IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TAMARA L. KAMMERER, AS EXECUTOR OF THE ESTATE OF MILDRED L. POEHNER, Plaintiff, v. DUNN LORING VA OPCO LLC d/b/a AUGUST HEALTHCARE AT ILIFF AND DUNN LORING PROPCO, LLC, Defendants.	)	Civil Action No. 1:24-cv-1369-CMH-LRV

ORDER

This matter is before the Court on Plaintiff's Motion to Amend the Complaint (Dkt. No. 19). Plaintiff requests leave to file a first Amended Complaint that adds as Defendants Iliff Opco LLC, Accordius Health LLC, Akiva Schohfeld, as trustee of the HC Family Trust, and Natalie Zanziper, as trustee of the Zanziper Family Trust (collectively, the "Proposed Defendants"). Plaintiff seeks to add the Proposed Defendants under "a joint venture and vicarious liability theory," and, separately, under a corporate veil-piercing theory of liability. (*Id.* ¶¶ 4–7.) Plaintiff does not seek to add new causes of action and makes no substantive changes to the claims against Defendants. Defendants oppose Plaintiff's Motion.[1] (*See* Dkt. No. 22.) The Motion is fully briefed, and Plaintiff waived oral argument. (*See* Dkt. Nos. 20, 23.)

[1] Plaintiff filed the Motion to Amend the Complaint on October 3. (Dkt. No. 19.) On October 15, 2024, the Court ordered Defendants to file an Opposition by October 17, 2024. (Dkt. No. 21.) Defendants filed their Opposition on October 17, 2024. (Dkt. No. 22.)

Federal Rule of Civil Procedure 15(a) provides that the Court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Under that liberal standard, "leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 509 (4th Cir. 1986). "A prejudicial amendment is one that 'raises a new legal theory that would require the gathering and analysis of facts not already considered by the [defendant, and] is offered shortly before or during trial.'" *Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The further a case progresses, "the more likely it is that the amendment will prejudice the defendant or that a court will find bad faith on the plaintiff's part." *Id.* Relatedly, bad faith may be shown by proof that "the moving party's motive is to unduly delay the litigation." *Brannen v. Selene Finance LP*, 2:18-CV-602, 2019 WL 13251099, at *2 (E.D. Va. Nov. 14, 2019) (citing *Ward Elecs. Serv. Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987)). An amendment is futile if it is "clearly insufficient or frivolous on its face," *Johnson*, 785 F.2d 503 at 510, or "if the claim it presents would not survive a motion to dismiss," *Save Our Sound OBX, Inc. v. N. Carolina Dep't of Transp.*, 914 F.3d 213, 228 (4th Cir. 2019) (citing *Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995)).

Having reviewed Plaintiff's Motion, the related briefing, and the proposed First Amended Complaint, the Court does not find prejudice, bad faith, or futility here. Defendants first contend that Plaintiff acted in bad faith because Dunn Loring VA Opco, LLC "is a named Defendant in the case" and the Trusts' ownership interest in that entity "is not new information." (Dkt. No. 22 ¶ 4.) In response, Plaintiff represents that she did not learn that the Trusts were the actual owners of Dunn Loring VA Opco, LLC until Defendants filed their Notice of Removal on August 7, 2024,

and that she has since been engaged in discovery "to determine the nature of the connection between the Trusts and the now defunct Dunn Loring VA Opco, LLC." (Dkt. No. 23 at 2.) Plaintiff further represents that in discovery, she learned that Dunn Loring VA Opco, LLC allegedly is "uninsured and undercapitalized," which prompted the filing of the instant Motion to add the Proposed Defendants. (*Id.*) Taken together, these facts cannot support a finding that Plaintiff acted in bad faith in moving to amend the Complaint. *See, e.g.*, *Peamon v. Verizon Corp.*, 581 F. App'x 291, 292 (4th Cir. 2014) ("Because it is clear that, in seeking to amend his complaint, Peamon merely sought to artificially inflate his damages in order to obtain subject matter jurisdiction, we conclude that Peamon' s motion to amend was filed in bad faith.").

Defendants next argue that the amendment is prejudicial because "the claims against the family trusts were known well before suit was filed" and "the new parties and claims will add significant discovery expenses to the case and push the deadlines and trial in this case further back." (Dkt. No. 22 ¶ 5.) In support, Defendants rely on *Red Bird Egg Farms, Inc. v. Pennsylvania Mfrs. Indem. Co.* as an example of an "amendment [that] would result in undue prejudice since the amended complaint would add a theory of the case that would require joinder of additional parties and the addition of new witnesses." (*Id.* (citing *Red Bird Egg Farms, Inc. v. Pennsylvania Mfrs. Indem. Co.*, 15 F. App'x 149, 154 (4th Cir. 2001).) Notably, however, the plaintiff in that case filed the motion to amend three days before the case was set to go to trial. *Red Bird Egg Farms, Inc.*, 15 F. App'x at 154. Accordingly, in upholding the district court's decision to deny the motion to amend, the Fourth Circuit held that "the addition of this new theory of the case *three days before trial* would have disrupted the trial schedule and unduly prejudiced [the defendant]."[2] *Id.*

[2] Defendants also cite *Equal Rts. Ctr. v. Niles Bolton Assocs.*, which is similarly unpersuasive. 602 F.3d 597 (4th Cir. 2010). In that case, the Fourth Circuit held that the district court did not abuse its discretion in denying a motion to amend a crossclaim because the crossclaim was filed three

(emphasis added). In the instant case, discovery does not close until January 10, 2025 (*see* Dkt. No. 16), and a trial date has not been set. Moreover, as noted by Plaintiff, the "underlying nature" of the suit has not changed and would not change with the addition of the Proposed Defendants. (Dkt. No. 23 at 2.) The Court thus finds that adding the Proposed Defendants at this juncture would not prejudice the current or Proposed Defendants.

Finally, Defendants argue that the amendment would be futile. With respect to the trustees, Defendants argue that the Court has "no specific or general jurisdiction over these parties." (Dkt. No. 22 ¶ 7.) With respect to all Proposed Defendants, Defendants further argue that Plaintiff's joint venture and veil-piercing theories of liability are futile because Plaintiff's allegations are "vague," "legally conclusive," and "are not sufficient to state a claim under Virginia law." (*Id.* ¶ 9,10.) Taking Plaintiff's allegations in the proposed First Amended Complaint as true (as the Court is required to do in this posture), the Court does not find that Plaintiff's allegations in support its veil-piercing or joint venture theories of liability are "clearly insufficient or frivolous on [their] face." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *see also, e.g.*, *Finney v. Clark Realty Cap., LLC*, No. 1:20-CV-93, 2020 WL 6948181, at *5 (E.D. Va. Aug. 6, 2020) ("To pierce a Virginia entity's corporate veil, a plaintiff must show [1] that the corporate entity was the alter ego, alias, stooge, or dummy . . . and [2] that the corporation was a device or sham used to disguise wrongs, obscure fraud, or conceal crime.") (internal quotations omitted); *Virginia Elec. & Power Co. v. Peters*, No. 3:17-CV-259-JAG, 2018 WL 1995523, at *2 (E.D. Va. Apr. 27, 2018) ("In corporate veil piercing actions, due process permits personal jurisdiction over individuals if (1) they are the alter ego of a corporation and (2) that corporation would

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weeks after the close of a three-year discovery process and on the eve of the deadline for dispositive motions. *Id.* at 604. The cross-claim was thus prejudicial in that it would have "change[d] the nature of the litigation . . . ." *Id.*

have been subject to the court's personal jurisdiction."); *Wells v. Whitaker*, 207 Va. 616, 625–26, 151 S.E.2d 422, 430 (Va. 1966) ("Although there is no generally accepted definition of joint venture, it is said to exist when two or more persons combine in a joint business enterprise for their mutual benefit, with an express or implied understanding or agreement that they are to share in the profits or losses of the enterprise, and that each is to have a voice in its control or management.") (internal quotations omitted). Thus, for now, the Court finds that Plaintiff has alleged sufficient facts, taken as true, that allow the Court to draw the reasonable inference that the Proposed Defendants are liable under the veil-piercing and/or joint venture theories of liability for the misconduct alleged in the proposed First Amended Complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

Accordingly, it is hereby

ORDERED that Plaintiff's Motion to Amend the Complaint (Dkt. No. 19) is **GRANTED.** It is further

ORDERED that the Clerk of Court is directed to docket Plaintiffs proposed First Amended Complaint (Dkt. No. 19-2) as the operative complaint. It is further

ORDERED that Plaintiff shall serve the First Amended Complaint on the Proposed Defendants within seven (7) days of this Order and promptly file the executed summons on the docket. It is further

ORDERED that, within fourteen (14) days after the First Amended Complaint has been served on the Proposed Defendants, Defendants shall answer or otherwise respond to the First Amended Complaint.

ENTERED this 28th day of October, 2024.

Alexandria, Virginia

/s/ LRV
Lindsey Robinson Vaala
United States Magistrate Judge