



\*\*\*\*\*  
**MEMORANDUM OPINION AND ORDER DENYING RESOURCE LAND  
HOLDINGS, LLC'S MOTION FOR LEAVE TO FILE ITS  
FIRST AMENDED COMPLAINT**  
\*\*\*\*\*

Before the Court is Resource Land Holdings, LLC's Motion for Leave to File its First Amended Complaint ("Motion for Leave") (Doc. 45) filed by Resource Land Holdings, LLC ("RLH") on August 14, 2014.

By way of background, on May 30, 2014, RLH filed Complaint for Declaratory Judgment (Doc. 1), which commenced this adversary proceeding against the Debtors/Defendants/Counter-Claimants D & L Energy, Inc. and Petroflow, Inc. ("Debtors"). The Complaint consists of 47 pages, 143 numbered paragraphs and two claims for relief. On June 16, 2014, the Debtors filed Answer to Complaint (Doc. 7) and Counterclaim Against Plaintiff Resource Land Holdings, LLC (Doc. 9). On June 26, 2014, after being granted leave to intervene, the Official Committee of Unsecured Creditors ("Committee") filed Answer and Counterclaim of Intervenor (Doc. 15). On July 7, 2014, RLH filed Amended Reply to Counterclaim (Doc. 19). On July 14, 2014, the Committee filed First Amended Counterclaim of Intervenor (Doc. 28). On July 15, 2014, RLH filed its Answer to Intervenor's Counterclaim (Doc. 30).

The Court held a status conference with all parties on June 25, 2014, at which time the parties agreed that all discovery could and would be completed by September 29, 2014.

RLH and the Debtors each filed motions for partial judgment on the pleadings, as follows (i) RLH filed Motion for Judgment on the Pleadings ("RLH's Motion") (Doc. 18) on July 3, 2013; and (ii) the Debtors filed their Motion for Partial Judgment on the Pleadings of Plaintiff's Complaint ("Debtors' Motion") (Doc. 20) on July 9, 2014. Over the next month, each of these motions was fully briefed: (i) the Debtors filed their Response (Doc. 31) to RLH's Motion on July 16, 2014, to which RLH filed its Reply (Doc. 36) on July 28, 2014; and (ii) RLH filed Response (Doc. 35) to the Debtors' Motion on July 28, 2014, to which the Debtors filed their Reply (Doc. 40) on August 4, 2014.

The Court issued Memorandum Opinion (Doc. 42) and Order (Doc. 43) on August 11, 2014, which granted RLH's Motion.

Just as this Court was about to enter a memorandum opinion and order on the Debtors' Motion, RLH filed the Motion for Leave – more than five weeks after the Debtors' Motion was filed and two and a half weeks after RLH responded to the Debtors' Motion. RLH states that it seeks leave to amend its already lengthy Complaint because the Debtors challenge the adequacy of the factual allegations that RLH pled in the Complaint. The fact that the Debtors challenge the sufficiency of the factual allegations in the Complaint is not and cannot be a new revelation to RLH. Indeed, this is the crux of the Debtors' Motion, which has been pending since July 9, 2014. RLH purports to bring the Motion for Leave in

order not to “waste the Court’s time and other resources” as well as those of the Debtors and the Committee; however, this late attempt to amend the Complaint is a waste of the Court’s and the other parties’ time and resources. Moreover, there are no facts added to the proposed amended complaint that were not known or could not have been known to RLH at the time it filed the Complaint.

Rule 15 of the Federal Rules of Civil Procedure governs amended pleadings and is incorporated into this proceeding by Rule 7015 of the Federal Rules of Bankruptcy Procedure. Although a motion for judgment on the pleadings is adjudicated under the same standard as a motion to dismiss,<sup>1</sup> Rule 15 treats these two types of motions differently. Rule 15 provides that a party may amend its pleading without leave if such amendment is made within 21 days after service of a motion under Rule 12(b), (e) or (f). There is no mention of the right to amend without leave in the event a motion for judgment on the pleadings is filed under Rule 12(c). The purpose of providing the ability to amend without leave when certain kinds of dispositive motions are filed is to conserve resources – *i.e.*, to permit the non-moving party to fix the problem before additional resources are expended. If a party can correct the shortcomings pointed out by the moving party, then allowing

---

<sup>1</sup> A motion for judgment on the pleadings is reviewed under the same standard used to review a Rule 12(b)(6) motion to dismiss. *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010) (citing *Ziegler v. IBP Hog Mkt., Inc.*, 249 F.3d 509, 511-12 (6th Cir. 2001)).

such amendment advances the process without the Court having to rule on the motion.

Here, however, RLH did not seek leave to amend its Complaint when the Debtors filed their Motion. Instead, RLH filed a Response, to which the Debtors filed a Reply. Now that the Debtors' Motion is fully briefed and the Court is ready to rule, RLH states that granting it leave to amend will somehow conserve rather than waste everyone's time and resources. Nothing could be further from the truth. The timing of RLH's Motion for Leave appears to be nothing more than a delaying tactic and an attempt to thwart the Debtors from receiving a ruling on their Motion.

If this Court were to grant RLH the leave it now requests, the Debtors and the Committee would have at least 14 days to respond to the new allegations in the amended complaint (and perhaps file new counterclaims). See Rule 15(a)(3). Although most of the "amendments" in the proposed amended complaint add to the allegations of breach in the original Complaint, the proposed amended complaint contains at least one new and additional allegation of material breach of contract. The period to answer an amended complaint would run through at least early September, which likely would cause at one or more parties to want an extension of the discovery period. As set forth above, based on the original Complaint and the Debtors' Answer and Counterclaim,

all parties previously agreed that the discovery period would conclude on September 29, 2014.

The Supreme Court noted in *Foman v. Davis*, 371 U.S. 178 (1962), that leave to amend should be freely given; however, tactics by the moving party such as undue delay or dilatory motive or undue prejudice to the opposing party may result in denial of leave to amend.

Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. - the leave sought should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

*Id.* at 182 (emphasis added) (citation omitted).

If RLH truly wanted to conserve the resources of the Court and the other parties, it would have sought leave to amend the Complaint before proceeding with its Response or as alternative relief when it filed its Response to the Debtors' Motion almost three weeks ago. Leave of the Court is to be "freely give[n] . . . when justice so requires." FED. R. CIV. P. 15(a)(3). However,

the Court is required to exercise judgment in granting leave and not do so when justice would not be served.

The grant or denial of a motion for leave to amend is within the sound discretion of the District Court and will be reversed only for an abuse of discretion. Rule 15(a), Fed. R. Civ. P., mandates that leave to amend 'shall be freely given when justice so requires.'

*The Troxel Mfg. Co. v. Schwinn Bicycle Co.*, 489 F.2d 968 (6th Cir. 1973), cert. denied, 94 S.Ct. 1942 (1974) (citing *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330 (1971); *Foman*, 371 U.S. at 182).

RLH filed the Motion for Leave a mere three days after this Court entered its Memorandum Opinion and Order granting RLH's Motion. The proposed amended complaint contains the same errors in layout (two Sections labelled F, two Sections labelled G and no Section H prior to Section I), which would have been caught and should have been corrected in any careful proof-reading of a proposed amended complaint. The timing of the Motion for Leave, coupled with the continued layout errors, indicates that RLH hastily decided to seek leave to amend the Complaint in order to defeat any ruling on the Debtors' Motion. This kind of dilatory tactic cannot and will not be countenanced by this Court.

The Sixth Circuit recognizes that seeking leave to amend for the purpose of delay or to harass the opposing party may be sufficient reason for a court to deny leave to amend. In *Morse v. McWhorter*, 290 F.3d 795 (6th Cir. 2002), the Sixth Circuit noted

that “[o]rdinarily, delay alone, does not justify denial of leave to amend.” *Id.* at 800 (citing *Sec. Ins. Co. v. Kevin Tucker & Assocs., Inc.*, 64 F.3d 1001, 1009 (6th Cir. 1982); *Tefft v. Seward*, 689 F.2d 637, 639 n. 1 (6th Cir. 1982) (“Delay that is neither intended to harass nor causes any ascertainable prejudice is not a permissible reason, in and of itself to disallow an amendment of a pleading.”)). “At some point, however, delay will become ‘undue,’ placing an unwarranted burden on the court, or will become ‘prejudicial,’ placing an unfair burden on the opposing party.” *Morse*, 290 F.3d at 800 (citation omitted).

Here, justice would not be served by allowing RLH to amend its Complaint more than five weeks after the Debtors filed their Motion for partial judgment on the pleadings and approximately six weeks before the close of discovery. The Court is prepared to issue its memorandum opinion and order on the Debtors’ Motion today.<sup>2</sup> Indeed, absent RLH filing this Motion for Leave, the Court’s ruling on the Debtors’ Motion could and would have been entered earlier. This Motion for Leave has delayed, rather than

---

<sup>2</sup> The Court notes that allowing RLH to file the proposed amended complaint would not change the Court’s decision on the Debtors’ Motion. The Court’s ruling on the Debtors’ Motion would be the same whether based on the Complaint or the proposed amended complaint.

advanced, the progress of this adversary proceeding.

The Court hereby denies the Motion for Leave.

# # #