

CIRCUIT CLERK
NICHOLAS COUNTY, WV
IN THE CIRCUIT COURT OF NICHOLAS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION A 941

MICHAEL D. HARLOW
Plaintiff,

V.

CIVIL ACTION NO. 17-C-149
PRESIDING JUDGE: JAMES H. YOUNG, JR.
RESOLUTION JUDGE: PAUL T. FARRELL

EASTERN ELECTRIC, LLC,
Defendant.

ORDER DENYING PLAINTIFF'S AMENDED MOTION FOR LEAVE OF COURT TO
FILE A SECOND AMENDED COMPLAINT

On February 19, 2019, Plaintiff appeared by counsel, Robert P. Dunlap, Esq., and Defendant appeared by counsel, John D. Hoblitzell, III, Esq., all for a hearing on Plaintiff's Amended Motion for Leave of Court to File a Second Amended Complaint. The Court having considered the arguments of counsel, reviewed the motions filed herein, along with the accompanying documents, as well as the parties' responses and replies, is of the opinion to deny the motion for the following reasons:

1. The present action is a proceeding that has been brought solely under West Virginia Code §§ 31B-7-701 and 702 to determine the value of Plaintiff Michael D. Harlow's distributional interest in Eastern Electric, LLC as of his voluntary dissociation from the company on April 14, 2017.

2. Plaintiff's Amended Motion for Leave of Court to File a Second Amended Complaint seeks to add additional parties; namely Trinity Solutions, LLC, Michael Charles Pritt, and Christopher Scott Skaggs based primarily on alleged acts and/or omissions that took place after the Plaintiff's dissociation from Eastern Electric, LLC and that flow from alleged breaches of fiduciary duties by Mr. Pritt and Mr. Skaggs.

3. The current action to determine the value of Plaintiff's distributional interest in Eastern Electric, LLC is an action that will be tried and decided by the Court pursuant to W.Va. Code §§ 31B-7-701 and 702. Conversely, the matters at issue in the proposed Second Amended Complaint include other matters that would be jury issues.

4. While Rule 15 of the West Virginia Rules of Civil Procedure provides that leave to amend is to be freely granted when justice requires, leave is not automatic. *See* W. Va. R. Civ. P. 15(a). Motions to Amend should be granted "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." *See* Syl. Pt. 5, *Brooks v. Isinghood*, 213 W. Va. 675 (2003). However, the West Virginia Supreme Court of Appeals has found that "delay and the accompanying element of prejudice to the other parties are critical factors that must be considered when a party seeks to amend pleadings [...]" *Martin Oil Co. v. Philadelphia Life Ins. Co.*, 203 W. Va. 266, 274 (1997).

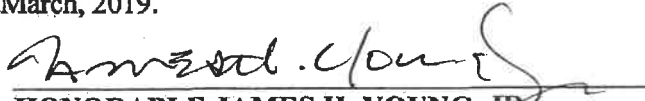
5. Here, the Court finds that there would be prejudice to Eastern Electric, LLC in that the amendment is sought very late in progression of this case, which is nearing its conclusion, and would, therefore, delay the proceedings and require a reopening of discovery with additional costs. This proceeding is one to determine the value of Plaintiff's distributional interest in Eastern Electric, LLC that will be decided by the Court; whereas the proposed Second Amended Complaint includes other matters that would constitute jury issues and that flow primarily from alleged breaches of fiduciary duties related to Trinity Solutions, LLC.

6. The Court also finds there would be little prejudice to Trinity or to the Plaintiff herein by the denial of this motion as he is also a member of Trinity and could bring a separate cause of action.

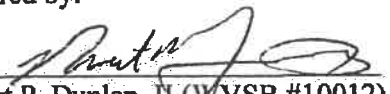
Based on the foregoing, the Court hereby finds that Plaintiff's Amended Motion for Leave of Court to File a Second Amended Complaint is DENIED.

The Clerk is directed to mail copies of this Order all parties of record.

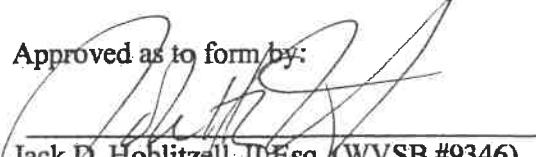
Entered this the 20 day of March, 2019.

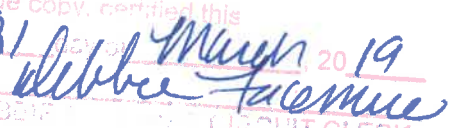


HONORABLE JAMES H. YOUNG, JR.

Prepared by:


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A true copy, certified this
21 day of March, 2019

DEBBIE FARNUM, CIRCUIT CLERK
NORTH CAROLINA Circuit Court
Summersville, WV 26651
By  Deputy