



IT IS ORDERED as set forth below:

Date: August 20, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|------------------------------------|---|-------------------------------|
| In re: | : | |
| | : | |
| JAMES QUARTERMAN and | : | BANKRUPTCY CASE NUMBER |
| FELICIA LACONYA QUARTERMAN, | : | 09-65818-MGD |
| | : | |
| Debtors. | : | |
| | : | |
| DOUGLAS COUNTY BOARD | : | ADVERSARY CASE NUMBER |
| OF COMMISSIONERS, | : | 09-06399-MGD |
| | : | |
| Plaintiff, | : | |
| v. | : | CHAPTER 7 |
| | : | |
| JAMES QUARTERMAN, | : | |
| | : | |
| Defendant. | : | |

**ORDER DENYING DEFENDANT’S MOTIONS TO AMEND
AND DISMISSING DEFENDANT’S COUNTERCLAIM**

The above-styled adversary proceeding is before the Court on Defendant James Quarterman’s (“Defendant”) Motion to Correct and Amend Pleading and Memorandum in Support (“Motion to Correct”), which Defendant filed on April 16, 2010. (Docket No. 19). On

the same date, Defendant filed a Motion for Leave to Amend Cross Complaint to Clarify Actual Damage and Civil Penalty Under 11 U.S.C. § 105 Damage Claim in Violation of 11 U.S.C. § 362(h) (“Motion to Amend”). (Docket No. 20). On April 27, 2010, Plaintiff Douglas County Board of Commissioners (“Plaintiff”) filed a Consolidated Response in Opposition to Defendant’s Motions for Leave to Amend Pleadings. (Docket No. 23). The Court has considered all the arguments of counsel and finds that Defendant is not entitled to amend his pleading or add new parties. For the reasons set forth herein, Defendant’s Motions are DENIED and Defendant’s late-filed amendment to his pleading is therefore improper.

I. FACTS

Defendant filed his Chapter 7 petition on March 3, 2009. (Bankr. Case No. 09-65818-MGD). Plaintiff filed the present adversary proceeding on July 20, 2009, and Defendant filed his Answer on August 20, 2009. On September 23, 2009, Plaintiff filed its Report of Rule 26(f) Conference (“Conference Report”), in which Plaintiff reported that the parties had conducted a Rule 26(f) Conference. (Docket No. 5). While Defendant did attend the Rule 26(f) Conference, Defendant did not consent to filing a proposed joint report and therefore Plaintiff filed the report solely on its own behalf. (*Id.*). Along with the Conference Report, Plaintiff filed a certificate of service indicating that Plaintiff properly served Defendant with the Conference Report.

Defendant filed no response or opposition to the Conference Report and the Court entered a Scheduling Order on October 14, 2009, that approved the time limits and provisions proposed in the Conference Report. (Docket No. 7). Defendant was served with the Scheduling Order by mail on October 16, 2009. (Docket No. 9). Among the provisions the Court approved was a requirement for Plaintiff and Defendant to file all motions to join additional parties or to amend

the pleadings on or before December 31, 2009. (Docket No. 5 at ¶ 3(b)–(c)). Additionally, the parties were given through February 26, 2010, to file all dispositive motions. (*Id.* at ¶ 3(d)). Neither party filed motions to amend pleadings or to add parties by the December 31, 2009, deadline. Neither party moved to extend the deadline for filing motions to amend.

Plaintiff filed its Motion for Summary Judgment on February 26, 2010. (Docket No. 10). Defendant filed an “Answer” to Plaintiff’s Motion for Summary Judgment and filed a Complaint for Exemplary Damages, Injunctive Relief and Motion for Summary Judgment on March 16, 2010 (“Defendant’s Complaint”). (Docket Nos. 11–12). On March 30, 2010, Plaintiff and Ben Mathis, a third party named as a defendant in Defendant’s Complaint, each filed a Motion to Dismiss Defendant’s Complaint. (Docket Nos. 13, 15). On April 16, 2010, before any of the prior motions were ripe for the Court’s review, Defendant filed his Motions to Correct and Amend. (Docket Nos. 19–20). Finally, on April 27, 2010, Plaintiff filed its objection to Defendant’s Motions to Correct and Amend. (Docket No. 23). Plaintiff objects to Defendant’s Motions on the grounds that they are untimely, that it is improper to join the proposed new defendants, and that Defendant’s Complaint, though improperly filed, was sufficiently clear with regard to the damages sought.

The Court’s Scheduling Order provided the parties with clearly identified dates by which they must have filed specific documents. Defendant was served properly with the Court’s Scheduling Order and therefore had sufficient notice of its provisions. Defendant knew or should have known that he had through December 31, 2009, to amend his pleadings and add parties and through February 26, 2010, to file dispositive motions. Despite having notice of the December 31, 2009, deadline, Defendant waited until March of 2010 to file his Complaint and until April of

2010 to file his additional Motions. As Defendant has waited until after the deadlines set in the Scheduling Order, he cannot amend his pleading, add parties, or file a dispositive motion without the permission of the Court.

It appears from the contents of Defendant's filed documents that Defendant filed his Motions to seek authority to file his Complaint, which is actually a late-filed amendment of his pleadings. In his Complaint, Defendant appears to assert counterclaims¹ against Plaintiff and to add parties, namely Judge David Emerson, Judge Grant Brantley, and attorney Ben Mathis, as additional defendants to his counterclaims. (Docket No. 12). In his Motion to Correct, Defendant seeks to add Judge David Emerson, Judge Grant Brantley, and Ben Mathis as defendants to his Complaint. (Docket No. 19, ¶ 3). In his Motion to Amend, Defendant seeks "to clarify the actual damages sought and civil penalties" related to his counterclaims. (Docket No. 20, ¶ 1). Given that Defendant's Motions seek authority to pursue precisely the action Defendant took in filing his Complaint and that the Complaint was filed beyond the time line provided by the Court for amending pleadings and adding parties, the Court construes those Motions as requests to amend the Scheduling Order deadline, and construes Defendant's Complaint as an amended pleading that was filed late and without the permission of the Court.

II. APPLICATION OF LAW

¹ Defendant refers to himself as "cross-complainant" and attached a "Supplemental Brief of Cross Complaint" to his Complaint. (Docket No. 12). Federal Rule of Civil Procedure 13, as made applicable by Federal Rule of Bankruptcy Procedure 7013, defines a crossclaim as a claim brought by one party against its coparty. Fed. R. Civ. Pro. 13(g). Defendant does not have any coparties. Accordingly, the Court here views Defendant's Complaint as asserting counterclaims against Plaintiff.

Federal Rule of Civil Procedure 15, which is applicable in adversary procedures pursuant to Federal Rule of Bankruptcy Procedure 7015, provides that when a party requests to amend its complaint “[t]he court should freely give leave when justice so requires.” “[W]hen a motion to amend is filed after a scheduling order deadline, Rule 16 is the proper guide for determining whether a party’s delay may be excused.” *Sosa v. Airprint Sys.*, 133 F.3d 1417, 1418 fn 2 (11th Cir. 1998). Federal Rule of Civil Procedure 16, made applicable herein pursuant to Federal Rule of Bankruptcy Procedure 7016, sets a standard of “good cause” for parties to modify a scheduling order. Fed. R. Civ. P. 16(b)(4). A showing of good cause is particularly appropriate when, as here, the Court’s Scheduling Order provides a generous time period for the filing of motions to amend pleadings and add parties. Whereas the Federal Rules of Civil Procedure generally permit parties to amend pleadings once within twenty-one days of serving an original pleading, the Court gave the parties four months from the date of Defendant’s answer to file motions to amend. *See* Fed. R. Civ. P. 17(a)(1)(A).

When a party fails to diligently pursue a claim, an attempt to act outside the time frame of the scheduling order is not supported by good cause. *Sosa v. Airprint Sys.*, 133 F.3d at 1419. A party has failed to diligently pursue a claim when the information supporting the claim was known to the party before the case was filed and the party only sought to add the claim after the deadlines set in a scheduling order had expired. *Id.* The Scheduling Order required the parties to file all motions to amend pleadings and to add parties by December 31, 2009. In his Motion to Correct, Defendant alleges that “the actions and litigation of the cross complaint didn’t happen and were not completed until the end of January 2010,” which was after the Court’s December 2009 deadline for motions to amend the pleadings. (Docket No. 19, ¶ 29). Defendant’s

Complaint, however, alleges conduct from the year 2006 through early December of 2009. Most of the alleged conduct was known to Defendant prior to his original Answer filed in this case. The facts alleged to have occurred after Defendant's Answer was filed all occurred prior to the December 31, 2009, deadline in the Court's Scheduling Order. Defendant's Complaint, which is an amended pleading, was not filed until March 16, 2010, and Defendant did not provide any reason or excuse for his late filing. It appears, therefore, that Defendant failed to diligently pursue his claims and has failed to show good cause for his delay in amending his pleading that would satisfy the requirements of Rule 16.

Even if the Court were to evaluate Defendant's Motions under the more lenient Rule 15 standard, Defendant's Motions should be denied. The policy behind Rule 15 is to "liberally permit[] amendments" and leave should be granted "unless a substantial reason exists to deny leave to amend." *Shipner v. Eastern Air Lines, Inc.*, 868 F.2d 401, 407 (11th Cir. 1989). Undue delay, undue prejudice to the opposing party, and the futility of a proposed amendment are each sufficient reasons for denial of a motion to amend. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). A party seeking to amend a pleading to include a claim based on facts known prior to the filing of the case must offer an explanation for the failure to include the claim, or the "unexplained tardiness constitutes undue delay." *Carruthers v. BSA Adver., Inc.*, 357 F.3d 1213, 1218 (11th Cir. 2004). Defendant's claim in his Motion to Correct that the alleged actions did not conclude until January of 2010 is insufficient explanation for his delay in amending his pleading. Defendant's Complaint alleges actions from as early as 2006 and Defendant does not allege that he recently learned of those actions. Additionally, if the actions that concluded in January of 2010 are the actions Defendant's Complaint alleges occurred in December of 2009,

then Defendant could have requested an extension of the deadline for filing motions to amend in order to address those issues. Defendant did not request an extension despite his knowledge of the alleged acts. Defendant's tardiness, therefore, constitutes undue delay sufficient for the Court to deny his Motions.

It also is appropriate to deny a motion to amend when it is filed after the parties have submitted motions for summary judgment. *See Layfield v. Bill Heard Chevrolet Co.*, 607 F.2d 1097, 1099 (5th Cir. 1979). Here, the Court set a final deadline for the filing of dispositive motions. Defendant's untimely Complaint and subsequent Motions were all filed after that deadline and after Plaintiff timely filed its Motion for Summary Judgment. Plaintiff's Motion for Summary Judgment is ripe for the Court's review and would, if granted, fully resolve the issues in this adversary proceeding. For these reasons, granting Defendant's request to amend his pleadings at this late date would constitute undue prejudice to Plaintiff and could unduly delay the proceedings.

"A proposed amendment may be denied for futility 'when the complaint as amended would still be properly dismissed.'" *Coventry First, LLC v. McCarty*, 605 F.3d 865, 865 (11th Cir. 2010) (quoting *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007)). Defendant's Motions should be denied because Defendant's amended pleading would still be properly dismissed. Defendant's proposed counterclaims appear to relate to a state court matter in which Defendant was contesting an election. (Docket No. 20, ¶ 17). Those matters are not within the jurisdiction of the Bankruptcy Court. Additionally, the parties Defendant proposes to add to the case are outside the jurisdiction of this Court. For these reasons, if the Court were to grant Defendant's Motions and permit Defendant to amend his pleading, the counterclaims against Plaintiff and all

claims against the proposed new parties would all be properly dismissed. It is, therefore, futile to grant Defendant's Motions and appropriate to deny the Motions now. Accordingly, it is

ORDERED that Defendant's Motion to Correct and Amend Pleading (Docket No. 19) is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Motion for Leave to Amend Cross Complaint (Docket No. 20) is **DENIED**.

IT IS FURTHER ORDERED that Defendant's Complaint for Exemplary Damages, Injunctive Relief and Motion for Summary Judgment (Docket No. 12) is **DISMISSED** as untimely.

The Clerk shall serve a copy of this Order upon the Plaintiff, counsel for Plaintiff, the Defendants, and counsel for Defendants.

END OF DOCUMENT