UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	Case No.: 3:20CV00187(SALM)
v.	
YALE NEW HAVEN HOSPITAL, INC.	November 10, 2021

RULING ON MOTION TO AMEND THE COMPLAINT TO VOLUNTARILY DISMISS ADA INTERFERENCE CLAIM [Doc. #70]

Plaintiff the Equal Employment Opportunity Commission ("plaintiff") has filed a motion seeking leave to file an amended complaint which would remove the claim asserted for interference pursuant to the Americans with Disabilities Act, 42 U.S.C. §12203(b) (hereinafter the "ADA"). [Doc. #70]. Plaintiff requests that the Court enter an order dismissing that claim, without prejudice. See id. at 1. Defendant Yale New Haven Hospital, Inc. ("defendant") has filed "a limited Opposition in Part to [plaintiff's] Motion to Amend[,]" contending that dismissal of the ADA interference claim should be with prejudice. Doc. #79. Plaintiff has filed a reply in support of its motion. [Doc. #85]. For the reasons stated below, plaintiff's Motion to Amend the Complaint to Voluntarily Dismiss the ADA Interference Claim [**Doc. #70**] is **GRANTED.**

I. **Background**

On February 11, 2020, plaintiff filed this action against defendant alleging that defendant "has adopted and implemented what it calls a 'Late Career Practitioner Policy' ('the Policy'), that requires any individual age 70 and older ... who applies for, or seeks to renew, medical staff privileges at YNHH to take both an ophthalmologic and a neuropsychological medical examination." Doc. #1 at 1. Plaintiff asserts that it has brought this action "to correct unlawful employment practices on the basis of age, to redress interference with rights protected under the ADA, to stop medical examinations in violation of the ADEA and ADA, and to provide appropriate relief to ... aggrieved employees and individuals who were adversely affected by such practices." Id. The original Complaint asserts one claim for violation of the ADEA, and three claims for violation of the ADA, including one count for interference with rights protected thereunder. See generally Doc. #1 at 6-10. Defendant answered the original Complaint on May 13, 2020. [Doc. #24].

On August 8, 2020, Judge Victor A. Bolden entered a Case Management Order, which divided discovery "into two phases: (1) Phase I will determine the employment status of any individuals affected by the Policy, after which summary judgment motions on this issue will be filed; and (2) Phase II will address whether

the Policy violates either the ADEA or the ADA, to the extent necessary." Doc. #34 at 1. On September 14, 2020, this case was transferred to Judge Vanessa L. Bryant. [Doc. #39]. On October 16, 2020, Judge Bryant entered a preliminary scheduling order setting interim deadlines for Phase I discovery. [Doc. #45].

On January 21, 2021, the parties filed a Joint Motion to Approve Stipulation Regarding Employer Status of Yale New Haven Hospital, Inc., in which the parties stipulated "to the employment status of certain categories of Affected Individuals," to "obviate additional litigation and motion practice[]" on this issue (hereinafter the "Stipulation"). Doc. #60 at 1. On January 22, 2021, Judge Bryant granted the parties' motion, and approved the Stipulation. See Doc. #61. Phase II discovery is currently scheduled to close on March 22, 2022, and dispositive motions are currently due by May 23, 2022. See Doc. #103.

Plaintiff now seeks to amend the original Complaint to withdraw the ADA interference claim, without prejudice. See Doc. #70 at 1. Plaintiff asserts that the ADA interference claim "is no longer necessary[,]" in light of the parties having stipulated "as to the employment status of persons aggrieved by the Policy" at issue in this case. Doc. #70-1 at 2-3. Although defendant "agrees" that the ADA interference claim should be

dismissed, defendant contends that the dismissal should be with prejudice. Doc. #79 at 1.

II. Applicable Law

Plaintiff moves to amend the original Complaint under Rules 15(a) and 41(a)(2) of the Federal Rules of Civil Procedure. See Doc. #70 at 1.

At this stage of the litigation, plaintiff may amend the original Complaint "only with the opposing party's written consent or the court's leave[,]" which leave should be "freely give[n] ... when justice so requires." Fed. R. Civ. P. 15(a)(2). Where plaintiff seeks to withdraw a claim that defendant has answered, plaintiff may do so "only by court order, on terms that the court considers proper." Fed R. Civ. P. 41(a)(2).

"[A] district court may permit withdrawal of a claim under Rule 15 ... subject to the same standard of review as a withdrawal under Rule 41(a)." Wakefield v. N. Telecom, Inc., 769 F.2d 109, 114 n.4 (2d Cir. 1985) (citation omitted); see also ING Bank, N.V. v. M/V Afr. Swan, No. 16CV01242(GBD)(BCM), 2017 WL 1080078, at *3 (S.D.N.Y. Mar. 9, 2017). Under either rule, "the trial court has considerable discretion" to grant a motion dismissing a claim without prejudice. Wakefield, 769 F.2d at 114; accord Jose Luis Pelaez, Inc. v. McGraw-Hill Glob. Educ.

Holdings LLC, No. 16CV05393(KMW), 2018 WL 1115517, at *2 (S.D.N.Y. Feb. 26, 2018) (same).

"[T]wo lines of authority have developed with respect to the circumstances under which a dismissal without prejudice might be improper." Kwan v. Schlein, 634 F.3d 224, 230 (2d Cir. 2011) (citation and quotation marks omitted). The first "indicates that such a dismissal would be improper if the defendant would suffer some plain legal prejudice other than the mere prospect of a second lawsuit." Id. (citation and quotation marks omitted). The second directs the trial court to consider "various factors, known as the Zagano factors." Id. (citation and quotation marks omitted). These factors

> include the plaintiff's diligence in bringing the motion; any "undue vexatiousness" on plaintiff's part; the extent to which the suit has progressed, including the defendant's effort and expense in preparation for trial; the duplicative expense of relitigation; and the adequacy of plaintiff's explanation for the need to dismiss.

Zagano v. Fordham Univ., 900 F.2d 12, 14 (2d Cir. 1990); accord Kwan, 634 F.3d at 230; Ultimate Nutrition, Inc. v. Diamond Drinks, Inc., No. 3:06CV00069(MRK), 2007 WL 2786420, at *1 (D. Conn. Sept. 24, 2007). "The Court will analyze each of these factors individually, but no one factor is dispositive. The crucial inquiry remains whether the defendant will suffer substantial prejudice as a result of a dismissal without

prejudice." ING Bank, 2017 WL 1080078, at *3 (citation and quotation marks omitted); see also Richards v. Groton Bd. of Educ., No. 3:14CV00709(VLB), 2015 WL 4999803, at *2 (D. Conn. Aug. 21, 2015) ("Regardless of the test employed, the presumption in this circuit is that such motions should be granted absent a showing of substantial prejudice." (citation and quotation marks omitted)).

"In instances in which the Zagano factors 'have little, if any, relevance,' such as where there is 'no possibility of relitigation at the instance solely of the plaintiff,' the district court should apply the legal prejudice test." Richards, 2015 WL 4999803, at *2 (quoting Kwan, 634 F.3d at 230). Based on the representations in the parties' briefing, the withdrawal of plaintiff's ADA interference claim would not bar plaintiff's unilateral litigation of that claim. See Doc. #70-1 at 9; Doc. #79 at 4. Accordingly, the Court applies the Zagano factors in considering plaintiff's request for leave to amend.[1]

[1] In response to an argument advanced by defendant, plaintiff makes a contention, almost in passing, that the Zagano factors "arguably do not apply at all." Doc. #85 at 8. The Court disagrees with this assessment, particularly in light of plaintiff's reliance on the Zagano factors to advance its argument in the motion to amend. See Doc. #70-1 at 6-10.

III. Discussion

The Zagano factors weigh in favor of granting plaintiff's motion to amend and dismissing the ADA interference claim without prejudice.

A. Diligence

Plaintiff asserts that it has been diligent in bringing the instant motion, which was not possible until the conclusion of Phase I discovery and the approval of the Stipulation. See Doc. #70-1 at 6; Doc. #60. Defendant asserts that plaintiff was not diligent in bringing the motion because it was filed "nearly six months" after the parties filed the Stipulation. Doc. #79 at 2. Defendant continues: "The parties have engaged in months of extensive and costly discovery already, much of which was probative to the interference claim." Id. In reply, plaintiff contends that its motion was filed just four months after the approval of the Stipulation and that such "a minimal time period" does not "constitute[] undue delay." Doc. #85 at 2.

A good "measure of diligence is whether a plaintiff moved to dismiss [a claim] without prejudice within a reasonable period of time after the occurrence of the event that led to the plaintiff's decision not to pursue the [claim]." Ascentive, LLC v. Opinion Corp., No. 10CV04433(ILG)(SMG), 2012 WL 1569573, at *4 (E.D.N.Y. May 3, 2012). Here, plaintiff filed the instant

motion approximately four months after Judge Bryant approved the Stipulation, not "almost six months" as represented by defendant. See Doc. #79 at 2. Although plaintiff did not act quickly in filing the motion, the motion was nevertheless filed in a reasonable amount of time after the Stipulation had been approved. Compare Ascentive, 2012 WL 1569573, at *4 (granting motion to dismiss, without prejudice, where motion was filed a month and a half after triggering event); with Universal Marine Med. Supply, Inc. v. Lovecchio, No. 98CV03495(ILG), 1999 WL 441680, at *5 (E.D.N.Y. May 7, 1999) (Plaintiff had "not been diligent" in bringing the motion, where it waited eight months to file its motion to dismiss after the triggering event.).

"The record does not reflect that [plaintiff] was dilatory in bringing its motion; rather it seeks dismissal of certain [claims] to facilitate the litigation." Stanley Works v. Alltrade, Inc., No.3:02CV01468(PCD), 2004 WL 367619, at *2 (D. Conn. Feb. 23, 2004). Accordingly, this factor weighs in favor of granting plaintiff's motion.

B. Undue Vexatiousness

"Undue vexatiousness requires a finding of ill motive." Jose Luis Pelaez, 2018 WL 1115517, at *4 (citation and quotation marks omitted). Defendant does not contend, and there is no evidence to suggest, that plaintiff was unduly vexatious in

bringing the instant motion. Accordingly, this factor also weighs in favor of granting plaintiff's motion.

C. Progression of the Lawsuit

This case has not progressed to a point that weighs against granting plaintiff's motion to amend. Although Phase I discovery has closed, see Doc. #61, the parties continue to engage in Phase II discovery, which is not scheduled to close until March 22, 2022. See Doc. #103. No dispositive motions have been filed, and no date for trial has been set. Accordingly, this factor also weighs in favor of granting plaintiff's motion. See, e.g., Ascentive, 2012 WL 1569573, at *5 ("Though the parties did engage in discovery with respect to Ascentive's preliminary injunction motion, much discovery — including the taking of additional depositions — remains to be completed, no pre-trial conference has been held, and a trial date has yet to be set. Under similar circumstances, courts have concluded that this factor weighs in favor of the plaintiff.").

D. Duplicative Expense of Relitigation

Plaintiff asserts that it "does not seek to refile this claim in another forum, and has no plan to reassert this claim in the present lawsuit, thus there is little chance that [defendant] will include duplicative litigation expenses." Doc. #70-1 at 9. However, in the event plaintiff does later reassert

the ADA interference claim, "discovery related to the remaining ADA and ADEA claims substantially overlaps ... [with] the ADA interference claim," and therefore "could be easily carried over to any subsequent litigation of this claim." Id. (citation and quotation marks omitted). Defendant disagrees, arguing that "re-litigating the interference claim -- the nature of which is highly individual to the circumstances of each Affected Individual" would not so easily be "carried over" and would "necessarily include discovery started anew and additional months of expensive, time-consuming, and repetitive discovery." Doc. #79 at 4.

The extent to which defendant would need to relitigate the ADA interference claim is unclear, given defendant's representation that it has "engaged in months of extensive and costly discovery already, much of which was probative to the interference claim." Id. at 2. Regardless, the risk of re-litigating this claim seems slim, and the Court finds this to be a neutral factor, weighing neither in favor nor against granting plaintiff's motion.

E. Adequacy of Plaintiff's Explanation

Plaintiff's explanation for the withdrawal of the ADA interference claim is adequate. Plaintiff states the ADA interference claim "ensured a remedy for victims of the Policy

who might not ultimately be considered 'employees' of" defendant. Doc. #70-1 at 3. However, since filing that claim, and after conducting relevant discovery, "the Parties were able to reach agreement as to the employment status of persons aggrieved by the Policy, and filed a joint Stipulation providing that, for purposes of this litigation, the individuals at issue were employees of [defendant] under the ADEA and ADA." Id. at 2-3. As a result of the parties' Stipulation, the ADA interference claim "is no longer necessary." Id. at 3; see also id. at 10. Accordingly, this factor weighs in favor of granting plaintiff's motion.

F. Prejudice to Defendant

Finally, "[a]s the non-movants, Defendants bear the burden of demonstrating that substantial prejudice would result were the proposed amendment to be granted." Jose Luis Pelaez, 2018 WL 1115517, at *2 (citation and quotation marks omitted). Defendant has failed to meet this burden.

The crux of defendant's argument is the potential threat of relitigation. "[S]tarting a litigation all over again does not constitute legal prejudice." D'Alto v. Dahon California, Inc., 100 F.3d 281, 283 (2d Cir. 1996). Defendant has failed to demonstrate any other way in which withdrawal of the ADA

interference claim, without prejudice, would result in substantial prejudice.

Thus, the Court's consideration of the Zagano factors weighs in favor of granting plaintiff's motion to amend and dismissing the ADA interference claim without prejudice.

IV. Conclusion

For the reasons stated, plaintiff's Motion to Amend the Complaint to Voluntarily Dismiss the ADA Interference Claim [**Doc. #70**] is **GRANTED.**

Plaintiff shall separately file the proposed Amended Complaint [Doc. #70-3] forthwith, and in any event no later than **November 17, 2021.**

SO ORDERED this 10th day of November 2021 at New Haven, Connecticut.

/s/
Hon. Sarah A. L. Merriam
United States District Judge