

NO. LLI-CV21-5014019-S : SUPERIOR COURT
JON A. GOODWIN :
 : JUDICIAL DISTRICT OF LITCHFIELD
V. : AT TORRINGTON
MILOT, ET AL. : OCTOBER 28, 2022

DEFENDANT’S OBJECTION
TO PLAINTIFF’S REQUEST TO AMEND

Defendant Hardy-Massaro hereby objects to the Plaintiff’s request for leave to amend his complaint. This request to amend will not affect the Defendant’s basis for summary judgment, which is currently pending. In the interest of judicial economy, the Court should deny the Plaintiff’s request to amend and instead consider the pending motion for summary judgment.

I. Background

The Plaintiff, Jon A. Goodwin, brings this Complaint against several Defendants including Supervisory Assistant Public Defender Karen Hardy-Massaro. The Plaintiff’s claims against Defendant Hardy-Massaro arise from allegations that occurred during a June 11, 2021 virtual school meeting. (Compl., Pgs. 20-22, ¶¶ 59-69). The Plaintiff alleges that Defendant Hardy-Massaro violated Connecticut General Statutes 46(b)-124(b),(c). Id. at Pg. 20, ¶¶ 60-61. The Plaintiff initially brought four counts against the Defendant including: slander, false light invasion of privacy, intentional infliction of emotional distress, and negligent infliction of emotional distress. Id. at Pgs. 20-22. The Plaintiff brings this action against Defendant Hardy-Massaro in her individual capacity only. (Doc. No. 100.30).

Plaintiff now seeks to amend his Complaint and to remove “all of the defendants in the original Complaint who have been dismissed or otherwise withdrawn from this action.” (Doc. No. 148.)

II. Argument

It is well settled that a motion to amend a complaint is “left to the sound discretion of the trial court” and “should be made seasonably.” *Ferugini v. Giuliano*, 148 Conn.App. 861, 872, 89 A.3d 358 (2014). Practice Book § 10–60(b) allows the judicial authority to “restrain ... amendments [of pleadings] so far as may be necessary to compel the parties to join issue in a reasonable time for trial ...” *Id.* “Whether to allow an amendment is a matter left to the sound discretion of the trial court. [An appellate] court will not disturb a trial court's ruling on a proposed amendment unless there has been a clear abuse of that discretion.... It is the [amending party's] burden ... to demonstrate that the trial court clearly abused its discretion.” (Internal quotation marks omitted.) *Beckenstein v. Reid & Riege, P.C.*, 113 Conn.App. 428, 435, 967 A.2d 513 (2009). “[M]atters involving judicial economy, docket management [and control of] courtroom proceedings ... are particularly within the province of a trial court.” (Internal quotation marks omitted.) *Marshall v. Marshall*, 71 Conn.App. 565, 574, 803 A.2d 919, cert. denied, 261 Conn. 941, 808 A.2d 1132 (2002).

“While our courts have been liberal in permitting amendments ... this liberality has limitations. Amendments should be made seasonably. Factors to be considered in passing on a motion to amend are the length of the delay, fairness to the opposing parties and the negligence, if any, of the party offering the amendment ... The motion to amend is addressed to the trial court's discretion which may be exercised to restrain the amendment of pleadings so far as necessary to prevent unreasonable delay of the trial ... Whether to allow an amendment is a matter left to the sound discretion of the trial court.” (Citations omitted; internal quotation marks omitted.) *LaFlamme v. Dallessio*, 65 Conn.App. 1, 7, 781 A.2d 482 (2001), rev'd on other grounds, 261 Conn. 247, 802 A.2d 63 (2002).

Our Appellate Court in *LaFlamme* specifically held that a trial court may grant a motion for summary judgment without having ruled on a plaintiff's request to amend which was filed after the summary judgment was pending. See *id.* (“It was well within the court's discretion to grant or deny the plaintiff's request. The court exercised its discretion by first hearing and ruling on the defendant's motion for summary judgment. Having granted the motion and rendered judgment, the court no longer was compelled to act on the plaintiff's request. We are not persuaded that the court abused its discretion by acting on the earlier filed motion”). Similarly, the Connecticut Supreme Court has upheld a trial court's denial of a request to amend, where the request was filed after a motion for summary judgment. *Citizen National Bank v. Hubney*, 182 Conn. 310, 438 A.2d 430 (1980) (where the court upheld the denial of request to amend where the request was filed after a motion for summary judgment); See also *Conference Center Limited v. TRC*, 189 Conn. 212, 216–17, 455 A.2d 857 (1983).

Our Appellate Court has since held that it was an abuse of discretion for a trial court to grant summary judgment without having ruled on a pending request for leave to amend, but **only** when such amendment would have served to defeat summary judgment. See *Miller v. Fishman*, 102 Conn.App. 286, 293–97, 925 A.2d 441 (2007), cert. denied, 285 Conn. 905, 942 A.2d 414 (2008). The court in *Miller* distinguished *LaFlamme v. Dallessio*, *supra*, by pointing out that in *LaFlamme*, the granting of summary judgment “did not rest on a failure of the operative complaint that could be remedied through a proper amendment.” *Miller*, 285 Conn. 292. Subsequently, a number of courts have denied requests to amend, or declined to rule upon such requests, because motions for summary judgment were pending. See e.g., *Sullivan v. Yale-New Haven Hosp., Inc.*, 64 Conn. App. 750, 785 A.2d 588, 598 (2001) (affirming grant of summary judgment and trial court's denial of request to amend pleadings, where permitting amendment

would have required delay in trial for arguments on newly presented theory); *GMAC Mortg., LLC v. Ford*, 144 Conn. App. 165, 185, 73 A.3d 742, 755 (2013) (trial court did not abuse its discretion when it denied request for leave to amend his answer, special defense, and counterclaim; court determined that amendments were proffered for purpose of delay because action had been pending for two years, mortgagor requested leave to amend two months after mortgagee filed motion for summary judgment, and sought to add new special defenses and counterclaims, none of which were unavailable when original pleading was filed); *Nonhuman Rights Project, Inc. ex rel. Beulah, Minnie & Karen v. R.W. Commerford & Sons, Inc.*, No. LLICV175009822S, 2018 WL 1787370, at *2 (Conn. Super. Ct. Feb. 27, 2018); *Asrat v. Nirmala, LLC*, No. CV166064293S, 2018 WL 1917050, at *7 (Conn. Super. Ct. Mar. 15, 2018); *Estate of Hodgate v. Ferraro*, No. HHDx04CV054034694S, 2008 WL 4017532, at *20 (Conn. Super. Ct. Aug. 5, 2008), *aff'd sub nom. Hodgate v. Ferraro*, 123 Conn. App. 443, 3 A.3d 92 (2010).

Here, in contrast to *Miller* and similarly to *LaFlamme*, the granting of summary judgment “[does] not rest on a failure of the operative complaint that could be remedied through a proper amendment.” *Miller v. Fishman*, *supra*, 292. The requested amendments here do not defeat the Defendant’s motion. Indeed, the Plaintiff’s amendments do not include any factual allegations which affect the determination of summary judgment. Accordingly, even if the Court were to grant the Plaintiff’s request to amend, his “proposed amendments would not change the outcome of the motion for summary judgment.” *Nonhuman Rights Project, Inc. ex rel. Beulah, Minnie & Karen*, at *2 (Conn. Super. Ct. Feb. 27, 2018). Here, just as in *LaFlamme*, the Court should hear and decide the pending motion for summary judgment and deny the Plaintiff’s request to amend.

III. Conclusion

For the foregoing reasons, the Defendant respectfully requests the Court sustain their objection and deny the Plaintiff's request to Amend.

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CERTIFICATION

I certify that a copy of this was filed electronically on this 28th day of October 2022 to all attorneys and self-represented parties of record. This was also served electronically on the following:

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A handwritten signature in black ink, appearing to read "J. Belforti", positioned above a horizontal line.

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