UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

In re: Bonnie Honcharik Geddes, Debtor.	Chapter 7 Case No.: 10-51080
TA Operating LLC, Plaintiff, v. Bonnie Honcharik Geddes, Defendant.	Adv. Pro. No.: 10-5064

ORDER ON PLAINTIFF'S MOTION TO AMEND COMPLAINT

INTRODUCTION

The plaintiff has filed a Motion to Amend Complaint (doc. #54) to which the chapter 7 debtor/defendant objections (*see* doc. #59). For the reasons that follow, the plaintiff's motion is granted.

BACKGROUND

The defendant commenced her chapter 7 case on May 11, 2010. The plaintiff claims that the defendant is indebted to it for approximately $491,000, plus interest, costs, and attorneys' fees. On July 26, 2010, the plaintiff commenced this adversary proceeding to challenge the defendant's discharge, alleging that she transferred property within one year before filing for bankruptcy relief with the intent to hinder, delay or defraud, *see* § 727(a)(2)(A), and she knowingly and fraudulently made a false oath in her bankruptcy case, *see* § 727(a). (*See* Complaint at 3-6 (doc. #1).) The defendant's answer denied those allegations and raised three affirmative defenses. (*See* Answer (doc. #7).)

The trial of this adversary proceeding (and related adversary proceedings[1]) has been re-scheduled several times.[2] On July 6, 2011, the plaintiff filed the instant motion to amend its complaint to add two additional causes of action, *i.e.*, § 727(a)(3), relating to concealment of recorded information from which a debtor's financial condition may be ascertained, and § 727(a)(5), relating to a debtor's failure to explain any loss of assets to meet the debtor's liabilities. The defendant objected.

DISCUSSION

Federal Rule of Civil Procedure 15 applies in adversary proceedings. *See* Fed. R. Bank. R. 7015. Under subsection (a)(2), "a party may amend its pleadings only with . . . the court's leave. The court should freely give leave *when justice so requires*." Bankruptcy Rule 7015(a)(2) (emphasis added). "The rule in our circuit is to allow a party to amend its complaint *unless the nonmovant demonstrates prejudice or bad faith*." *City of New York v. Group Health Inc.*, 649 F.3d 151, 157 (2d Cir. 2011) (citing *AEP Energy Servs. Gas Holdings Co. v. Bank of Am., N.A.*, 626 F.3d 699, 725 (2d Cir. 2010) (emphasis added; further citation omitted). *See also Longman v. Wachovia Bank, N.A.*, No. 3:09-CV-01669 (JCH), 2011 WL 4352102, *4 (D. Conn. Sept. 16, 2011)

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[1] This adversary proceeding is being tried with three other adversary proceedings: Adv. Pro. No. 10-5058 (*Coan, Trustee, v. Geddes, et al.*) and Adv. Pro. No. 10-5059 (*Coan, Trustee, v. Geddes, et al.*), the genesis of which was a single, state court action that upon the separate bankruptcy filings of the defendant and her husband, Ryan Geddes, was removed to this court and filed as separate adversary proceedings in each of those separate bankruptcy cases; and Adv. Pro. No. 10-5063 (*TA Operating, LLC v. Ryan Geddes*).

[2] The trial was originally scheduled for March 2, 2011 (*see* Pretrial Order dated Oct. 21, 2010 (doc. #13)). Per the First Amended Pretrial Order, the trial date was accelerated to Feb. 23, 2011. (*See* doc. #19.) Thereafter, the March 2, 2011 date was reinstated. (*See* Second Amended Pretrial Order (doc. #24).) After a February 22, 2011 status conference, the discovery deadline was extended to March 25, 2011 and the trial was re-scheduled to April 27, 2011. (*See* Feb. 22, 2011 ECF docket entry; Third Amended Pretrial Order (doc. #34).) The trial was again rescheduled to May 2011. The May trial was then rescheduled to June 22, 23, 29, and 30 at the request of one of the related defendant's counsel. (*See* Notice of Rescheduled Trial (doc. #47).)

("An important consideration when determining whether allowing [an] amendment would be prejudicial is the degree to which the amendment would delay the final disposition of the case.") (further citation omitted).

The defendant argues that the proposed amended complaint asserts two causes of action that do "not rely upon the same facts as those set forth in the Original Complaint." (Def.'s Amended Objection at 2.) That is, the proposed new counts "will require the introduction of facts completely different that what is necessary to establish" the plaintiff's original counts. (*Id.*) The argument is unavailing. The plaintiff proposes to incorporate into the new counts all of the facts that were plead in paragraphs 1 through 15 of the original complaint. While additional facts are alleged in the proposed amended counts, the defendant was on notice of the gravamen of the new counts from the plaintiff's required "Adversary Proceeding Cover Sheet", attached to the original complaint:

> Plaintiff objects to the dischargeability of debts as outlined in the bankruptcy petitions of the Defendants. As detailed in the Complaints, the petitions rely on fraudulent representations of fact and fail to property [*sic*] disclose available pertinent information.

(Adversary Proceeding Cover Sheet at 1 "Cause of Action"; *see also id.* at "Nature of Suit" (marking "*FRBP 7001(4) – Objection/Revocation of Discharge*" (emphasis added) to indicate the plaintiff's cause of action) (doc. #1).)

Even if the notice argument had merit, justice would require permitting the amendment. The plaintiff persuasively argues that its motion to amend was prompted by

> recent discovery, including the deposition of Michael Santoro[,] and Debtor Ryan Geddes' amended bankruptcy petition reflecting a previously undisclosed membership interest in an entity, whose sole member was previously Bonnie Geddes, deriving substantial pre and post-petition income.
>
> . . .

(Plaintiff's Motion to Amend Complaint at 1 (doc. #54).) The plaintiff does not seek further discovery and notes a new trial date has not yet been scheduled. Contrary to

the defendant's contention that she will be prejudiced if the plaintiff is permitted to bring these new counts, it is more likely that the plaintiff will be prejudiced (and, arguably, the defendant that will be rewarded) if the plaintiff is denied the opportunity to pursue the new counts based on facts that should have been disclosed by the defendant at the onset of her bankruptcy case, but have only just been discovered.

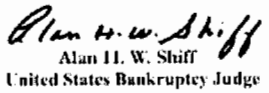
Moreover, the record of this proceeding demonstrates that the proposed amended complaint was not filed in bad faith, permitting the amendment will not delay the final disposition of this proceeding,[3] and allowing the amendment will not prejudice the defendant. Indeed, it is noteworthy that the defendant fails to demonstrate prejudice or bad faith warranting the denial of the plaintiff's motion to amend. *See Group Health Inc.*, 649 F.3d at 157.

CONCLUSION

Accordingly, IT IS ORDERED that the plaintiff's Motion to Amend Complaint is granted.

Dated this 24th day of October 2011 at Bridgeport, Connecticut.

By the court



Alan H. W. Shiff
United States Bankruptcy Judge

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[3] As noted *supra* at note 2, there have been several continuances of the trial dates, some at the request of the parties and at least one required by the court, and, in any event, time is not of the essence in this matter.