

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 11-14547)	
)	
DARREN LEE SIMMONS)	
)	
Debtor)	
)	
)	
CROSSROADS BANK)	
)	
Plaintiff)	
)	
vs.)	PROC. NO. 12-1111
)	
DARREN LEE SIMMONS)	
)	
Defendant)	

**DECISION AND ORDER ON MOTION FOR LEAVE
TO FILE THIRD AMENDED COMPLAINT**

At Fort Wayne, Indiana, on July 18, 2013.

This matter is before the court on the plaintiff's motion for leave to file a third amended complaint. Leave to amend is to be given freely, Fed. R. Civ. P. Rule 15(a)(2), and is a matter committed to the court's discretion. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330, 91 S. Ct. 795, 802 (1971); Hi-Lite Products Co. v. American Home Products Corp., 11 F.3d 1402, 1411 (7th Cir. 1993); Campbell v. Ingersoll Mill. Mach. Co., 893 F.2d 925, 927 (7th Cir. 1990). Nonetheless, it should be denied where the amendment asserts additional claims which are barred by the statute of limitations, unless the amendment relates back under Rule 15(c). See e.g., Woods v. Indiana University-Purdue University at Indianapolis, 996 F.2d 880, 884-85 (7th Cir. 1993). That is the question presented by plaintiff's motion and the defendant's objection to it.

So long as the amendment arises out of the same conduct, transaction, or occurrence that

forms the basis of the original claim, it will relate back to the date of the original pleading, Fed. R. Civ. P. Rule 15(c)(1)(B). This occurs if there is a sufficient factual nexus between the original and the amended pleadings, such that the original gave fair notice of the factual situation from which the amended pleadings arise. In re Carmell, 424 B.R. 401, 412 (Bankr. N.D. Ill. 2010). Stated somewhat differently, the question is whether “a reasonably prudent person ought to have been able to anticipate or should have expected that the character of the originally pleaded claim might be altered or other aspects of the conduct, transaction, or occurrence set forth in the original pleading might be called into question.” 6A Fed. Prac. & Proc. Civ. § 1497 (3rd ed.).

This adversary proceeding seeks to deny the debtor’s discharge and determine the dischargeability of the debt due the plaintiff.¹ The current complaint is in three counts. Count I seeks denial of the discharge, pursuant to § 727(a)(4), as the result of a variety false oaths in the schedules and statement of financial affairs in the debtor’s underlying bankruptcy. Count II seeks denial of discharge, pursuant to § 727(a)(7), as the result of fraudulent transfers made in connection with a separate bankruptcy case involving The Simmons Company, an LLC of which the debtor was a member and manager. Count III seeks a declaration of non-dischargeability, as a willful and malicious injury, due to the sale of a bulldozer securing plaintiff’s claim and the improper disposition of the sale proceeds. The proposed amended complaint would allege additional false oaths in both count one (paragraphs 7.8-7.34) and count two (paragraphs 20-21). Although conceding that at least some of the new allegations may not be inappropriate, see, Defendant’s Memorandum, filed May 31, 2013, p. 5, the debtor opposes the proposed amendment arguing it

¹Plaintiff’s deadline for asserting such claims expired on July 10, 2012. Matter of Simmons, Case No. 11-14547, Order dated May 16, 2012.

improperly asserts new claims which are otherwise time barred.

As for the proposed changes to count I, the court has little trouble concluding they arise out of the same conduct, transaction, or occurrence that forms the basis for the original claim. That claim is based upon the contention that the debtor made a number of false oaths in his bankruptcy schedules and statement of financial affairs. The amended complaint simply alleges more of the same and the new allegations all relate to the content, execution, and testimony concerning those documents. It is simply more fabric, cut from the same cloth, and it is hardly surprising that, having alleged some false oaths in the original complaint, the plaintiff would find more of the same to complain about as the proceedings mature. To accept the defendant's argument that the plaintiff knew about and could or should have included the new details in the previous complaint would, in effect, be an inappropriate return to the fact-based pleading standards that predated the current rules of procedure.² See, Alexander v. United States, __ F.3d __, 2013 WL 3215667 * 2 (7th Cir. 2013). Indeed, the new allegations are so tied to the present claim that amending the complaint may not be necessary at all. See, In re Fidanovski, 347 B.R. 343, 348-49 (Bankr. N.D. Ill. 2013) (having unearthed additional facts to support an existing claim, the plaintiff does not have to amend its complaint as the price of proving them at trial). See also, In re Kruszynski, 150 B.R. 209, 212 (Bankr. N.D. Ill. 1993) (test is whether evidence regarding the new allegations could have been introduced under the original complaint, liberally construed). Nonetheless, a formal amendment

²A claim is sufficiently stated when the facts alleged, accepted as true, demonstrate a right to relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009); Bell Atlantic v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007). Satisfying this standard does not require detailed factual allegations, Alexander v. United States, __ F.3d __, 2013 WL 3215667 * 2 – a short, plain statement will do, Fed R. Civ P. Rule 8(a)(2) – so that one is not required to allege all the facts that may later be offered to prove its claim, and is actually discouraged from doing so. In re Fidanovski, 347 B.R. 343, 348 (Bankr. N.D. Ill. 2013).

may help to ensure that all involved have a similar understanding of what is and is not at issue.

The proposed changes to Count II do not fare so well. That count is based upon the debtor's involvement with fraudulent transfers made by The Simmons Company, whose case is pending in the Southern District of Indiana. The allegations the plaintiff wants to add to Count II are that the statement of financial affairs filed in that bankruptcy case, which the debtor signed as the LLC's member and manager, contains false oaths because all payments to insiders were not disclosed. These new allegations are not sufficiently related to the fraudulent transfers upon which Count II is based and involve a completely different kind of conduct. The amendment would not be a variation on the original theme, based upon the same core of facts; but something entirely new, based upon materially different facts. See, In re Carmell, 424 B.R. 401, 412-13 (Bankr. N.D. Ill. 2010); Kruszynski, 150 B.R. at 211-12. As such it would not be proper.

Plaintiff's motion for leave to file an amended complaint is GRANTED, in part, and DENIED, in part. Plaintiff may file and serve a third amended complaint amending Count I as proposed in its motion. The proposed amendment to Count II is denied.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court