



SO ORDERED.

SIGNED this 7th day of February, 2024

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**



Suzanne H. Bauknight
CHIEF UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

ANTHONY BRYAN GOOLSBY
JENNIFER MARIE GOOLSBY

Debtors

ANN MOSTOLLER, TRUSTEE

Plaintiff

v.

JAMES BEECH

Defendant

Case No. 3:22-bk-30757-SHB
Chapter 7

Adv. Proc. No. 23-ap-03002-SHB

**MEMORANDUM AND ORDER
ON AMENDED MOTION TO AMEND**

Plaintiff initiated this adversary proceeding on January 4, 2023, through the filing of her Complaint seeking to avoid, pursuant to 11 U.S.C. § 548, the transfer of a 2017 Keystone 271 camper (“Camper”) to Defendant, who is the brother of Debtor Anthony Bryan Goolsby (“Debtor”), and for turnover of the Camper or \$11,500.00 (the Camper’s reasonable value) for

the benefit of Debtors' bankruptcy estate. [Doc. 1 at ¶ B.] Defendant filed an answer asserting that Plaintiff failed to establish a prime facie cause of action under § 548 and that the transfer was for value in excess of \$21,000.00. Defendant sought summary judgment, which was denied by the Memorandum and Order on Motion for Summary Judgment entered August 28, 2023 [Doc. 30], discovery ensued, and a scheduling conference is currently scheduled for February 29, 2024.

On January 12, 2024, Plaintiff filed an Amended Motion to Amend ("Motion to Amend") [Doc. 41], seeking approval under Federal Rule of Bankruptcy Procedure 7015 (incorporating therein Federal Rule of Civil Procedure 15) to amend her Complaint to include a cause of action under 11 U.S.C. § 549, stating that she learned during discovery that title to the Camper may not have been transferred pre-petition and that Debtor signed over title to the Camper to Defendant or another family member at some point.¹ On January 31, 2024, Defendant timely filed a response in opposition [Doc. 44], arguing that Plaintiff has known for more than eighteen months that the Camper was not transferred pre-petition, that allowing an amendment would delay and prejudice Defendant, and that the requested amended cause of action would not be successful on its merits.

Courts "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). "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." *Forman v. Davis*, 371 U.S. 178, 182 (1962). Whether to grant leave to amend, however, is within the

¹ Although the proposed amended complaint was attached thereto, the Motion to Amend was not accompanied by a brief as required by E.D. Tenn. LBR 7007-1(a). Noncompliance with the Local Rules should have resulted in a summary denial of the motion; however, because application of Rule 7015, incorporating therein Federal Rule of Civil Procedure 15, is straight-forward, the Court will rule without submission of the supporting brief. Likewise, Defendant is relieved of the requirement to file a brief in support of his response.

discretion of the court and should not be granted “in cases of undue delay, undue prejudice to the opposing party, bad faith, dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, or futility.” *Duggins v. Steak ‘N Shake, Inc.*, 195 F.3d 828, 834 (6th Cir. 1999) (citing *Forman*, 371 U.S. at 182)). Accordingly, “[t]o deny a motion to amend, a court must find ‘at least some significant showing of prejudice to the opponent’” but delay alone is not sufficient without more. *Id.* (quoting *Moore v. City of Paducah*, 790 F.2d 557, 562 (6th Cir. 1986) (affirming a court’s denial of leave to amend for “undue delay in missing deadlines and undue prejudice to the opponent in allowing amendment after the close of discovery”)); *see also Prater v. Ohio Educ. Ass’n*, 505 F.3d 437, 445 (6th Cir. 2007) (affirming the denial of leave to amend based on timing – after expiration of the deadline to amend, significant discovery, and fully briefed summary judgment motions – and futility because the requested additional count was parallel to an already pled claim). The court also may deny leave to amend when amendment would be futile. *See Forman*, 371 U.S. at 182 (including futility among other reasons for denial of leave to amend a pleading). “An amendment is futile if it could not withstand a motion to dismiss as amended.” *Flowers v. Benz (In re Benz)*, Case No. 22-10726, Adv. Proc. No. 22-1046, 2022 WL 14149574, at *4 (Bankr. N.D. Ohio Oct. 21, 2022) (citing *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000)).

Here, weighing the liberal standard against the reasons not to grant leave, the Court finds that leave should be granted. The facts and circumstances alleged in both the Complaint and the proposed amended complaint are the same except for the addition of paragraph 7, which alleges alternative relief under § 549, and the January 11, 2024 document date on the amended complaint. [*Compare* Doc. 1 *with* Doc. 41-1.] Defendant, therefore, has not suffered any sort of prejudice based on the addition of facts or allegations of which he would not have been aware

previously.

Defendant argues that the delay in seeking to amend the Complaint was unreasonable because Plaintiff knew as early as June 2022, that Defendant had not transferred title to the Camper pre-petition and that allowing her to amend to include a post-petition transfer claim would prejudice him because discovery is complete and the parties' scheduling conference is scheduled for February 29, 2024. Defendant also argues that Plaintiff has known through the discovery process that he is no longer in possession of the Camper, which he sold in 2023.

Defendant has failed to show how he would be prejudiced by the amendment. As previously stated, the facts alleged in the proposed amended complaint mirror those previously pled. In fact, as reflected in Plaintiff's Statement of Undisputed Facts filed on June 26, 2023, in connection with her response in opposition to Defendant's request for summary judgment, Plaintiff was in possession of an Accuprint vehicle record dated June 21, 2022, approximately one month after the bankruptcy case was filed, reflecting that the Camper remained titled in the name of Debtor when he filed his bankruptcy case on May 16, 2022. [*See* Doc. 23 at ¶ 2.] Defendant acknowledges this in his response by arguing that it proves an unreasonable delay.

With respect to the post-petition transfer, Plaintiff states in her Motion to Amend that she "learned through discovery that the debtor did at some point sign over the title to the Camper to his brother or another family member." [Doc. 41 at 2.] However, Plaintiff's discovery of additional facts and information during the discovery process is a wholly appropriate basis for seeking to amend, and the new information is not so far outside the scope of her previous allegations that Defendant would have been blindsided by the addition of a post-petition transfer claim. Moreover, Plaintiff's knowledge that the Camper title had not been transferred pre-petition is distinct from the information learned during discovery that the title was transferred

post-petition, thereby creating the § 549 cause of action.

This situation also differs from those in which the Sixth Circuit affirmed dismissal because there has been no pretrial conference or order entered, discovery has begun but the Court has not assigned a date by which it must be completed, and there is no trial scheduled at this time. Because the claim Plaintiff seeks to add would not appear to require a significant shift in discovery or strategy by either party, Defendant has not shown any real prejudice by the Court allowing the amendment. As stated by the Sixth Circuit, delay alone is not sufficient justification to deviate from the express liberality of Rule 15.

Concerning futility, Defendant argues that a § 549 cause of action “will not be successful on its merits because the Defendant paid equivalent value” for the Camper, “[t]he title was merely an incidental documentation” of the pre-petition transaction between Debtor and Defendant, and “Defendant does not have the property the Trustee seeks to recover under any theory including § 549 as it was transferred in 2023.” [Doc. 44 at ¶¶ 7-8.] Each of these objections to the amendment on grounds of futility fail because they raise issues of fact that would not be appropriate grounds for a Rule 12 motion to dismiss.

ORDER

For the forgoing reasons, the Court directs that the Amended Motion to Amend filed on January 12, 2024 [Doc. 41], is GRANTED. Plaintiff shall file and serve the Amended Complaint within five days.

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