

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re:)	
)	
Brokers, Inc.,)	Case No. 04-53451
)	
Debtor.)	
_____)	

ORDER GRANTING MOTION BY HOSSEIN AHMADI TO AMEND

This matter came before the Court for hearing on May 30, 2007 upon the Motion by Hossein Ahmadi to Amend. Appearing before the court was Andrew Brown, counsel for Claimant Hossein Ahmadi (the “Claimant”) and Paul Daniels and J. David Yarborough, Jr., counsel for Brokers, Inc. (the “Debtor”). Upon consideration of the motion, the court makes the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

On November 22, 2004, Brokers filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. On April 13, 2005, the Claimant filed a proof of claim (the “Claim”) for a debt incurred on or about May 2002 in an unliquidated amount with a copy of a complaint (the “Complaint”) attached. Contemporaneous with the filing of the Claim, the Claimant filed a motion for authority to file a late proof of claim. While the deadline for the filing of proofs of claim was March 14, 2005, the Claimant was not noticed as a creditor in the bankruptcy proceeding. As a result, the court entered a consent order finding that the Claimant had demonstrated cause to deem his Claim timely. In addition, on April 27, 2005, the court entered an agreed order modifying the automatic stay for the limited purpose of permitting the Claimant to file the Complaint in state court to prevent the running of the applicable statutes of

limitation and permitting the Claimant to serve the Complaint on the Debtor. The parties agreed that the Debtor was not required to file an answer or any other responsive pleading in state court.

The Claimant filed the Complaint on April 29, 2005 against the Debtor in the North Carolina Superior Court, High Point Division, asserting claims for negligent damage to automobiles, trespass to personalty, punitive damages, and negligent damage to business equipment. In response, Brokers filed an Objection to the Claim with this court, and this court entered a scheduling order, which was amended numerous times, setting deadlines for various pleadings and discovery. The Debtor's Objection to Claim was scheduled for trial beginning on March 22, 2007. On March 13, 2007, counsel of the Claimant filed a motion to withdraw. On March 21, 2007, the day before the trial was set to begin, Andrew Brown filed a notice of appearance on behalf of the Claimant, and the parties agreed to an extension of the time for the trial. In addition, the court entered a scheduling order regarding the completion of additional discovery in advance of the rescheduled trial. On April 12, 2007, the Claimant filed a motion to amend the Complaint which would, in turn, amend his Claim. The Debtor objects to the motion to amend.

MOTION TO AMEND THE COMPLAINT

In the Complaint, the Claimant alleges that he leased business property from the Debtor, located in Thomasville in Davidson County, North Carolina from 1993 to June 2004 upon which he operated his business of purchasing, reconditioning, and selling vehicles. In or about the first week of May 2002, while the Claimant was out of the country for a period of time, the Debtor, by and through its agents, allegedly moved vehicles of the Claimant without notice or permission of the Claimant. The Complaint further alleges that, in or about the first week of May 2002, the

Claimant returned to the leased property and noticed that a great number of vehicles were missing. The Claimant contends that he could not located all of the missing vehicles, and on or about May 7, 2002, the Claimant filed a police report with the Sheriff's Department of Davidson County. As a result of the ensuing investigation, the Claimant discovered that the Debtor had moved the vehicles off of the leased property to a remote portion of the Debtor's property for the benefit of the Debtor. The Complaint alleges that numerous vehicles were damaged during and as a result of the relocation. The Complaint alleges that the actions of the Debtor, through its authorized agents, were done with willful, wanton, conscious, and intentional disregard of, and indifference to, the property rights of the Claimant. In support of these allegations, the Complaint alleges that many vehicles were moved with a forklift and stacked one upon another. A list of vehicles which were damaged is attached to the Complaint as Exhibit A.

Additionally, the Complaint alleges that beginning in or about May 2002, and continuing thereafter during the remainder of the occupation of the premises by the Claimant, the building on the leased property leaked to such an extent that the Claimant suffered substantial damage to his business personal property. Despite complaints, the Debtor allegedly failed to remedy the situation or pay for damages to the property.

The Claimant now seeks leave to amend the Complaint attached to his Claim. The Claimant contends that prior to the filing of the original Complaint, he informed his former counsel that a number of vehicles had been damaged and most, but not all, were included in a list prepared for counsel and subsequently attached to the Complaint as Exhibit A. The Claimant contends that his former counsel advised him that he could amend his Complaint at a later date. Opposing counsel was put on notice informally that the Exhibit A filed with the

Complaint was only a partial, and not complete, list of the vehicles damaged by the Debtor in a letter dated September 26, 2005 in which the Claimant's former counsel stated "I will warn you about one additional item. Mr. Ahmadi believes that he has discovered additional cars that were damaged during the process of the movement of the vehicles described in the Complaint. These additional vehicles are not presently described on Exhibit A. We are working up an Exhibit B, and will probably supplement [our] damage claim at some time in the next sixty days."¹

The Claimant now proposes to amend the Complaint to remove reference to Exhibit A, the incomplete list of vehicles damaged. Moreover, the Claimant proposes to amend the Complaint to indicate that damage occurred over several months, rather than several days, in 2002. Specifically, the Amended Complaint includes the following changes:

(1) The first sentence of Paragraph 5 is changed from "In or about the first week of May 2002, the Plaintiff was away from his business premises, above noted, for a period of time" to "In or about the first week of May 2002, and in the months before and in parts of the months that followed during that year, the Plaintiff was away from his business premises, above noted, for a period of time."

(2) The first sentence of Paragraph 6 of the Amended Complaint is changed from "In or about the first week of May, 2002, the plaintiff returned to the leased property and noticed a great number of his vehicles were missing" to "At some point during 2002, the Plaintiff returned

¹ It is clear from the evidence presented that the Claimant has known for quite some time that Exhibit A did not represent an exclusive list of the vehicles allegedly damaged, and this information was informally communicated to opposing counsel. Nevertheless, an Amended Complaint was not actually filed until the Claimant obtained new counsel. Costs incurred by the Debtor due to the delay of the trial in this proceeding, due in part to Mr. Brown's discovery upon being retained that an Amended Complaint was needed and that various discovery was not complete, have been addressed by this court in a separate order.

to the leased property and noticed a great number of his vehicles were missing.”

Because the Debtor does not consent to the filing of the Amended Complaint, the Claimant requests that the Court allow the filing pursuant to Rule 15(c) of the Federal Rules of Civil Procedure.

ANALYSIS

Federal Rule of Civil Procedure 15 provides that leave to amend pleadings “shall be freely given when justice so requires.” This rule is applicable to a claim proceeding in the bankruptcy court pursuant to Bankruptcy Rules 7015 and 9014. *See also In re Jackson*, 220 B.R. 273 (Bankr. E.D. Va. 1998). When applying Rule 15, courts have found that leave to amend should be granted unless the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile. *Nolte v. Capital One Financial Corp.*, 390 F.3d 311, 317 (4th Cir. 2004) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir.1999)). Moreover, Rule 15(c) provides that a claim contained in an amended complaint relates back to the date of the original complaint when the claim asserted in the amended complaint arose out of the conduct, transaction, or occurrence set forth in the original complaint. Fed. R. Civ. P. 15(c)(2). “The rationale of Rule 15(c) is that a party who has been notified of litigation concerning a particular occurrence has been given all the notice that statutes of limitations were intended to provide.” *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 150 n. 3, 104 S.Ct. 1723, 80 L.Ed.2d 196 (1984); *see also Bensel v. Allied Pilots Ass’n*, 387 F.3d 298, 310 (3rd Cir. 2004) (“In essence, application of Rule 15(c) involves a search for a common core of operative facts in the two pleadings. As such, the court looks to whether the opposing party has had fair notice of the general fact situation and legal

theory upon which the amending party proceeds.”).

The Fourth Circuit has set forth a two-prong analysis to be followed by courts in determining whether an amendment relates back. The court must consider (1) whether there is a factual nexus between the amendment and the original complaint; and (2) if there is some factual nexus, an amended claim is liberally construed to relate back to the original complaint if the defendant had notice of the claim and will not be prejudiced by the amendment. *Grattan v. Burnett*, 710 F.2d 160, 163 (4th Cir. 1983).

In this case, the Claimant is essentially seeking to amend his Claim by making two changes to the Complaint: (1) deleting the itemized list of vehicles allegedly damaged, and (2) expanding the dates upon which the alleged incidents occurred.² The Debtor contends that the amendments contained in the Amended Complaint do not relate back to the Complaint as required by Rule 15(c), and therefore, the amendments are barred by the statute of limitations, rendering any such amendment futile. Thus, the court must determine whether, in this instance, there is a factual nexus between the allegations contained in the Complaint and those contained in the Amended Complaint, and whether the Debtor had sufficient notice of the new allegations.

First, the court finds that the Claimant’s proposed amendment to remove reference to Exhibit A, so that he is not limited to asserting negligent damage to those vehicles listed on Exhibit A, relates back to the Complaint. There is clearly a factual nexus between this amendment and the Complaint. The same conduct is at issue, that is, the relocation of the Claimant’s vehicles by the Debtor from the Claimant’s leased property to another location. Furthermore, in the Complaint, the Claimant alleges that “a great number of his vehicles” were

² The Claimant agrees that any damages that occurred more than three years prior to the date of the filing of the Complaint are barred by the statute of limitations.

missing and had been moved, that it was difficult to locate the vehicles, and that vehicles were stacked one upon another. These allegations in the Complaint were sufficient to put the Debtor on notice that vehicles other than those listed on Exhibit A may have been damaged.

Second, the Amended Complaint expands the time period over which the alleged conduct occurred. Generally, if an amended complaint “merely adds a new legal ground for relief, changes the date and location of the transaction alleged, or spells out the details of the transaction originally alleged” the requirements of Rule 15(c) will be met. *In re Kam Kuo Seafood Corp.*, 67 B.R. 304, 306 (Bankr. S.D.N.Y.1986) (citations omitted); *see also In re Lenox Healthcare, Inc.*, 343 B.R. 96 (Bankr. D. Del. 2006); *In re Austin Driveway Services, Inc.*, 179 B.R. 390, 395 (Bankr. D. Conn. 1995). In addition, if an amendment simply restates with greater particularity or amplifies the details of the original complaint, then the amendment satisfies the relation back requirements. *McClellon v. Lone Star Gas Co.* 66 F.3d 98, 102 (5th Cir. 1995). An amended complaint may also relate back to the original complaint if the original complaint describes a series of events linked by some underlying conduct or transaction, such that the defendant is afforded with sufficient notice that the plaintiff might amend the complaint to allege another event in the series after conducting discovery. *In re Austin Driveway Services, Inc.*, 179 B.R. at 395. However, if a party is trying to “interject entirely different conduct or different transactions or occurrences into a case, then relation back is not allowed.” *See F.D.I.C. v. Conner*, 20 F.3d 1376, 1385 (5th Cir.1994). “A plaintiff may not baldly allege a broad course of conduct over a lengthy period of time and later sue on any act that occurred during that time period.” *English Boiler & Tube, Inc. v. W.C. Rouse & Son, Inc.*, 1999 WL 89125, *3 (4th Cir. 1999) (finding that if each act alleged is a separate tort, in most instances, each must be

specifically alleged).

After careful consideration, the court finds that the Claimant's proposed amendments that expand the time period over which the alleged conduct occurred relate back to the Complaint. The claims, parties, and general factual situation remain the same in the Amended Complaint. The Complaint set forth sufficient allegations to give notice to the Debtor that the Claimant was seeking to recover damages incurred as a result of the Debtor's relocation of numerous vehicles from the Claimant's leased property over a period of time in an allegedly negligent manner. The Claimant is only proposing to enlarge the time period during which the alleged conduct occurred as a result information obtained during the process of discovery.

Thus, the court finds that the Claimant has established that there is a sufficient factual nexus between the Amended Complaint and the Complaint, and that the Debtor had sufficient notice to allow the amendments. Furthermore, the Claimant's proposed amendments are merely amending the Claim and are not asserting an entirely new claim. *See In re Macmillan, Inc.*, 186 B.R. 35 (Bankr. S.D.N.Y. 1995). Finally, the court recognizes that there have been numerous delays in this proceeding, but notes that the Debtor has already been compensated for costs associated with the delay of the trial in this matter.

Based on the foregoing, the court finds that the Amended Complaint relates back to the Complaint and is not barred by the statute of limitations. The Claimant's motion for leave to amend the complaint and, therefore, his proof of claim, is GRANTED.

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