

TO BE PUBLISHED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

LISA CORNELL,

Plaintiff,

vs.

JIM HAWK TRUCK TRAILER, INC.,  
et al.,

Defendants.

No. C13-4022-DEO

**ORDER**

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***I. INTRODUCTION***

Plaintiff Lisa Cornell has filed a motion (Doc. No. 46) for leave to file a second amended complaint. Defendants Jim Hawk Truck Trailer, Inc. (JHTT), and Sioux City Jim Hawk Truck Trailer, Inc. (SCJHTT), have filed a resistance (Doc. No. 47), while the third defendant, Shawn Corbett, takes no position on the motion. Cornell has filed a reply (Doc. No. 50). No party has requested oral argument and, in any event, I find it to be unnecessary. The motion is fully submitted.

***II. RELEVANT BACKGROUND***

Cornell filed this case on February 22, 2013. Her original complaint (Doc. No. 2) included claims of sexual harassment, discrimination and retaliation under Iowa and federal law and named two defendants: JHTT and Corbett. Cornell alleged that JHTT had been her employer and that Corbett had been her supervisor during the relevant period of time.

On March 27, 2013, JHTT filed an answer (Doc. No. 7) in which it denied, *inter alia*, having been Cornell's employer and affirmatively stated that Cornell had been

employed by a different entity, SCJHTT. JHTT also stated that Corbett was the General Manager of SCJHTT while Cornell was employed by SCJHTT.

On March 28, 2013, JHTT filed a disclosure statement (Doc. No. 8) pursuant to Local Rule 7.1. Among other things, JHTT stated: “Jim Hawk Group, Inc. is the parent entity and owns all shares of Jim Hawk Truck Trailers, Inc.”

On July 8, 2013, Cornell filed a motion (Doc. No. 10) for leave to file her first amended complaint. After noting JHTT’s position that SCJHTT was her employer, she requested permission to add SCJHTT as a defendant. The motion was granted, and the first amended complaint filed, on July 26, 2013. *See* Doc. Nos. 14, 15.

Meanwhile, on July 16, 2013, I approved and entered the parties’ joint proposed scheduling order and discovery plan (Doc. No. 11). That order established a deadline of October 21, 2013, for motions to add parties and amend pleadings, and a deadline of December 20, 2013, for the completion of all discovery. Trial was then scheduled to begin on June 23, 2014. *See* Doc. No. 12.

On December 12, 2013, the parties filed a joint motion (Doc. No. 26) to continue trial and extend certain deadlines. The motion did not address the then-expired deadline for motions to add parties and amend pleadings. I granted the motion on the date it was filed and trial was then rescheduled for August 18, 2014. *See* Doc. Nos. 27, 28. While some subsequent adjustments have been made with regard to expert deadlines and the deadline for the close of discovery (Doc. Nos. 30, 34, 43, 45), no request was made to extend the deadline for motions to add parties and amend pleadings. Trial remains set for August 18, 2014.

Cornell filed her present motion on March 5, 2014. She now seeks to add an additional defendant, Jim Hawk Group, Inc. (JHG), to this case. While acknowledging that her motion is untimely, Cornell states that she did not learn until February 2014 that JHG is the parent company of both JHTT and SCJHTT. She explains that she previously understood JHTT to be SCJHTT’s parent company, meaning that by naming both

SCJHTT and JHTT she thought she had sued her former employer and its parent company.

In their resistance, JHTT and SCJHTT contend that Cornell had sufficient information to know about JHG, and its status as SCJHTT's parent company, either before the relevant deadline or, at least, long before she filed her motion. They point to a combination of email exchanges, filings in this case and discovery responses to argue that Cornell's motion is far too late.

### ***III. ANALYSIS***

#### ***A. Applicable Standards***

Leave to amend a pleading "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). There is, however, no absolute right to amend a pleading. *See, e.g., Hammer v. Osage Beach*, 318 F.3d 832, 844 (8th Cir. 2003); *Becker v. Univ. of Nebraska*, 191 F.3d 904, 908 (8th Cir. 1999); *Williams v. Little Rock Mun. Water Works*, 21 F.3d 218, 224 (8th Cir. 1994). Balanced against the liberal amendment policy of Rule 15(a) is the court's interest in enforcing its scheduling orders. Scheduling orders may be modified only for "good cause." Fed. R. Civ. P. 16(b)(4); *see also* Local Rule 16(f) ("The deadlines established by the Rule 16(b) and 26(f) scheduling order and discovery plan will be extended only upon written motion and a showing of good cause.").

"The interplay between Rule 15(a) and Rule 16(b) is settled in this circuit." *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008). The liberal amendment standard contained in Rule 15(a) applies when a motion for leave to amend is filed within the time permitted by the court's scheduling order and discovery plan. On the other hand, "[i]f a party files for leave to amend outside of the court's scheduling order, the party must show cause to modify the schedule." *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008); *see also In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437-38 (8th Cir. 1999) ("If we considered only Rule 15(a) without regard to Rule

16(b), we would render scheduling orders meaningless and effectively would read Rule 16(b) and its good cause requirement out of the Federal Rules of Civil Procedure.”) (quoting *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998)).

In *Sherman*, the Eighth Circuit Court of Appeals explained the Rule 16(b) “good cause” standard as follows:

“The primary measure of good cause is the movant's diligence in attempting to meet the order's requirements.” *Rahn v. Hawkins*, 464 F.3d 813, 822 (8th Cir. 2006); *see also* Fed.R.Civ.P. 16(b), advisory committee note (1983 Amendment) (“[T]he court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension.”). While the prejudice to the nonmovant resulting from modification of the scheduling order may also be a relevant factor, generally, we will not consider prejudice if the movant has not been diligent in meeting the scheduling order's deadlines. *See Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir. 2001) (concluding that there was “no need to explore beyond the first criterion, [diligence,] because the record clearly demonstrate[d] that Bradford made only minimal efforts to satisfy the [scheduling order's] requirements”). Our cases reviewing Rule 16(b) rulings focus in the first instance (and usually solely) on the diligence of the party who sought modification of the order. *See, e.g., Rahn*, 464 F.3d at 822 (affirming the district court's denial of Rahn's request for a modification of the scheduling order because the record made clear that Rahn did not act diligently to meet the order's deadlines); *Barstad v. Murray County*, 420 F.3d 880, 883 (8th Cir. 2005) (affirming the district court's denial of leave to amend the Barstads' complaint under Rule 16(b) because the Barstads had eight months to request an amendment of the scheduling order and “knew of the claims they sought to add when they filed the original complaint”); *Freeman v. Busch*, 349 F.3d 582, 589 (8th Cir. 2003) (affirming, under Rule 16(b), the district court's denial of Freeman's motion to amend her complaint because she provided no reasons why the amendment could not have been made earlier or why her motion to amend was filed so late).

*Sherman*, 532 F.3d at 716-17. Under this “good cause” standard, the Eighth Circuit held that leave to add a new defense should have been denied, as such leave was not sought until almost eighteen months after the deadline to amend pleadings had expired. *Id.* at 717-18.

This court, in applying *Sherman*, has held that good cause for an untimely amendment under Rule 16(b) “requires a showing that, despite the diligence of the movant, the belated amendment could not reasonably have been offered sooner.” *Transamerica Life Ins. Co. v. Lincoln Nat’l Life Ins. Co.*, 590 F. Supp. 2d 1093, 1100 (N.D. Iowa 2008) (citing *Sherman*).

**B. Discussion**

In light of the standards described above, the primary issue is whether Cornell has established that, despite diligence, she could not reasonably have filed her motion sooner. I find that the answer is, rather clearly, “no.” While I fully accept her counsel’s representation that they did not actually understand JHG’s status as SCJHTT’s parent company until February 2014, they had sufficient information long before then that should have alerted them to this fact.

As noted above, JHTT filed a disclosure statement nearly one year ago stating that: “Jim Hawk Group, Inc. is the parent entity and owns all shares of Jim Hawk Truck Trailers, Inc.” *See* Doc. No. 8. If Cornell was not aware of JHG’s existence prior to March 28, 2013, the disclosure statement put her on notice that the entity existed and that it was the parent company of JHTT.

After JHTT filed its answer, and alerted Cornell to its position that SCJHTT had been her actual employer, counsel exchanged emails concerning JHTT’s request that Cornell substitute SCJHTT as the corporate defendant in this case. On May 28, 2013, counsel for JHTT acknowledged that he had erred in previously identifying JHTT as Cornell’s employer. *See* Doc. No. 47-2 at 1-2. He then stated that “all Jim Hawk facilities are owned by Jim Hawk Group, Inc., including Jim Hawk Truck Trailer, Inc., which is the entity that operates the Council Bluffs location.” *Id.* at 1. He also stated: “Each of the Jim Hawk entities, including Sioux City, pay a management fee to Jim Hawk Group.” *Id.*

Cornell's counsel responded on May 29, 2013, by stating that they lacked sufficient information to dismiss JHTT as a defendant and noting that some discovery would be necessary. *Id.* JHTT's counsel then stated that he would "put together some evidence of the employment situation for JHTT and Sioux City JHTT and we can discuss it a bit later." *Id.* While Cornell cites these messages as evidence that JHTT's own counsel was confused about the corporate structure, none of these exchanges addressed the issue of SCJHTT's ownership. Instead, the discussions focused on (a) which entity employed Cornell and (b) which entity employed certain other individuals. *Id.* at 1-3. Cornell's counsel did not ask about SCJHTT's parent company. Nothing about JHTT's counsel's communications remotely suggested that JHTT owns SCJHTT. If anything, these messages made it clear that there is an entity called Jim Hawk Group, Inc., that is above both JHTT and SCJHTT in the corporate organizational structure. And, of course, by this time JHTT had already disclosed that JHG owns JHTT. *See* Doc. No. 8.

While the parties discussed the need for discovery concerning the corporate structure, Cornell points to no further efforts on her part, prior to the October 21, 2013, deadline, to explore the issue of SCJHTT's ownership. Thus, while she states that she "has been under the mistaken impression that JHTT was the parent company of SCJHTT,"<sup>1</sup> she does not identify the source of this mistaken impression. She does not contend that JHTT and/or SCJHTT supplied her with false information concerning the identity of SCJHTT's parent company. She simply made an assumption that was incorrect.

Even after the October 21 deadline expired, Cornell had the opportunity to realize that she was mistaken, and file a motion to add JHG as a party, long before March 5, 2014. On December 6, 2013, SCJHTT and JHTT served interrogatory answers that, among other things, stated: "Sioux City Jim Hawk Truck Trailer, Inc. is a wholly owned subsidiary of Jim Hawk Group, Inc." *See* Doc. No. 47-3 at 5 (answer to interrogatory

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<sup>1</sup> *See* Doc. No. 50 at 3.

no. 5). Cornell admits that this information was provided on December 6, 2013, but simply states, without further explanation, that her counsel did not *review* the information until January 9, 2014. *See* Doc. No. 50 at 3. Even then, instead of immediately seeking relief, Cornell waited nearly two more months to file her present motion. She contends that she elected to wait until after the depositions that were scheduled to take place in February because of “the contradictory information Defendants had provided in the past.” *Id.* However, she cites no such “contradictory information” concerning the ownership of SCJHTT. As noted above, there is no evidence SCJHTT, JHTT or their counsel ever represented to Cornell that JHTT owns SCJHTT.

In short, while I have no doubt that Cornell’s counsel are sincere about their mistaken assumption concerning SCJHTT’s ownership, that mistake does not satisfy Rule 16(b)’s “good cause” requirement on this record. By late May of 2013, Cornell and her counsel had sufficient information about JHG to be put on inquiry notice concerning its role in the “Jim Hawk” corporate organization. JHTT had already disclosed that JHG was *its* parent company and that JHG owns all “Jim Hawk” facilities. Long before October 21, 2013, Cornell easily could have asked, either informally or via an interrogatory, which entity owns SCJHTT. Not only did she fail to do so, but she also failed to act promptly after being provided with an unambiguous answer to that question on December 6, 2013. Cornell has failed to show that despite diligence, her belated proposed amendment could not reasonably have been offered sooner.<sup>2</sup>

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<sup>2</sup> Because I have found against Cornell on the issue of diligence, I need not address the issue of prejudice. *See Sherman*, 532 F.3d at 717 (“we will not consider prejudice if the movant has not been diligent in meeting the scheduling order's deadlines.”). Nonetheless, I note that adding a new party at this stage of the case would likely cause undue prejudice to the existing defendants and to the court’s schedule. Discovery has closed and the existing defendants have filed motions for summary judgment. *See* Doc. Nos. 54, 55.

***IV. CONCLUSION***

For the reasons explained above, plaintiff's motion (Doc. No. 46) for leave to file a second amended complaint is **denied**.

**IT IS SO ORDERED.**

**DATED** this 26th day of March, 2014.



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LEONARD T. STRAND  
UNITED STATES MAGISTRATE JUDGE