

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NO. BCD-CV-18-27

FREDERICK J. POOR,)
et al.,)
)
Plaintiffs)
)
v.)
)
ROBERT K. LINDELL, JR.,)
et al.,)
Defendants)

ORDER DENYING LINDELL'S MOTION
TO AMEND THE ANSWER & PLEADINGS

On August 20, 2019, Defendant Robert K. Lindell, Jr. ("Lindell") filed a "Motion to Amend Answer to Plaintiff's [sic] Second Amended Complaint and His Answers to Defendant Gray's And Defendant Latady's Cross-Claims and to Make His Own Cross-Claim." For the reasons set forth below, Lindell's Motion is Denied.

BACKGROUND

Plaintiffs initiated this litigation on or about May 4, 2018. The Complaint was duly served on Lindell. On June 18, 2018, Lindell filed a one-sentence Answer denying all counts and allegations against him. Thereafter, Plaintiffs successfully pursued an attachment against Lindell.

In due course, on August 28, 2018, this Court issued Scheduling Order No. 1. The Scheduling Order established a deadline of October 26, 2018, for joinder of parties and amendment of pleadings. Pursuant to Scheduling Order No. 2, that deadline was extended to March 1, 2019. The deadline was ultimately extended to

April 9, 2019. In sum, the Court provided seven months for joinder of parties and amendment of the pleadings.

On January 23, 2019, Plaintiffs amended the Complaint, added Defendant Latady, and served the First Amended Complaint on Lindell. Lindell did not answer the First Amended Complaint. On April 9, 2019, Plaintiffs amended the Complaint for a second time, added Defendant Bar Harbor Trust Services (“BHTS”), and served the Second Amended Complaint on Lindell. Lindell did not answer the Second Amended Complaint. Lindell also did not answer any of the cross claims. And Lindell did not seek to join parties or amend the pleadings during the seven months provided by the Court to do so.

Lindell otherwise has actively participated in the litigation, conducting discovery, filing motions, invoking the Maine Rules of Civil Procedure, and participating in hearings and phone conferences. The deadline to conduct discovery expired on August 14, 2019.¹

Lindell now seeks to file an amended answer, adding affirmative defenses, joining a new party, and adding cross claims. As discussed below, the time for taking all these actions is long since passed.

ANALYSIS

A party has ten days after service to answer an amended complaint. M.R. Civ. P. 15(c). In this case, Lindell failed to answer both the First Amended Complaint and the Second Amended Complaint. In his Motion, Lindell asserts that he wishes to

¹ Although, discovery relating to Bar Harbor Trust Services is currently stayed while the Court considers BHTS’s Motion to Dismiss.

amend his answer to the Second Amended Complaint, but Lindell never filed an answer to the Second Amended Complaint. There is nothing to amend.

Moreover, Lindell fails to offer any credible reason to excuse his failure to answer the amended Complaints. Lindell claims during discovery, he “uncovered new evidence and facts after prior deadlines elapsed.” As will be discussed in the next section, the Court rejects Lindell’s claim of newly discovered evidence. But even if it were the case—which it is not—it would not excuse Lindell’s failure to answer the amended Complaints.

Lindell also argues he is “a lay person with no legal training and is acting pro se.” The Court has from time to time explained to Lindell that even though he is representing himself, he is nevertheless obligated to comply with the rules of procedure and the rules of evidence. *See Uutinen v. Hall*, 636 A.2d 991, 992 (Me. 1994); *see also Brown v. Thaler*, 2005 ME 75, ¶ 8, 880 A.2d 1113. Indeed, Lindell has shown himself to be knowledgeable about the applicable rules, and has actively litigated this case while representing himself. His status as a self-represented litigant thus offers him no excuse for failure to answer the amended Complaints. His request to now answer the Second Amended Complaint, four months after his answer was due, is denied.²

Lindell’s Motion also seeks to amend the pleadings, by joining a new party (one of the lawyers representing Plaintiffs), and to add various cross-claims. However, the Court already gave the parties, including Lindell, seven months to amend the

² Lindell’s attempt to now answer the cross-claims is also denied, as untimely for all the same reasons.

pleadings and join parties. Lindell failed to timely take advantage of that opportunity. The deadline to amend the pleadings expired six months ago. Accordingly to Scheduling Order No. 2: "A motion filed after the applicable deadline is untimely and may be denied on that basis, even if not opposed." In this case, Lindell's motion is untimely. The case has already been in litigation for sixteen months. If Lindell's motion were granted at this time it would significantly impair the efficient handling and management of this case.

The Court is mindful that even when leave of Court is required, leave to amend should be freely given when justice so requires. *See* M.R. Civ. P. 15(a). In this case, justice does not so require. Not only is Lindell's Motion significantly untimely, there is no credible basis to support granting the Motion.

Lindell claims that during discovery he uncovered new evidence and facts after prior deadlines elapsed. Lindell says nothing further in support of this claim, and fails to explain or elaborate on the claim. Contrary to his claim, an inspection of the proposed amended answer, and the documents attached thereto, demonstrate that the "new" evidence and facts on which he relies were wholly or substantially known to Lindell prior to the litigation.³ Accordingly, Lindell's motion to amend the pleadings is denied.

CONCLUSION

³ Footnote 2 to Plaintiffs' Opposition provides a useful description of the history and origins of the so called "new" evidence.

For all these reasons, Lindell's Motion to Amend Answer to Plaintiff's [sic] Second Amended Complaint and His Answers to Defendant Gray's And Defendant Latady's Cross-Claims and to Make His Own Cross-Claim is DENIED.

So Ordered.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

September 5, 2019.

_____/s/_____
Michael A. Duddy
Judge, Business and Consumer Docket