

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 19, 2023 at 11:00 a.m.

1. <u>21-23778-E-7</u>	CAREN SPAULDING	MOTION FOR LEAVE TO AMEND
<u>22-2006</u>	Jeffrey Ogilvie	12-22-22 <u>[34]</u>
DNL-4		

RICHARDS V. SPAULDING ET AL

1 thru 2

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant’s Attorney, Plaintiff’s Attorney, and creditors who have filed claims on December 22, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion for Leave to Amended has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Leave to Amended is granted.
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The Chapter 7 Trustee, Geoffrey Richards (“Plaintiff-Trustee”) filed this Motion for Leave to Amend Complaint against Defendant Thomas L. Spaulding (“Defendant”) to add additional estate claims against Defendant. Motion at 2:3-6.

Additionally, Plaintiff-Trustee seeks to name the Debtor in order to obtain relief sought on her community property and community debt theories. *Id.* at 2:6-7.

The original complaint pleaded a single theory of actual fraudulent transfer of the property commonly known as 531 Outsen Road, Yreka, California (“Outsen Property”). Complaint, Dckt. 1; Motion, Dckt. 34 at 5:19-20. Since conducting discovery, Plaintiff-Trustee has determined the Outsen Property, as well as several accounts and real property, are likely community property. Motion, Dckt. 34 at 20-23. Additionally, Plaintiff-Trustee claims the estate may have an interest in contributions from Defendant’s separate property. *Id.*

In the Motion, Plaintiff-Trustee enumerates detailed factual allegations that are the basis for seeking this amendment. In his Declaration (Dckt. 36) the Trustee testifies that this information concerning possible other assets of the Bankruptcy Estate has been obtained through the discovery in this Adversary Proceeding.

Plaintiff-Trustee seeks to add claims that the bankruptcy estate has a beneficial interest in (1) what was previously characterized as the Defendant’s separate property and (2) additional fraudulent transfers. *Id.* at 6:11-13. Plaintiff-Trustee states these claims were not included in the original complaint because Plaintiff-Trustee only became aware of these facts after reviewing document productions after “several delays by third parties’ compliance with discovery.” *Id.* at 6:7-10.

Plaintiff-Trustee states amendment is necessary pursuant to Federal Rules of Civil Procedure 15(a)(2) to fully adjudicate the interests of the bankruptcy estate. *Id.* at 6:4-7.

Trustee has provided the proposed amended complaint as Exhibit A, Dckt. 37.

DEFENDANT’S OPPOSITION

Defendant filed an opposition on January 4, 2023. Dckt. 41. Defendant opposes the Motion on the grounds:

- I. Prolonging litigation would impose “unjustifiable expenses and disruptions to the [D]efendant who is currently 86 years of age, lives on a fixed income, and is in ill health.” *Id.* at 2:1-3.
- II. Plaintiff-Trustee’s belief that Defendant’s separate property assets are community is without merit and futile. *Id.* at 2:5-6.
- III. Plaintiff-Trustee misstates facts, or misapplies them to law, or both. *Id.* at 2:7-8. Defendant provides the court with a list of contested facts Defendant believes are misstated or misapplied to the law.

DISCUSSION

Federal Rules of Bankruptcy Procedure 7015 incorporates Federal Rules of Civil Procedure 15 and allows a party to amend its complaint once as a matter of course within 21 days of serving it or after service of a responsive pleading or motion. Other amendments may only be granted with the opposing party’s written consent or the court’s leave.

Pursuant to Rule 15, the court should freely give leave when justice requires. The court may consider the following factors when deciding to grant leave to amend:

- (1) undue delay;
- (2) bad faith or dilatory motive on the part of the movant;
- (3) repeated failure to cure deficiencies by amendments previously allowed;
- (4) undue prejudice to the opposing party; and
- (5) futility of the amendment.

3 Moore's Federal Practice - Civil § 15.15 (2022) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) (courts should freely grant leave to amend, absent specified factors)).

Although it has been nearly a year since the filing of Plaintiff-Trustee's original complaint, Dckt. 1, trial has not yet commenced, and this case is still at the pre-trial phase. Additionally, Plaintiff-Trustee states the delay in seeking an amendment was not due to fault of their own, but rather a third party's delay in producing discovery documents. Although Defendant is older in age, the court does not find undue delay or prejudice, Plaintiff-Trustee acting in bad faith, or futility of the amendment.

In the context of time, Debtor commenced her Chapter 7 case on November 2, 2021. In the proposed Amended Complaint, the Plaintiff-Trustee cites to 11 U.S.C. §§ 544(b) and 548(a) as the legal grounds for the relief. Congress provides a federal statute of limitations for claims sought pursuant to 11 U.S.C. § 544 or § 548 as two years after the entry of the order for relief. 11 U.S.C. § 546(a). For Debtor's bankruptcy case, that two year period would expire on November 2, 2023 - which is just under eleven (11) months in the future.

The Plaintiff-Trustee could have elected to conduct discovery concerning property of the Bankruptcy Estate using the wide-ranging discovery permitted under Federal Rule of Bankruptcy Procedure 2004. In effect, the discovery conducted in this Adversary Proceeding that has, in the Plaintiff-Trustee's view, turned up information about other assets the Plaintiff-Trustee now seeks to recover has taken the place of 2004 examinations. This is all occurring well within the time frame established for such discovery and commencement of adversary proceedings to recover such assets. No basis has been shown that the Plaintiff-Trustee forfeits the ability to conduct that discovery and recover assets for the bankruptcy estate merely because it is done in the context of an early filed adversary proceeding.

Defendant also claims factual disputes warrant denial of this Motion. Factual disputes, however, are not grounds to deny leave to amend. Rather, factual disputes will be resolved by the trier of fact, this court, if they remain unresolved by Plaintiff-Trustee and Defendant.

If, as Defendant postulates, the Plaintiff-Trustee is misguided as to the facts and the law, then Defendant should be able to present the court with incontrovertible facts and hard and fast law that would quickly sink the Amended Complaint. Even more likely, by presenting such to the Plaintiff-Trustee and the Trustee-Trustee's attorney, Defendant would demonstrate that there is nothing for the Plaintiff-Trustee to recover and all their efforts would result in an uncompensated "goose egg" for the Plaintiff-Trustee and his

counsel. (Additionally, if clearly laid out for the Plaintiff-Trustee and his counsel, the specter of whether there was a good faith prosecution of such litigation would begin to arise from the mist.)

The court does not find any of the *Foman* factors present in this case. The court finds justice requires allowing Plaintiff-Trustee to amend their complaint to add additional claims against Defendant.

Plaintiff-Trustee's Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Leave to Amend Complaint filed by the Chapter 7 Trustee, Geoffrey Richards ("Plaintiff-Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Leave to Amend Complaint is granted, and Plaintiff-Trustee is allowed to amend their complaint against Thomas L. Spaulding ("Defendant"), filed as Exhibit A in support of the Motion (Dckt. 37).

2. [21-23778-E-7](#) CAREN SPAULDING
[22-2006](#)
CAE-1

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT
1-25-22 [[1](#)]

RICHARDS V. SPAULDING ET AL

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Jeffrey S. Ogilvie

Adv. Filed: 1/25/22
Reissued Summons: 1/25/22
Answer: 2/18/22

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Continued from 12/13/22 for a status and re-scheduling conference, to be conducted with the Plaintiff-Trustee's Motion to Amend the Complaint.

The Pre-Trial Conference is XXXXXXX

JANUARY 19, 2023 PRE-TRIAL CONFERENCE

The court has been presented with a Motion to Amend the Complaint by the Plaintiff-Trustee, which amendments are based on additional asserted facts learned about through the discovery. The Court XXXXXXX