

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LIONETTA WHITE,)
Plaintiff,) Case No. 17-cv-2877
v.) Judge Ellis
CITY OF CHICAGO, et al) Magistrate Judge Finnegan
Defendants.)

**DEFENDANT KALLATT MOHAMMED'S MOTION TO RECONSIDER DENIAL OF
LEAVE TO FILE AMENDED ANSWER TO PLAINTIFF'S COMPLAINT**

Defendant, Kallatt Mohammed ("Mohammed"), by and through one of his attorneys, Special Assistant Corporation Counsel Eric S. Palles of Mohan Groble Scolaro, P.C. pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, moves the Court for reconsideration of its order denying Mohammed's motion for leave to file his Amended Answer to Plaintiff's Complaint. In support of his motion, Mohammed states as follows:

The Subject Order

On June 23, 2024, Defendant Mohammed moved, pursuant to Fed. R. Civ. P. 15, to amend his April 21, 2018 Answer to Plaintiff's Complaint to eliminate his previous assertions of his Fifth Amendment privilege against self-incrimination, which he had waived in his deposition testimony on November 15, 2023. (Dkt.176-3). On November 18, 2024, this Court entered an Opinion and Order which, despite acknowledging that Mohammed's invocation of the Fifth Amendment was made in good faith, denied the motion because granting it "would burden White with undeserved strategic disadvantages, and because the motion has an air of bad faith . . ." Opinion and Order (Dkt. 192) at p. 2. These conclusions are manifestly in error and no evidence supports them.

In opposition to Mohammed's motion to amend, Plaintiff never claimed that he would be prejudiced by Mohammed's proposed amendment; rather he contended that the amendment should be denied because the privilege had been asserted in bad faith (Dkt. 178, at pp. 7-9), an argument that this Court rejected (Dkt. 192, at p. 4). This Court was instead more concerned with the circumstances surrounding withdrawal of the privilege, and particularly, the seven-month interval before seeking leave to amend the answer. (*Id.* at pp. 5-6).

The Court's Error

The reason that Plaintiff did not claim prejudice resulting from Mohammed's withdrawal is apparent. He simply has not been prejudiced. Although Mohammed invoked the Fifth Amendment privilege in his 2018 answer, he testified fully about the *White* case when deposed about it for the first time in November 2023. The fact that this occurred over five years later and toward the end of fact discovery cannot be laid at Mohammed's feet. The order of the cases upon which Mohammed was questioned in the consolidated cases was determined by Plaintiff's counsel. Consequently, prior to November 2023, Mohammed had been deposed four times about 49 other plaintiffs. Nor do the plaintiffs claim unfair surprise. The record establishes that counsel discussed Mohammed's testimony a week before the deposition at which point Plaintiff's counsel was advised that Mohammed would be waiving his privilege against self-incrimination regarding the *White* case. Dkt. 176-2. Counsel had adequate time to prepare and act accordingly.

The Court's focus on the subsequent lapse in moving to amend the answer to conform to the proof is misplaced. Mohammed withdrew his privilege in November 2023. He "may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details." *Mitchell v. United States*, 526 U.S. 314, 321(1999). The fact that Judge Maldonado's trial setting directed the undersigned's attention to the state of the pleadings

resulting in the motion to amend the answer – to conform to Mohammed’s deposition testimony – does not evidence gamesmanship or have the “air of bad faith.”

Because Mohammed’s counsel did not anticipate the primacy that this Court would place upon the seven-month lapse in filing the motion, or the inference it would gather therefrom that the undersigned’s conduct “smacks of bad faith,” he did not provide the Court with these additional facts, which he adds for the sake of completeness: a.) on May 23, 2024, counsel filed two motions before Judge Valderrama in the Watts Coordinated Proceedings to amend the answers in this case and in *Carter v. City of Chicago*, No. 17 C 7241. No. 19 C 1717, Dkts. 735 and 736; b.) on May 31, 2024, Judge Valderrama directed counsel to refile before Judge Maldonado, then presiding over both cases. *Id.*, Dkt 743 (Ex.1).

While this Court cited cases stating that “unreasonable delay” may result in the denial of a motion to amend notwithstanding the absence of prejudice, these are inapposite for several reasons. First, the cases involve late-stage amendments to complaints seeking new and additional relief. Second, none reflects the additional considerations resulting from the waiver of a constitutional privilege. *See Johnson v Guevara*, No 20 C 4156, 2023 U.S. Dist. LEXIS 131972 (N.D. Ill. July 31, 2023). Lastly, labelling a delay as unreasonable requires context. Delay, standing alone, is an insufficient ground to warrant denial of leave to amend. *Park v. City of Chicago*, 297 F.3d 606, 613 (7th Cir. 2002). In *Park*, for example, the denial of the amendment to the complaint was separately justified because it was both prejudicial and futile. Similarly, in *Liebhart v. SPX Corp.*, the four-month delay was considered in the context of a completed summary judgment briefing and “fast approaching” trial date. By contrast, Mohammed’s motion was filed seven months prior to the initial summary judgment briefs and fifteen months prior to the scheduled trial.

The Court’s presumption that Mohammed’s withdrawal of the privilege saddled Plaintiff’s

counsel with “undeserved strategic disadvantages” and caused him to “retool his strategy” lacks evidentiary foundation and is purely conjectural. Plaintiff did not argue that Mohammed’s withdrawal of the Fifth Amendment privilege impacted his strategy in the least or suggest some other discovery or litigation path he would have followed if he had known sooner that Mohammed would testify that he did not recall the events in question rather than asserting the privilege. And the Court did not fill in that evidentiary gap when it made the conclusory statement that “strategic disadvantages” had occurred. The most that can be said is that White can no longer enjoy the strategic advantage of Mohammed’s silence. If Plaintiff’s counsel engaged in *any* strategy concerning Mohammed’s testimony it was in waiting until the eleventh hour to question Mohammed about the *White* case in the first place.

It appears that this Court’s central objective is that Mohammed not be shielded from impeachment and questioning regarding his former silence. Dkt. 192 at p. 8. Denying Mohammed the ability to amend his answer is not, however, the appropriate remedy. As the undersigned argued, the Fifth Amendment invocation in the Answer currently stands as a denial. In *Gipson v City of Chicago*, 18 C 5120, Judge Seeger had a slightly different take on Mohammed’s virtually identical motion. He construed the Fifth Amendment assertion as merely an assertion of privilege, asking Gipson’s counsel (also White’s co-counsel) whether the real issue was the treatment of the original Answer as an evidentiary matter at trial, a decision that could be made at a later day. See No. 18 C 5120, Dkt. 131 (September 11, 2024) (Ex. 2) Counsel responded affirmatively:

3. Plaintiff does intend to introduce prior invocation of the Fifth Amendment to the jury.

4. That said, Plaintiff agrees with the Court that it is premature to decide any disputes about this evidentiary issue.

No. 18 C 5120, Dkt. 133 at p. 2 (Ex. 3) Accordingly, Judge Seeger allowed the amendment, explicitly reserving ruling on the admissibility of the prior Fifth Amendment invocation at trial.

No. 18 C 5120, Dkt. 133 (Ex. 4) Notably, Mohammed waived his Fifth Amendment privilege in *Gipson* at the same November 15, 2023 deposition where he testified about White and the *Gipson* trial is scheduled to begin April 21, 2025. Similarly, in *Carter v City of Chicago*, No. 17 C 7241, Judge Hunt found that Mohammed’s amendment did not create undue prejudice to plaintiff, again reserving the admissibility issue for her May 27, 2025 trial. No. 17 C 7241, Dkt. 180 (October 21, 2024) (Ex. 5). Contrary to this Court’s view, allowing Mohammed to amend does not “erase . . . traces [of the prior invocation] from the record” or necessarily “prevent a jury from hearing of his initial decision to stay silent.” Op. at p.8. The original Answer is, and will remain, upon the docket of this district court. Whether a jury hears about it should appropriately be decided at a future date.

As an interlocutory order, this Court may reconsider its ruling as justice requires. *See Allen v. Sterling Cap. Partners, L.P.*, No. 19 C 7289, 2021 U.S. Dist. LEXIS 270672, at *2 , 2021 WL 12179486 (N.D. Ill. Sept. 15, 2021) (Guzman, J.) (“Rule 54(b) allows district courts to revisit any order or other decision that adjudicates fewer than all the claims in an action and to revise it at any point before the entry of judgment as justice requires.”) (internal citations omitted); *United States v. Jerry*, 487 F.2d 600, 605 (3d Cir. 1973) (explaining that orders may be reconsidered by a district court when doing so is “consonant with justice”); *Hyung Seok Koh v. Graf*, No. 11 C 2605, 2015 U.S. Dist. LEXIS 199660, at *13 (N.D. Ill. Apr. 23, 2015) (Chang, J.) (noting that Courts have an inherent power to reconsider interlocutory orders as justice requires); *Herman v. Cent. States Southeast & Southwest Areas Pension Fund*, No. 03 C 1010, 2003 U.S. Dist. LEXIS 14688, at *3 (N.D. Ill. Aug. 21, 2003) (Conlon, J.) (explaining motion to reconsider may be granted as justice requires). This Court’s denial of the motion to amend the answer exacts too high a cost for invocation of a constitutional privilege, prematurely determines issues of admissibility best reserved for trial and injects a serious risk of injecting further reversible error at trial.

WHEREFORE, Defendant, Kallatt Mohammed, moves this Court for reconsideration of its denial of Mohammed's motion for leave to file his Amended Answer to Plaintiff's Complaint.

Respectfully submitted,

/s/ Eric S. Palles #2136473
ERIC S. PALLES
Special Assistant Corporation Counsel

Eric S. Palles
Sean M. Sullivan
Mohan Groble Scolaro, P.C.
55 W. Monroe St., Suite 1600
Chicago, IL 60603
(312) 422-9999
Counsel for Defendant Kallatt Mohammed