

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

Christopher Roller,

Civil No. 05-1297 MJD/AJB

Plaintiff,

v.

**ORDER ON MOTION
TO AMEND COMPLAINT**

GE Medical Systems Information
Technologies, Inc.,

Defendant.

This matter is before the Court, Magistrate Judge Arthur J. Boylan, U.S. Courthouse, 316 No. Robert St., St. Paul, MN 55101, on plaintiff Christopher Roller's Motion for Leave to Amend Complaint. [Docket No. 26]. Plaintiff has submitted a document entitled Amended Complaint–Fraud. Defendant has not filed an answer to the initial complaint, but has filed a motion to dismiss the action which is pending before the court.

Based upon the file and documents contained therein, including the motion and proposed amended pleading, **IT IS HEREBY ORDERED** that plaintiff's Motion for Leave to Amend Complaint is **denied**. The Court's docket shall contain a notation that Docket No. 25, entitled Amended Complaint-Fraud, is **stricken**, though deletion of the electronic filing is not required.

Dated: October 26, 2005

s/ Arthur J. Boylan
Arthur J. Boylan
United States Magistrate Judge

MEMORANDUM

Fed. R. Civ. P. 15(a) states that leave to amend a pleading should be freely given when justice requires. However, the court is justified in denying leave to amend when the amendment would be futile. Foman v. Davis, 371 U.S. 178, 182 (1962). Plaintiff now moves to amend his complaint to allege fraud. The decision on whether to grant or deny motion to amend a pleading lies within the sound discretion of the court, and it is not a abuse of that discretion to deny leave to amend when granting leave is unlikely to be productive. Ruffolo v. Oppenheimer & Co., 987 F.2d 129, 131 (2d Cir. 1993). The court may refuse to permit amendment to assert claims which could not survive motion to dismiss. Weimer v. Amen, 870 F.2d 1400, 1407 (8th Cir. 1989). Plaintiff's proposed amended pleading does not state the circumstances constituting fraud with particularity as required by Fed. R. Civ. P. 9(b). The amended complaint would not survive a motion to dismiss is therefore denied as futile.