

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NEWTON DICKSON,
Plaintiff,

v.

FRANKLIN METZNER, *ET AL.*,
Defendants.

§
§
§
§
§
§

CIVIL ACTION NO. H-05-4168

ORDER

Plaintiff has filed a motion to amend his complaint (Dkt. 31). Defendants' oppose the motion and move to strike paragraphs 39-47 of the amended complaint under Federal Rule of Civil Procedure 12(f).

Plaintiff originally filed a petition in state court, which defendants removed to this court. Plaintiff seeks to file an amended complaint in federal court adding Continental Airlines, Inc. as a defendant, making additional factual allegations, and asserting new claims for tortious interference with contract, intentional infliction of emotional distress, invasion of privacy, negligence, and conspiracy.¹ Under the scheduling order governing this case (Dkt. 29), the deadline for joining parties is June 15, 2006, and the deadline for amending pleadings is August 4, 2006.

Rule 15(a) provides that leave to amend pleadings "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). The Fifth Circuit has concluded that Rule 15(a) evinces

¹ Plaintiff's proposed amended complaint drops his claim for battery.

a bias in favor of granting leave to amend, but leave to amend is by no means automatic. *Goldstein v. MCI WorldCom*, 340 F.3d 238, 254 (5th Cir. 2003) (citations omitted); *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607-08 (5th Cir. 1998). The decision to grant or deny leave to amend “is entrusted to the sound discretion of the district court.” *Lyn-Lea Travel Corp. v. American Airlines, Inc.*, 283 F.3d 282, 286 (5th Cir. 2002) (citation omitted).

Plaintiff’s motion is timely and will not unduly delay the case or prejudice defendants. Defendants object to the amendment on the ground that plaintiff’s claims are preempted by the Railway Labor Act (RLA), the Airline Deregulation Act (ADA), the Federal Aviation Act (FAA) and FAA regulations, or otherwise fail to state a claim. The grant of leave to amend will not prejudice defendants’ right to file a motion to dismiss on these or other grounds.

Defendants further contend that the proposed amended complaint contains “redundant, immaterial, impertinent, or scandalous matter” that is improper and should be stricken. FED. R. CIV. P. 12(f). This objection specifically relates to paragraphs 39-47 of the amended complaint, which contain allegations of misconduct by defendants’ counsel relating to a witness. Plaintiff is required only to make a short and plain statement of his claim for relief, and should do so in a manner that is simple, concise, and direct. FED. R. CIV. P. 8. The challenged paragraphs describe events alleged to have occurred well after this lawsuit was filed. The allegations are largely immaterial to the merits of the underlying claims. To the extent they are relevant, the level of detail is certainly inappropriate, given their inflammatory nature. Accusations of misconduct by opposing counsel typically generate more heat than

light, and serve only to distract the focus of the litigation away from where it should be – the conflict between the parties themselves. There are appropriate venues to pursue such complaints of attorney misconduct. This proceeding is not one of them. The court concludes that the offending paragraphs should be stricken from the record. It is therefore

ORDERED that plaintiff's motion for leave to amend (Dkt. 31) is granted. It is further

ORDERED that plaintiff shall file within five days of the date of this Order a first amended complaint in the same form as that attached to his motion (Dkt. 31-2), but with paragraphs 39-47 omitted. The clerk is directed to remove the existing proposed first amended complaint (Dkt. 31-2) from the record in this case.

Signed at Houston, Texas on May 26, 2006.



Stephen Wm Smith
United States Magistrate Judge