In the United States Bankruptcy Court

for the Northern District of Iowa

RONALD B. REIL
KAYE A. REIL
Debtor(s).

Bankruptcy No. L92-00860W

Chapter 11

RONALD B. REIL and
KAYE E. REIL Adversary No. L92-0094W
Plaintiff(s)

vs.

ETHEL STANLEY and DES MOINES
GOLD & SILVER BUYERS INC.
Defendant(s)

Adversary No. L92-0094W

ORDER RE MOTION FOR LEAVE TO AMEND COMPLAINT

On October 14, 1994, the above-captioned matter came on for telephonic hearing pursuant to assignment. John R. Walker, Jr., represented Debtors/Plaintiffs, Ronald and Kaye Reil. Thomas Levis represented Defendants, Ethel Stanley and Des Moines Gold & Silver Buyers, Inc. The matter before the court is Debtors' Motion for Leave to Amend the Complaint filed in the above-captioned adversary proceeding. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E).

STATEMENT OF THE CASE

Debtors filed a Chapter 11 bankruptcy proceeding on April 30, 1992. The above-captioned adversary proceeding was filed on May 8, 1992. The complaint outlines ten causes of action against Defendants, Ethel Stanley and Des Moines Gold & Silver Buyers, Inc. In general terms, the causes of action include voidable transfer, fraud, injunctive relief and punitive damages.

Discovery was closed prior to the filing of the parties' joint pretrial statement on July 1, 1994. A pretrial conference was held August 3, 1994, at which the Court directed the parties to amend the joint pretrial statement and set the matter for trial for a date after April 15, 1995. Debtors filed the present Motion for Leave to Amend on September 21, 1994, seeking to add an emotional distress claim against Defendants. The amended joint pretrial statement was filed September 26, 1994. Defendants objected to Debtors' Motion to Amend on September 27, 1994.

Debtors claim that the facts set forth in the original complaint provide sufficient notice to Defendants of the emotional distress claim. They further state that Defendants will not be prejudiced by granting the motion. Defendants claim the amendment adds a completely new cause of action, and that they will be substantially prejudiced by the granting of the amendment. Defendants note that the discovery deadline has passed and that granting Debtors' motion would require reopening discovery to enable Defendants to meet this new cause of action.

CONCLUSIONS OF LAW

Motions for leave to amend a complaint are governed by Fed. R. Civ. P. 15, which is made applicable to adversary

proceedings in bankruptcy by Fed. R. Bankr. P. 7015. In re Germansen Decorating, Inc., 149 B.R. 522, 530 n.12 (Bankr. N.D. Ill. 1993). Rule 15(a) allows amendments to the complaint after a responsive pleading has been served "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); Johnston v. Percy Constr., Inc., 258 N.W.2d 366, 370 (Iowa 1977). The courts have embraced the spirit of Rule 15 and hold that amendments should be liberally granted. In re Rath Packing Co., No. 83-02293, slip op. at 6 (Bankr. N.D. Iowa March 28, 1984) (citing Foman v. Davis, 371 U.S. 178, 83 S.Ct. 222, 230 (1962)).

This liberal policy for granting motions to amend exists, in part, to enable a party to assert claims that were unknown or overlooked at the time of the original complaint. Stavriotis, 977 F.2d at 1206. The right to file amended complaints is not unqualified, however. Id. At some point, a deadline for discovering unknown or overlooked claims must be set. If not, parties would be free to bring entirely new causes of action without consideration for time limits. "Rule 15(c) does not permit lawyers to endlessly answer the question: How many causes of action can you find in this fact situation?" Marsman v. Western Electric Co., 719 F. Supp. 1128, 1143 (D. Mass. 1988). Defendants should not have to play guessing games as to which claims plaintiffs will ultimately attempt to prove.

The philosophy of Rule 15 and pleadings in general is that complaints should give fair notice, be liberally construed, be subject to liberal amendment, and be examined on the merits, not on the technicalities of pleading. 1 James W. Moore et al., Moore's Manual § 9.09[9] (1992); In re Stavriotis, 977 F.2d 1202, 1205 (7th Cir. 1992). The policy for liberally granting motions to amend is not automatic, however. In re Barnes, 96 B.R. 833, 836 (Bankr. N.D. Ill. 1989). Several factors influence the decision whether to grant or deny a motion to amend. Undue delay, bad faith on the part of the movant, or prejudice to the nonmoving party justifies a decision to deny a motion to amend a complaint. The decision of whether to grant or deny the motion is ultimately left to the discretion of the Court. Id. at 7 (citing Kaufmann v. Sheehan, 707 F.2d 355, 357 (8th Cir. 1983)).

The nonmoving party has the burden of showing why the motion should be denied. Genentech, Inc. v. Abbott Laboratories, 127 F.R.D. 529, 530-31 (N.D. Cal. 1989). Here, Defendants have presented several justifications for denying the motion.

First, Defendants argue that Debtors have not clearly shown that the original complaint set out sufficient facts to put Defendants on notice as to the emotional distress claim. If the original pleading gives fair notice of the general fact situation out of which the claim arises, Staren v. American Nat'l Bank & Trust Co. of Chicago, 529 F.2d 1257, 1263 (7th Cir. 1976), and the general nature of the claim, Roberts v. Acres, 495 F.2d 57, 58 (7th Cir. 1974), allowance of an amendment will be favorably considered.

If the original complaint does not put a party on notice as to a claim, however, courts are less favorable to a motion to amend. Fuller v. Marx, 724 F.2d 717, 720-21 (8th Cir. 1984); Barnes, 96 B.R. at 837. Here, the original complaint did not raise emotional distress and no facts were alleged which fairly assert that Mr. Reil experienced such distress. Debtors have not shown that their original complaint provides the requisite fair notice to Defendants of the emotional distress claim.

If the amended claim is inherent in the plaintiff's other claims, even if not expressly stated, and does not add new and complex factual issues, some courts will allow the amended claim. Webb v. City of Chester, Ill., 813 F.2d 824, 835 (7th Cir. 1987) (granting plaintiff's amendment after finding that emotional distress was inherent in plaintiff's sexual discrimination claim). Here, emotional distress is not inherent in Debtors' claims of fraudulent misrepresentation and voidable transfer of assets. It is obvious that the elements of the tort of emotional distress are new to this case and the amended claim would add new and complex issues.

Defendants also assert that granting the motion would further delay this proceeding. This adversary proceeding was filed by Debtors over two years ago. Allowing an additional claim at this late hour would further delay this already aged proceeding. Undue delay warrants denial of an amendment because it circumvents the public's interest in the speedy resolution of disputes and is prejudicial to both the judicial system and the defendant. Perrian v. O'Grady, 958 F.2d 192, 195 (7th Cir. 1992). Authority exists that amended complaints should not be

allowed after the pretrial conference except for compelling reasons. Nevels v. Ford Motor Co., 439 F.2d 251, 257 (5th Cir. 1971). No such compelling reasons are presented here.

While delay alone may be insufficient to deny a motion to amend, when delay is accompanied by prejudice to the opposing party, such as last minute surprise necessitating expanded discovery, denial of the motion is warranted. Id. at 260; Barrows v. Forest Laboratories, Inc., 742 F.2d 54, 58 (2d Cir. 1984) (holding that a two-year delay in amending the complaint for which additional discovery was required, as well as no reasonable excuse for the delay, warranted denial of the motion to amend). Defendants have shown sufficient prejudice here. They were unaware of Debtors' emotional distress claim until the motion for leave to amend was filed, and additional discovery would be needed to meet the new cause of action. McGlinchy v. Shell Chemical Co., 845 F.2d 802, 809 (9th Cir. 1988) (holding that the delay would unfairly prejudice the defendant by requiring new depositions, additional research, and the rewriting of trial briefs).

Finally, Debtor's emotional distress claim has statute of limitations implications. A claim for emotional distress is subject to a two-year statute of limitations. Iowa Code § 614.1(2). Debtors did not claim emotional distress in the original complaint filed in May, 1992. The emotional distress issue was not specifically addressed until September, 1994, when Debtors' Motion for Leave to Amend was filed. Without conclusively deciding this issue, the Court is concerned that Debtors may be amending their complaint as a vehicle for adding a new cause of action against which the statute of limitation has expired. Barnes, 96 B.R. at 837 (holding that amended complaints may not be used to defeat the statute of limitations).

In summary, the Court has considered all of the factors raised by both parties. These factors compel the Court to conclude that, on balance, and using the Court's discretionary power, the policy of liberal amendments is overcome in this case based on considerations of prejudice to Defendants and delay in an ultimate determination on the merits.

WHEREFORE, Debtors' Motion for Leave to Amend the Complaint filed in the above-captioned adversary proceeding is DENIED.

SO ORDERED this 17th day of November, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge