

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

CUMBERLAND COUNTY

22 CVS 5535

CUMBERLAND COUNTY  
HOSPITAL SYSTEM, INC.,  
individually,

Plaintiff,

v.

MICHAEL G. WOODCOCK and  
WOODCOCK CUSTOM VISION,  
LLC,

Defendants.

**ORDER ON PLAINTIFF'S MOTION  
FOR LEAVE TO AMEND COMPLAINT**

**THIS MATTER** comes before the Court on Plaintiff's Motion for Leave to Amend Complaint ("Motion," ECF No. 67).

**THE COURT**, having considered the Motion and all appropriate matters of record, **CONCLUDES**, in its discretion, that the Motion should be **GRANTED** as set forth below.

1. As this Court has previously noted, this dispute concerns Woodcock Custom Vision, LLC ("WCV")—a "North Carolina LLC owned by Plaintiff Cumberland County Hospital System, Inc. ("CCHS"), a private, not-for-profit health system operating in southeastern North Carolina, and Michael G. Woodcock, an ophthalmologist in Fayetteville, North Carolina." *Cumberland Cnty. Hosp. Sys. v. Woodcock*, 2023 NCBC LEXIS 43, at \*\*2 (N.C. Super. Ct. Mar. 21, 2023) ("21 March Opinion").

2. A complete summary of the factual background of this case—as alleged in Plaintiff’s existing Complaint (ECF No. 3)—can be found in the Court’s 21 March Opinion and is not repeated herein.

3. In its Motion, Plaintiff seeks leave to file an amended complaint that, among other things, adds a new defendant—Vision International, PA, d/b/a Carolina Vision Center (“Vision International”)—as well as asserting a number of new claims, including various derivative claims on behalf of WCV.

4. Plaintiff filed the Motion along with a supporting brief on 27 September 2023. (ECF No. 67.)

5. Defendants’ deadline to file a response brief in opposition to Plaintiff’s Motion was 17 October 2023. *See* BCR 7.6 (“A party that opposes a motion may file a responsive brief within twenty days of service of the supporting brief.”).

6. Defendants have failed to timely file a response brief or, for that matter, any response at all to Plaintiff’s Motion.

7. BCR 7.6 provides that “if a party fails to timely file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion.” BCR 7.6.

8. Motions to amend are governed by Rule 15 of the North Carolina Rules of Civil Procedure. Rule 15(a) provides, in relevant part, as follows:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by

leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

N.C. R. Civ. P. 15(a).

9. Although Rule 15 states that leave shall be freely given, “the rules still provide some protection for parties who may be prejudiced by liberal amendment.” *Vitaform, Inc. v. Aeroflow, Inc.*, 2021 NCBC LEXIS 79, at \*\*11 (N.C. Super. Ct. Sept. 16, 2021) (quoting *Henry v. Deen*, 310 N.C. 75, 82 (1984)). As a result, an amendment may be denied for reasons of “undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, and futility of amendment.” *Id.* (quoting *Bartlett Milling Co. v. Walnut Grove Auction and Realty Co.*, 192 N.C. App. 74, 89 (2008)). “The burden is upon the opposing party to establish that [it] would be prejudiced by the amendment.” *Id.*

10. The decision whether to grant or deny a motion to amend is within the discretion of the trial court, and its decision will not be reversed except in case of manifest abuse. *Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 603 (2018).

11. To the extent that any of the recognized grounds for denying a motion to amend apply here, it was incumbent upon Defendants to raise them in opposing Plaintiff’s Motion. However, because Defendants have not responded to the Motion, they have failed to meet their burden of showing why the Motion should be denied.

12. Therefore, **THE COURT**, having considered the Motion and all appropriate matters of record, **CONCLUDES**, in its discretion, that the Motion should be **GRANTED**. Plaintiff is **DIRECTED** to file its Amended Complaint (in

the form attached to its Motion as Exhibit A) **within five days** of the date of this Order.

**SO ORDERED**, this the 24th day of October, 2023

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge  
for Complex Business Cases