

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DENNIS JACKSON,)
Plaintiff,)
v.) No. 1:22-cv-04337
CITY OF CHICAGO, PATRICK BOYLE,) Honorable Jorge L. Alonso
JENNIFER BURMISTRZ, EFRAIN CARRENO,)
MATTHEW EVANS, JOHN FOERTSCH,)
EDWARD GARCIA, MICHAEL HIGGINS,)
GERALD LAU, and JEFFREY LAWSON,)
Defendants.

**DEFENDANTS' OPPOSED MOTION FOR
LEAVE TO FILE AN AMENDED ANSWER**

Defendants, Patrick Boyle, Jennifer Burmistrz, Efrain Carreno, Matthew Evans, John Foertsch, Edward Garcia, Michael Higgins, Gerald Lau, Jeffrey Lawson, and the City of Chicago, by and through one of their attorneys, Jordan F. Yurchich, Assistant Corporation Counsel Supervisor, move for leave to file an amended answer to plaintiff's complaint, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure. In support of this motion, defendants state as follows:

1. On August 16, 2022, plaintiff initiated this action under 42 U.S.C. § 1983 seeking redress for alleged violations of his Fourth and Fourteenth Amendment rights. (See Pl.'s Compl., ECF No. 1.)

2. On October 21, 2022, defendants filed a joint answer to plaintiff's complaint with affirmative defenses. (Defs.' Answer to Pl.'s Compl., ECF No. 12.)

3. After filing their answer and in preparation for filing their dispositive motion, defendants learned that plaintiff's Fourth Amendment claim of unlawful pretrial detention is untimely. More specifically, plaintiff's unlawful pretrial claim accrued on November 7, 2017, the date he was released from jail on an I-bond. See *Townsel v. Chicago Police Dep't*, No. 1:20-cv-01774, 2023 WL 6388253, at *4 (N.D. Ill. Sept. 30, 2023) ("Plaintiff was released on bond on November 8, 2017, so his unlawful pretrial detention claim accrued on that date" and his claim is untimely).

4. Defendants now seek leave to file an amended answer to include an affirmative defense that plaintiff's Fourth Amendment claim for unlawful pretrial detention is barred by the two-year statute of limitations. (See Ex. 1, Proposed Am. Answer to Pl.'s Compl.)

5. Rule 15(a)(2) allows a party to amend its pleading "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Moreover, "court[s] should freely give leave when justice so requires." *Id.*; see also *King v. Kramer*, 763 F.3d 635, 642 (7th Cir. 2014) (noting that amendments are liberally allowed up to and even after trial in cases in which there is no harm). The district court has the discretion to allow the defendant to amend his or her answer to assert an affirmative defense not raised initially. *Williams v. Lampe*, 399 F.3d 867, 870–71 (7th Cir. 2005). Delay alone is insufficient to justify denying a motion to amend. *Dubicz v. Commonwealth Edison Co.*, 377 F.3d 787, 792-793 (7th Cir.2004). "The rule that forfeits an affirmative defense not pleaded in the answer (or by an earlier motion) is, we want to make clear, not to be applied rigidly." *Herremans v. Carrera Designs, Inc.*, 157 F.3d 1118, (7th Cir. 1998).

6. In this case, there has been no undue delay, bad faith, or dilatory motive on the part of the defendants. Further discovery is not required, and the litigation process will not be delayed. Last, granting defendants' leave to file an amended answer will not unduly prejudice plaintiff;

rather, it will facilitate the interests of justice by allowing defendants to present and defend their case at the summary judgement stage, prior to trial. Any prejudice that may be occasioned by the untimeliness can be remedied by plaintiff's opportunity to address the merits of the affirmative defense when responding to defendants' motion for summary judgment.

7. On March 25, 2024, counsel for plaintiff stated that he opposes the relief sought in this motion.

WHEREFORE, defendants respectfully request leave to file an amended answer to the plaintiff's complaint and for any other relief this court deems equitable and just.

DATED: March 25, 2024

Respectfully submitted,

BY: /s/ Jordan F. Yurchich
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CERTIFICATE OF SERVICE

I hereby certify that, on **March 25, 2024**, I submitted with the Clerk for the Northern District of Illinois using the Court's electronic filing system or CM/ECF **Defendants' Opposed Motion for Leave to File an Amended Answer**, and thereby provided a copy of same by service to all attorneys of record.

/s/ Jordan F. Yurchich
JORDAN F. YURCHICH
Assistant Corporation Counsel Supervisor