs, and thus their interests may diverge from the interests of other class members. It is certainly true that, for this reason, Plaintiffs would not be adequate class representatives in a lawsuit against the private entity and its clinicians. But this lawsuit is now against state Defendants, and those Defendants suggest no reason why Plaintiffs might have divergent interests from class members with regard to damages claims against them.

For these reasons, I exercise my discretion to ***ALLOW*** Plaintiffs' Motion for Leave to Amend Their Complaint. The Second Amended Complaint (with Class Action Allegations) filed on September 1, 2016 shall be the operative complaint.

<<signature>>

Paul D. Wilson

Justice of the Superior Court

October 7, 2016

Footnotes

* In her capacity as Guardian of Peter Minich

** Felipe Zomosa; Jeff and Judy Doe, in their capacities as Guardians of Jeffrey Doe

*** Robert Murphy; Massachusetts Department of Correction; Commonwealth of Massachusetts

4 In fact, the guardians of two of these mentally ill persons sue on their behalves. For convenience, however, I refer to the mentally ill persons themselves as Plaintiffs.

5 Plaintiffs have settled the claims they brought in this lawsuit against other Defendants, namely a private medical provider and clinicians it employs to provide medical services at Bridgewater.

6 The fact that I only now am deciding this motion to amend results in part from Defendants' request, which I allowed, for a lengthy period in which to file a sur-reply brief.