

**IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**DIRECTIONAL ONE SERVICES, INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,**

Plaintiff,

v.

**Civil Action No. 18-C-14
Presiding Judge: H. Charles Carl, III
Resolution Judge: Christopher C. Wilkes**

**ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,**

Defendant.

FILED
NOV 21 2019
Candy L. Warner
Tyler Co. Circuit Clerk

ORDER DENYING PLAINTIFF'S MOTION TO AMEND PLEADINGS

This matter came before the Court this 21st day of November 2019, upon Plaintiff's Motion to Amend Pleadings. The Plaintiff, Directional ONE Services, Inc., by counsel Christopher Kamper, Esq., and Defendant, Antero Resources Corporation, by counsel W. Henry Lawrence, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter was commenced with the filing of the Complaint on April 6, 2018,¹ alleging claims of Breach of Contract (Count I); Lien Foreclosure (Count II);

¹ The Court notes the court file reflects that a First Amended Complaint with Jury Demand was filed April 19, 2018, but the causes of action are the same.

Estoppel (Count III); Mutual Mistake/Equitable Reformation of Contract (Count IV); and Negligent Misrepresentation (Count V). *See* Compl. ¶¶ 44-79. The allegations involve a dispute between Plaintiff, Directional One Services Inc. USA (“Plaintiff”), a directional drilling contractor, and Defendant, Antero Resources Corporation (“Defendant”), an oil and gas well owner and operator.

2. On or about November 20, 2019, the Plaintiff filed the instant Motion to Amend Pleadings, seeking to add to Count I of the Complaint an allegation that Defendant has underpaid Plaintiff for services that Directional One provided to Defendant, in addition to failing to pay standby, mobilization, demobilization or daily-rate charges required by Plaintiff’s published schedule of rates, and Defendant has lost its entitlement under the parties’ agreement to early-pay and other discounts that Directional One has previously provided, after reviewing its own field tickets in this matter and realizing that it allegedly under-billed Defendant in the past for directional drilling services. *See* Pl’s Mot., p. 1, 3. The Court notes Plaintiff also seeks to amend its Reply to Defendant’s Counterclaims to add similar language and reasoning as an affirmative defense. *Id.* at 4.
3. The Court now finds the instant Motion is ripe for adjudication.

CONCLUSIONS OF LAW

Plaintiff seeks to amend its original Complaint in this civil action to add to Count I by adding an allegation Defendant has underpaid Plaintiff for services that Directional One provided to Defendant, in addition to failing to pay standby, mobilization, demobilization or daily-rate charges required by Plaintiff’s published schedule of rates, and Defendant has lost its entitlement under the parties’ agreement to early-pay and other discounts that Directional One has previously

provided, after reviewing its own field tickets in this matter and realizing that it allegedly under-billed Defendant in the past for directional drilling services. *See* Pl's Mot., p. 1, 3. Plaintiff also seeks to amend its Reply to Defendant's Counterclaim to add the following affirmative defense: "Defendant's damages arising from Count IV of its Counterclaims may be reduced or eliminated by Defendant's underpayment of daily rate, standby, mobilization, and demobilization charges, and Defendant's lack of entitlement to early pay and other discounts and credits previously afforded Defendant, such that Defendant may on balance owe Plaintiff amounts in addition to those previously invoiced". *Id.* at 4.

The general rule of amendments to civil actions is governed by Rule 15 of the West Virginia Rules of Civil Procedure. Rule 15 of the West Virginia Rules of Civil Procedure provides, in pertinent part,

...a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires...

W. Va. R. Civ. P. 15.

Further, the rule of civil procedure that leave to amend a pleading "shall be freely given when justice so requires" is to be liberally construed to promote substantial justice and to secure the just, speedy, and inexpensive determination of every action. *Perdue v. S. J. Groves & Sons Co.*, 152 W. Va. 222, 161 S.E.2d 250 (1968). "The purpose of the words 'and leave [to amend] shall be freely given when justice so requires' in Rule 15(a) W. Va. R. Civ. P., is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of procedural impediments; therefore, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the

amendment; and (3) the adverse party can be given ample opportunity to meet the issue.” Syl. pt. 3, *Rosier v. Garron, Inc.*, 156 W.Va. 861, 199 S.E.2d 50 (1973). Syl. Pt. 6, *Berry v. Nationwide Mut. Fire Ins. Co.*, 181 W.Va. 168, 381 S.E.2d 367 (1989); *see also*, Franklin D. Cleckley, Robin J. Davis & Louis J. Palmer, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 334 (2002).

The West Virginia Supreme Court of Appeals has previously held that “[t]he liberality allowed in the amendment of pleadings pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure does not entitle a party to be dilatory in asserting claims... Lack of diligence is justification for a denial of leave to amend where the delay is unreasonable, and places the burden on the moving party to demonstrate some valid reason for his or her...delay”. Syl. Pt. 3, *State ex rel. Vedder v. Zakaib*, 217 W.Va. 528, 618 S.E.2d 537 (2005).

Furthermore, circuit courts are typically afforded broad discretion in ruling upon motions to amend. “A trial court is vested with a sound discretion in granting or refusing leave to amend pleadings in civil actions. Leave to amend should be freely given when justice so requires, but the action of a trial court in refusing to grant leave to amend a pleading will not be regarded as reversible error in the absence of a showing of an abuse of the trial court's discretion in ruling upon a motion for leave to amend.” Syl. Pt. 6, *Perdue v. S.J. Groves & Sons Co.*, 152 W.Va. 222, 161 S.E.2d 250 (1968). *See Lloyd's, Inc. v. Lloyd*, 225 W.Va. 377, 382, 693 S.E.2d 451, 456 (2010).

Here, the Court must find that Plaintiff's Motion for Leave to Amend Complaint is untimely. The motion was filed on or about November 20, 2019, over a year and a half after the original complaint was filed; over six months after the April 30, 2019 deadline for amendments;

and approximately six weeks before the scheduled trial². Further, the request is not even based off a document Plaintiff received in discovery at some point in this litigation, of which timing the Court would normally consider upon a motion for leave to amend. Instead, this request is based off of documents that were in Plaintiff's own possession – they are Plaintiff's own "field ticket[s] and invoice[s] it submitted to Defendant during the parties' relationship". See Pl's Mot., p. 1. As stated, the law places the burden on the moving party to demonstrate some valid reason for his or her...delay". Syl. Pt. 3, *State ex rel. Vedder v. Zakaib*, 217 W.Va. 528, 618 S.E.2d 537 (2005). Here, Plaintiff proffers no reason for its discovery now, in November 2019 of alleged under-charges of field tickets and invoices it submitted to Defendant years ago. In essence, Plaintiff is arguing "new evidence" indicating alleged under-charging as reflected in its field tickets and invoices, and then arguing it necessitates the addition of a new allegation to Count I to be alleged against Defendant. Further, the Court finds and notes that Count I of the Complaint was essentially resolved upon summary judgment in this matter, as the Plaintiff itself has admitted and proffered to the Court that Count IV of the Counterclaim remains the only issue left to try in this case. See Plaintiff's Motion *in Limine* Regarding Unsupported Allegations, p. 1("Count IV of its Counterclaims, the sole remaining claim in this case").

However, there is no new evidence. The field tickets and invoices Plaintiff claims recently revealed "significant under-charg[ing]" on the part of Plaintiff are Plaintiff's own documents. See Pl's Mot., p. 1. Indeed, it has been shown that in this litigation, Plaintiff's field tickets were turned over to Defendant as part of the discovery process. The field tickets and invoices Plaintiff submitted to Defendant during the course of their business relationship have

² The Trial in this matter is scheduled for January 7, 2020.

always been in Plaintiff's possession. Therefore, it is plain that Plaintiff has known about the information at the heart of this request since the inception of this lawsuit and before. The Court finds there is no good cause to amend the Complaint because of this information now.

Certainly, Plaintiff cannot claim surprise that it allegedly undercharged Defendant for directional well services. Plaintiff had more than enough time to add an allegation or detail to its Complaint during the time that the scheduling order allowed based upon a review it could have done at any time *to its own records* if it felt justice so required.

It has been established above that Plaintiff intimately knew – since the inception of this litigation – about its field tickets and invoices it submitted to Defendant during the course of the parties' relationship because the field tickets and invoices were Plaintiff's own documents. It not only was in possession of these documents, it created these documents. The Court also notes this litigation began in April 2018 and the instant Motion to Amend was not filed until November 2019. Since Plaintiff has offered no reason for this delay, other than its allegation that Defendant's most recent discovery supplement caused it to review its field tickets and invoices at this time – an action it could have chosen to do earlier – the Court finds it has not met her burden to demonstrate a valid reason for her delay. *See* Syl. Pt. 3, *State ex rel. Vedder v. Zakaib*, 217 W.Va. 528, 618 S.E.2d 537 (2005). The Court finds that because Plaintiff was aware of, in possession of, and created its own field tickets and invoices submitted to its client (Defendant) long before the documents were produced (by Plaintiff) in discovery, because the deadlines for amendments have long passed, and because Plaintiff offers no other reason for its delay, it cannot find that the instant request to amend the complaint is timely. Accordingly, the Court must deny Plaintiff's Motion to Amend Pleadings.

Moreover, the Court also denies the request for leave to amend Plaintiff's Reply to Defendant's Counterclaims to add the affirmative defense as detailed above.

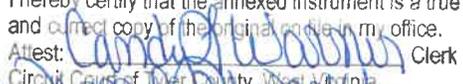
CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff's Motion to Amend Pleadings is hereby DENIED as untimely. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 21st day of November 2019.



JUDGE H. CHARLES CARL, III
West Virginia Business Court Division

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
Attest:  Clerk
Circuit Court of Tyler County, West Virginia
By:  Deputy