

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

BETTY PARMER,

Plaintiff,

v.

Civil Action No. 14-C-374

Presiding Judge: Christopher C. Wilkes

Resolution Judge: Russell M. Clawges, Jr.

**UNITED BANK, INC., a West Virginia
corporation; and RANDALL WILLIAMS,**

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER COURT'S DENIAL OF
PLAINTIFF'S MOTION TO AMEND COMPLAINT**

This matter came before the Court pursuant to Plaintiff's Motion to Reconsider Court's Denial of Plaintiff's Motion to Amend Complaint. The matter has been fully briefed and is submitted for decision.

In September, 2013 Plaintiff sued Mitchell Brozik, Brandon Kupec, and others alleging many of the same facts that appear in the original Complaint. On April 21, 2014, Plaintiff filed the instant suit against Defendants United Bank and Mr. Williams, alleging negligence, breach of fiduciary duty, and conspiracy regarding a loan she closed and which was funded April 19, 2012. After Defendants filed a Motion to Dismiss, Plaintiff filed a Motion to Amend Complaint on February 27, 2015, seeking to add numerous new allegations and a new claim for fraud. This Court denied the Motion to Amend on April 2, 2015, because the Plaintiff had failed to show any compelling reason to amend the Complaint and had failed to offer any valid reason for delay in seeking the amendment.

On January 20, 2016, approximately six weeks before trial, after discovery had closed and Defendants had filed a Motion for Summary Judgment, Plaintiff filed this Motion,

contending that the Court is without authority to refuse Plaintiff's request to amend the complaint, along with a Motion for Disqualification of Judge Wilkes. Defendant has objected, arguing that the resurrection of this Motion is a tactic to delay the proceedings that would unfairly prejudice Defendants, who are prepared to go to trial on March 8. Defendants assert further that amending the complaint would be futile, citing *Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995).

As stated in the Court's denial of the original Motion to Amend, all factual allegations raised in the proposed amended complaint were capable of being addressed in discovery. Further,

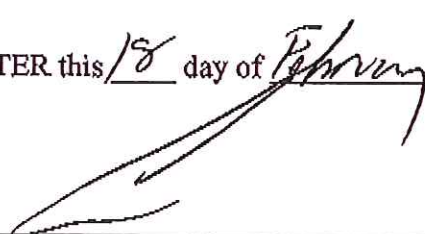
The liberality allowed in the amendment of pleadings pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure does not entitle a party to be dilatory in asserting claims or to neglect his or her case for a long period of time. Lack of diligence is justification for a denial of leave to amend where the delay is unreasonable, and places the burden on the moving party to demonstrate some valid reason for his or her neglect and delay.

State ex rel. Vedder v. Zakaib, 217 W.Va. 528, 618 S.E.2d 537, 539 (2005). By counsel's admission, Plaintiff has neglected this case while pursuing other defendants involved in the same transaction. Discovery in the related case has been extensive, and Plaintiff had the opportunity to depose and cross-examine Defendants in that related action. The Court finds that granting Plaintiff's Motion at this late date would be futile, unduly prejudicial to Defendants, a waste of judicial resources, and would not serve the interests of justice.

THEREFORE, the Court hereby DENIES Plaintiff's Motion to Reconsider Court's Denial of Plaintiff's Motion to Amend Complaint. The Court notes that this Order follows the final order which removed this case from the active docket. The Court was cognizant of and considered the instant motion to reconsider prior to granting the Defendant's Motion for Summary Judgment,

which was granted on February 12, 2016. The Court found the instant motion ultimately could not remedy the fatal defects present in the Plaintiff's case and accordingly granting Defendant's motion. The Court enters this Order to clarify the record and notes the objections and exceptions of the Plaintiff. The Circuit Clerk of Monongalia County is directed to distribute attested copies of this Order to all counsel of record; the Resolution Judge, the Honorable Russell M. Clawges, Jr., at the Monongalia County Courthouse, 243 High Street, Division 2, Morgantown, West Virginia 26505; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401.

ENTER this 18 day of February, 2016.


CHRISTOPHER C. WILKES, JUDGE
BUSINESS COURT DIVISION

STATE OF WEST VIRGINIA, SS:

I, Jean Friend, Clerk of the Circuit and Family Courts of Monongalia County State aforesaid do hereby certify that the attached ORDER is a true copy of the original Order made and entered by said Court.


Circuit Clerk