

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC,

Plaintiffs,

vs.

Case No. 2013-2742-CB

NARTRON CORPORATION, n/k/a GEN X MICROSYSTEMS and a/k/a OLDNAR CORPORATION, a Michigan corporation and UUSI, LLC, d/b/a NARTRON, a Michigan limited liability company,

Defendants,

and

UUSI, LLC, d/b/a NARTON, a Michigan limited liability company,

Defendant/Counter and Third-Party Plaintiff

vs.

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC

Counter-Defendants,

and

FUTABA CORPORATION OF AMERICA, a foreign corporation, THOMAS J. GRONSKI, RANDY GRIFFIN, and GINA TERRY,

Third-Party Defendants.

CARROLL A. AUSTIN
MAGISTRATE CLERK
MACOMB COUNTY, MICHIGAN
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OPINION AND ORDER

Plaintiffs have filed a motion to strike Defendant's amended counter/third party complaint. Defendant has filed a response and requests that the motion be denied.

I. Facts and Procedural History

On March 21, 2016, Plaintiffs filed their instant renewed motion for leave to amend. On March 25, 2016, Defendants filed their response and request that the motion be denied. On March 28, 2016, the Court held a hearing in connection with Plaintiffs' motion and took the matter under advisement. On April 29, 2016, the Court entered its Opinion and Order granting, in part, and denying, in part, Plaintiffs' motion.

On May 5, 2016, Plaintiffs filed their first amended complaint. On May 26, 2016, Defendant filed its response to the first amended complaint. Defendant's response, in addition to its answer to the first amended complaint, included, *inter alia*, an amended counter/third party complaint.

On June 6, 2016, Plaintiffs filed their instant motion to strike Defendant's amended counter/third party complaint. Defendant has filed a response and requests that the motion be denied. On June 13, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

In their motion, Plaintiffs contend that Defendant's amended counter/third-party complaint ("Amended Counter-Complaint") should be stricken because it was filed without first obtaining leave from this Court. MCR 2.115(B) provides that "[o]n motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or

part of a pleading not drawn in conformity with these rules.” Counterclaims and third-party complaints are “pleadings” as defined by MCR 2.110(A). MCR 2.118 governs amended pleadings, and provides, in part:

(A) Amendments.

- (1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.
- (2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

In this case, Defendant’s original counter-claim/third-party complaint was filed on November 12, 2013. Accordingly, the 14 day time frame during which Defendant could amend their original counter/third-party complaint under MCR 2.118(A)(1) has clearly expired. Consequently, the only mechanism by which Defendant would amend their original counter/third party complaint is under MCR 2.118(A)(2) which requires the party to first obtain leave of the Court before filing their amended pleading.

In its response, Defendant avers that MCR 2.118(B)(1) allows a party to file a pleading in response to an amended pleading, and that because MCR 2.110(C) permits a counterclaim to be combined with an answer it was allowed to file its Amended Counter-Complaint with its answer to Plaintiff’s amended complaint without first obtaining leave of the court.

Courts are to use the same rules of interpretation to interpret statutes and court rules. *In re McCarrick/Lamoreaux Minors*, 307 Mich App 436, 446; 861 NW2d 303 (2014). The words of rules and statutes are to be given their plain and ordinary meanings. *Id.* Legal terms are to be construed according to their legal meanings. See

Feyz v. Mercy Mem. Hosp., 475 Mich. 663, 673; 719 NW2d 1 (2006). The intent of the court rule is determined “from an examination of the court rule itself and its place within the structure of the Michigan Court Rules as a whole.” *Haliw v. Sterling Hts.*, 471 Mich 700, 706; 691 NW2d 753 (2005). Moreover, the courts should avoid any construction that would render a court rule, or any part of it, surplusage or nugatory. *Altman v. Meridian Twp.*, 439 Mich. 623, 635, 487 NW2d 155 (1992).

MCR 2.118(A)(2) unambiguously provides that the a party may amend a pleading with leave of the court if the amendment is not made within 14 days of filing the initial pleading. While MCR 2.118(B)(1) allows a party to file a response to a properly amended pleading, that provision does not indicate that such a response may violate the requirements of subsection (A). Moreover, although MCR 2.110 allows counterclaims to be included within a party’s original answer to a complaint, the Court rejects Defendant’s interpretation of the rule to allow a party to bypass the clear and unambiguous requirement of MCR 2.118(A)(2) and file an amended counter/third-party complaint without leave. Such an interpretation would render MCR 2.118(A)(2) nugatory in the context presented in this case. Accordingly, the Court is persuaded that Defendant was required to obtain leave from this Court prior to filing an amended counter/third-party complaint. This conclusion is further supported by the Michigan Court of Appeal’s conclusion in *Art Van Furniture, Inc v Detroit Edison Co.*, unpublished per curiam opinion of the Court of Appeals, decided March 14, 2000 (Docket No. 207522). (“[d]efendant should have ask the court’s permission to amend its counterclaim, which it filed with its answer to plaintiff’s amended counterclaim...”)

Consequently, the Court is satisfied that the Amended Counter-Complaint must be stricken on the basis that it was improperly filed.

III. Conclusion

Based upon the reasons set forth above, Plaintiffs' motion to strike Defendant's amended counter/third-party complaint is GRANTED. This Opinion and Order does not resolve the last claim and does not close the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: JUL 08 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge