STATE OF MICHIGAN

COURT OF CLAIMS

WATER WARRIOR ISLAND BALD MOUNTAIN RECREATION, INC.,

Plaintiff/Counterdefendant,

v

Case No. 26-000025-MK

DEPARTMENT OF NATURAL RESOURCES,

Hon. Michael F. Gadola

Defendant/Counterplaintiff.
_____ /

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

On September 14, 2026, plaintiff moved, under MCR 2.118(A), for leave to amend the complaint to add a claim for conversion relating to a waterslide that was allegedly dismantled by defendant, as well as a claim for injunctive relief relating to the 2027 competitive-bidding season. Plaintiff provided the Court with a copy of its proposed amended complaint. Defendant argues that this Court should deny the motion on futility grounds because the proposed conversion claim is barred by governmental immunity and lacks legal merit, and the claim for injunctive relief is not ripe for adjudication.

MCR 2.118(A)(2) allows a party to amend a pleading with leave of the Court, and "[l]eave shall be freely given when justice so requires." Leave may be denied for particularized reasons, such as futility. *Wormsbacher v Phillip R Seaver Title Co, Inc*, 284 Mich App 1, 8; 772 NW2d 827 (2009). An amendment is futile if it is legally insufficient on its face. *Id*. at 8-9.

Defendant argues that plaintiff has not pleaded facts to avoid application of governmental immunity to the proposed conversion claim. "A plaintiff pleads in avoidance of governmental immunity by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function." *Mount Clemens Recreational Bowl, Inc v Dir of Dep't of Health & Human Servs*, 344 Mich App 227, 245; 998 NW2d 917 (2022). Plaintiff's proposed amended complaint pleads facts that may fit within a statutory exception to governmental immunity or pleads facts that may demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function. The alleged deficiency is not therefore evident from the face of the pleading. Additionally, defendant's argument about the merits of the claim does not establish legal insufficiency on the face of the pleading. Plaintiff's motion to amend the complaint to add this claim is GRANTED.

However, the claim for injunctive relief is hypothetical in nature and legally insufficient on its face. "A party may not premise an action on a hypothetical controversy." *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 554; 904 NW2d 192 (2017). Plaintiff asserts that "given its [defendant's] past abusive and illegal conduct in failing to conduct competitive bidding for the 2026 season," it is unknown whether defendant will engage in fraudulent or illegal behavior during the 2027 bidding season that has not yet begun. Plaintiff's claim rests on a speculative theory that defendant will engage in unlawful conduct in the future. Therefore, plaintiff's request to add this claim to its complaint is DENIED.

Plaintiff is directed to file an amended complaint in compliance with this Order. Any amended complaint must be filed within seven days of the date of this Order.

IT IS SO ORDERED. This order is not a final order and does not close the case.

Date: October 14, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims