

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

OLD REPUBLIC NATIONAL  
TITLE INSURANCE COMPANY,  
et al.,

Plaintiffs,

v.

Case No: 8:15-cv-126-T-30EAJ

FIRST AMERICAN TITLE  
INSURANCE COMPANY,

Defendant.

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**ORDER**

THIS CAUSE comes before the Court upon Defendant First American Title Insurance Company's ("First American") Motion for Leave to Amend its Answer, Affirmative Defenses, and Counterclaim (Doc. 80) and Plaintiff Stewart Title Guaranty Company's ("Stewart Title") response in opposition thereto (Doc. 82).

In this reinsurance dispute, Stewart Title asserts claims against First American for rescission, reformation, declaratory judgment, and negligence. In response, First American filed three counterclaims against Stewart Title alleging claims for breach of contract, breach of the utmost duty of good faith, and declaratory judgment. (Doc. 67). The Court previously dismissed certain allegations underpinning First American's counterclaim for breach of the utmost duty of good faith because those allegations were unrelated to a breach of contract as required to sustain a claim for breach of the utmost duty of good faith under

West Virginia law. (Doc. 79). Specifically, the Court dismissed First American's allegations that Stewart Title breached the duty of good faith by (1) preemptively filing suit against First American, (2) falsely accusing First American of making misrepresentations and omissions, and (3) improperly using documents provided by First American to support its accusations that First American made misrepresentations.

First American pled these allegations as individual bases for its claim for breach of the utmost duty of good faith. First American concedes that those allegations, standing alone, were insufficient to support a claim for breach of the utmost duty of good faith. In the present motion, First American now seeks to recast its grounds regarding Stewart Title's false accusations and improper document requests as factual support for its remaining grounds, i.e., that Stewart Title breached the utmost duty of good faith by breaching the parties' reinsurance agreement and by using delay tactics to avoid payment as required under the agreement. Namely, First American asserts that Stewart Title made these accusations and improper document requests to avoid or delay payment.

Federal Rule of Civil Procedure 15(a) provides that leave to amend pleadings "shall be freely given when justice so requires." The Eleventh Circuit recognized that Rule 15(a) "severely restricts" a district court's discretion to deny leave to amend. *Sibley v. Lando*, 437 F.3d 1067, 1073 (11th Cir. 2005). "Unless a substantial reason exists to deny leave to amend, the discretion of the District Court is not broad enough to permit denial." *Fla. Evergreen Foliage v. E.I. DuPont De Nemours & Co.*, 470 F.3d 1036, 1041 (11th Cir. 2006) (internal quotation marks omitted). That said, leave to amend can be properly denied under circumstances of "undue delay, bad faith or dilatory motive on the part of the movant,

repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment.” *Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc.*, 556 F.3d 1232, 1241 (11th Cir. 2009) (internal quotation marks omitted).

Stewart Title does not object to the motion on the grounds of prejudice or undue delay. Rather, Stewart Title objects to the amendment as futile. Stewart Title correctly asserts that the allegations cannot serve as a basis for a claim for breach of the utmost duty of good faith and argues that First American is simply “repackaging” its allegations. The Court agrees that First American’s proposed amendment is futile.

First American argues that the dismissed allegations lend factual support to its properly pled claim for breach of the utmost duty of good faith. But First American misunderstands the grounds for the Court’s dismissal. The Court did not dismiss these allegations to the extent they lend *factual* support to First American’s properly pled allegations that Stewart Title breached the utmost duty of good faith in failing remit payment as required under the parties’ agreement and in attempting to delay or avoid payment. Instead, the Court dismissed these allegations to the extent that Stewart Title sought to rely on them as a stand-alone basis to support its claim for breach of the utmost duty of good faith. The factual allegations as they relate to a properly pled claim stand.<sup>1</sup>

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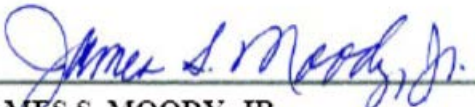
<sup>1</sup>In support of its motion, First American cites two cases applying Massachusetts law: *Trenwick American Reinsurance Corp. v. IRC, Inc.*, 764 F. Supp. 2d 274, 306 (D. Mass. 2011) and *Commercial Union Ins. v. Seven Provinces Insurance Co.*, 9 F. Supp. 2d 49, 65 (D. Mass. 1998). Unlike West Virginia, Massachusetts codified the duty of good faith thereby recognizing it as a stand-alone claim. Therefore, these cases are inapplicable to the present case.

And there is no need for clarification. Accordingly, the amendment First American seeks is futile.

Accordingly, it is therefore **ORDERED AND ADJUDGED** that:

1. Defendant First American Title Insurance Company's ("First American") Motion for Leave to Amend its Answer, Affirmative Defenses, and Counterclaim (Doc. 80) is DENIED.

**DONE** and **ORDERED** in Tampa, Florida, this 17th day of July, 2015.

  
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**JAMES S. MOODY, JR.**  
**UNITED STATES DISTRICT JUDGE**

Copies furnished to:  
Counsel/Parties of Record