

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	
LOUIS J. PEARLMAN, ET AL.,)	Case No. 6:07-bk-00761-KSJ
Debtors.)	Chapter 7
_____)	
)	
SONEET R. KAPILA, as CHAPTER 11)	
TRUSTEE)	Adv. P. No. 6:09-ap-00718-KSJ
)	
Plaintiff)	
)	
v.)	
)	
WATSKY, MARTINEZ & COMPANY,)	
CPA's, P.A., n/k/a/ MARTINEZ, OLSON)	
& ASSOCIATES CPAS, P.A.)	
_____)	

ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND

This case is one of many adversary proceedings connected with the Ponzi scheme orchestrated by the Louis J. Pearlman and the related Debtors. On April 5, 2009, the Chapter 11 Trustee, Soneet Kapila, filed a complaint against the Defendant, one of the Debtors' accounting firms, seeking to avoid and recover *constructively* fraudulent transfers under the Bankruptcy Code, Florida's Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, and for unjust enrichment.¹ After the Defendant answered, the Plaintiff sought to amend the complaint to add additional transfers to be recovered.² The Court granted this request on May 12, 2009.³

¹ Doc. No. 1.

² Doc. No. 6.

³ Doc. No. 7.

Now, more than three years have passed. The Plaintiff again seeks to amend the complaint against the Defendant, this time to add an *actual* fraud cause of action.⁴ As the Plaintiff admits, after the Court substantively consolidated the bankruptcy estate of the jointly administered Debtors,⁵ the constructive fraud claims were eliminated as viable causes of action. The Trustee seeks to change his litigation theory against the Defendant now to recover under a totally new theory asserting actual fraud.

Federal Rule of Civil Procedure 15(a) governs a party's right to amend pleadings and provides that, after any responsive pleading has been filed, subsequent amendments are permitted only with the leave of the court. Whether to grant leave to amend lies within the court's sound discretion.⁶ Complete discretion may be a misnomer, however, in that Rule 15(a) goes on to state that such leave "shall be freely given when justice so requires."⁷ This liberal policy of permitting amendments facilitates the resolution of claims on the merits and "circumscribes the exercise of the trial court's discretion 'unless there is a substantial reason to deny leave to amend.'"⁸ Such substantial reasons that might justify denying the amendment of a pleading include "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, and undue prejudice to the opposing party."⁹

The Court finds that further amendment to the complaint would cause undue delay in this adversary proceeding that already has been pending for four years. An amendment also would unduly prejudice the Defendant, who has spent time and money over the last four years taking discovery and defending a known cause of action. For over two years, the Plaintiff has had

⁴ Doc. No. 23.

⁵ Doc. Nos. 3489 & 3490 (Memorandum Opinion and Order granting substantive consolidation of the Joint Debtors' estates).

⁶ *Best Canvas Products & Supplies, Inc. v. Ploof Truck Lines, Inc.*, 713 F.2d 618 (11th Cir.1983).

⁷ *Espey v. Wainwright*, 734 F.2d 748, 750 (11th Cir. 1984) (citing *Dussouy v. Gulf Coast Investment Corp.*, 660 F.2d 594, 597 (5th Cir.1981)).

⁸ *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d at 598.

⁹ *Espey v. Wainwright*, 734 F.2d at 750 (citations omitted).

possession of and been aware of the information he now relies on to radically change his legal course of action, yet he waited until after his pleaded causes of action became moot to seek the requested amendment and to add a new cause of action. This dilatory tactic is highly prejudicial to the Defendant. The Plaintiff's request to amend the complaint is denied. Accordingly, it is

ORDERED:

1. The Trustee's Motion for Leave to Amend the Complaint (Doc. No. 23) is denied.
2. A Pretrial Conference to determine whether any further action in this adversary proceeding is needed is set for 4/11/13 at 2:00 p.m. at Courtroom 6A, 6th Floor, George C. Young Courthouse, 400 W. Washington Street, Orlando, Florida 32801.

DONE AND ORDERED on February 22, 2013, in Orlando, Florida.



M.W.M.

Karen S. Jennemann
Chief United States Bankruptcy Judge