



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: 8590 Sunset A-FS, LLC dba Cafe Primo, Debtor.	Case No.: 2:17-bk-24457-ER
Rosendo Gonzalez, Chapter 7 Trustee, Plaintiff,	Adv. No.: 2:19-ap-01495-ER
v.	MEMORANDUM OF DECISION AUTHORIZING CHAPTER 7 TRUSTEE TO FILE FIRST AMENDED COMPLAINT
Charlton Lui, individually and as Trustee of Catalyst Trust, the Catalyst Trust, CP WW Ventures Inc., CTC Investment Holdings LLC, Primo Hospitality Group, Inc., and Hovahannes Tshavrushyan, Defendants.	[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

At issue is whether the Chapter 7 Trustee (the “Trustee”) should be given leave to file a First Amended Complaint.¹ For the reasons set forth below, the Court will grant the Trustee leave to amend, and the First Amended Complaint shall be the operative pleading in this action.

¹ The Court reviewed the following papers in adjudicating this matter:

- 1) Trustee’s Response to Order Setting Briefing Schedule on Whether Chapter 7 Trustee Will Be Given Leave to File the First Amended Complaint or, in the Alternative, Motion for Leave to File First Amended Complaint [Doc. No. 36];
- 2) Opposition to the Trustee’s Request for Leave to Amend [Doc. No. 37]; and

I. Procedural Background

On November 22, 2019, the Chapter 7 Trustee (the “Trustee”) filed a complaint seeking to avoid and recover fraudulent and preferential transfers (the “Complaint”) [Doc. No. 1] against Charlton Lui, individually and as Trustee of the Catalyst Trust, the Catalyst Trust, CP WW Ventures, Inc., CTC Investment Holdings, LLC, Primo Hospitality Group, Inc., and Hovhannes Tshavrushyan (collectively, the “Defendants”).

On December 26, 2019, Defendant Hovhannes Tshavrushyan moved to dismiss the Complaint, for failure to state a claim upon which relief can be granted (the “Tshavrushyan Motion to Dismiss”) [Doc. No. 9]. The hearing on the Tshavrushyan Motion to Dismiss was initially set for February 4, 2020, but was subsequently continued to April 15, 2020, pursuant to a Court-approved stipulation (the “Stipulation”) [Doc. No. 11]. The purpose of the Stipulation was to provide the parties time to exchange informal discovery, “both to provide the Trustee with additional facts which may enable him to provide more specific allegations in an amended complaint and in the hopes of early settlement.” Stipulation at ¶ F.

On February 21, 2020, Defendant Charlton Lui moved to dismiss the Complaint, for failure to state a claim upon which relief can be granted (the “First Lui Motion to Dismiss”) [Doc. No. 14]. The hearing on the First Lui Motion to Dismiss was initially set for April 22, 2020.

On April 14, 2020, the Trustee filed a First Amended Complaint (the “First Amended Complaint”) [Doc. No. 20]. The Trustee did not obtain either the Court’s leave or the opposing parties’ written consent prior to filing the First Amended Complaint.

On April 14, 2020, the Court entered an *Order (1) Establishing Procedures to Determine Whether the Trustee Shall be Granted Leave to File the First Amended Complaint, (2) Taking the Hearings on Motions to Dismiss Off Calendar, and (3) Setting Continued Status Conference for June 16, 2020, at 10:00 a.m.* (the “Procedures Order”) [Doc. No. 19]. The Procedures Order explained that under Civil Rule 15(a), the Trustee was required to obtain either the Court’s leave or the opposing parties’ written consent prior to filing the First Amended Complaint. The Procedures Order stated that Defendants would be deemed to have consented to the filing of the First Amended Complaint unless they filed an objection by April 28, 2020. Finally, the Procedures Order took the hearings on the Tshavrushyan Motion to Dismiss and the First Lui Motion to Dismiss off calendar, based on the fact that both motions would be rendered moot if the Trustee was given leave to file the First Amended Complaint.

On April 20, 2020, Tshavrushyan objected to the filing of the First Amended Complaint and requested that the hearing on the Tshavrushyan Motion to Dismiss be restored to the calendar. Doc. No. 29. On May 1, 2020, Lui moved to dismiss the First Amended Complaint (the “Second Lui Motion to Dismiss”) [Doc. No. 30].

On May 4, 2020, the Court entered an *Order: (1) Setting Briefing Schedule on Whether Chapter 7 Trustee Will Be Given Leave to File the First Amended Complaint and (2) Taking Off Calendar Hearing on Second Lui Motion to Dismiss Pending Determination of Whether the Complaint or the First Amended Complaint Will Be the Operative Pleading* [Doc. No. 32] (the “Briefing Order”). The Briefing Order stated:

Adjudication of this proceeding cannot move forward until the Court determines whether the Trustee will be given leave to file the First Amended Complaint. The Tshavrushyan Motion to Dismiss is directed at the Complaint, whereas the Second Lui Motion to

3) Trustee’s Reply to Defendant Tshavrushyan’s Opposition to Trustee’s Request for Leave to File First Amended Complaint [Doc. No. 38].

Dismiss is directed at the First Amended Complaint. Until it has been determined whether the Complaint or the First Amended Complaint will be the operative pleading, adjudication of either of the motions would be an inefficient use of judicial resources.

Briefing Order at ¶ 2.

The Trustee asserts that under the liberal standard set forth in Civil Rule 15(a)(2), he should be given leave to file the First Amended Complaint. The Trustee contends that if the Tshavrushyan Motion to Dismiss were restored to the calendar and granted, the Trustee would most likely be given leave to file the First Amended Complaint in any event.

Tshavrushyan opposes leave to amend. He asserts that the Tshavrushyan Motion to Dismiss should be heard because he is “trying to narrow down and exclude causes of action that the Trustee alleges in her complaint that are unsubstantiated and do not meet the required level of pleading.”² If leave to amend is granted, Tshavrushyan requests the opportunity to file a motion to dismiss directed at the First Amended Complaint.

II. Findings and Conclusions

Civil Rule 15(a)(2) provides that subsequent to the filing of an answer, a complaint may be amended “only with the opposing party’s written consent or with the court’s leave.” The Court is required to “freely give leave when justice so requires.” Civil Rule 15(a)(2). However, “[l]eave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay.” *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

Authorizing the Trustee to file the First Amended Complaint is in the interests of justice and judicial efficiency. The First Amended Complaint contains additional detail regarding transfers which the Trustee alleges are avoidable. Allowing Tshavrushyan to file a motion to dismiss directed at the First Amended Complaint is a more efficient means of testing the sufficiency of the Trustee’s claims than adjudicating the Tshavrushyan Motion to Dismiss, which is directed at the less detailed Complaint. In addition, although the Trustee did not comply with the requirements of Civil Rule 15, the Court finds that the Trustee’s attempted filing of the First Amended Complaint was not in bad faith. The Trustee presented the First Amended Complaint for filing after engaging in informal discovery with the parties. The Trustee’s objective was to present a complaint containing more specific allegations. These efforts inured to the benefit of all parties. The First Amended Complaint clarifies the misconduct alleged, making it easier for Tshavrushyan and Lui to present their defenses.

Tshavrushyan is not unduly prejudiced by the filing of the First Amended Complaint, since he will have the opportunity to file a renewed motion to dismiss. Based upon its review of the First Amended Complaint, the Court finds that granting leave to amend does not constitute an exercise in futility. Finally, allowing leave to amend does not create undue delay. To the contrary, granting leave to amend will most likely expedite litigation of this action. If the Court declined to permit the filing of the First Amended Complaint, it would be required to adjudicate motions to dismiss directed at the less detailed Complaint. If the Court found that the Complaint failed to state claims upon which relief could be granted, it would be required to grant the Trustee leave to amend unless it found that the “proposed amendments would fail to cure the pleading deficiencies and amendment would be futile.” *Cervantes v. Countrywide Home Loans*,

² Doc. No. 37 at ¶ 2.

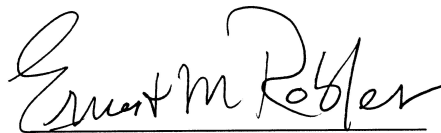
Inc., 656 F.3d 1034, 1041 (9th Cir. 2011). It is unlikely that either of the Defendants could satisfy the difficult standard of futility of amendment. Therefore, if the Court declined to permit the Trustee to file the First Amended Complaint at this juncture, it would most likely be required to authorize the filing of an amended complaint after adjudicating the motions to dismiss directed at the Complaint.

III. Conclusion

Based upon the foregoing, the Trustee is given leave to file the First Amended Complaint. The First Amended Complaint shall be deemed filed as of June 15, 2020, the date of issuance of this Memorandum of Decision. The Court will enter an order consistent with this Memorandum of Decision.

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Date: June 15, 2020

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge