



IT IS ORDERED as set forth below:

Date: February 02, 2009

Mary Grace Diehl

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

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

In re:

**TITAN FINANCIAL GROUP II, LLC,
*et. al.,***

Debtor.

**TITAN FINANCIAL GROUP II, LLC,
*et. al.,***

Plaintiff,

v.

**DELTA FAMILY PARTNERSHIPS, L.P.,
CAPITAL FAMILY PARTNERSHIP,
L.P., CITIZENS FAMILY
PARTNERSHIP, L.P., HEWETT
MANAGEMENT, INC., CITIZENS
REINSURANCE LTD., DELTA BOONE
LIFE INSURANCE COMPANY, LTD.,
LIFE OF GEORGIA REINSURANCE,
LTD., and BENNIE E. HEWETT,**

Defendants.

**BANKRUPTCY CASE NUMBER
06-70852-MGD**

**ADVERSARY CASE NUMBER
06-06400-MGD**

CHAPTER 7

**ORDER GRANTING PLAINTIFF’S MOTION TO AMEND
COMPLAINT AND TO EXTEND DISCOVERY PERIOD**

The above-styled adversary proceeding is before the Court on Plaintiff Robert Trauner’s, as Chapter 7 Trustee of Titan Financial Group II, LLC, (“Plaintiff”) Motion to Amend Complaint for Avoidance and Recovery of Fraudulent Transfers and Subordination of Claims and to Extend Discovery Period (“Motion”). (Docket No. 31). Plaintiff filed his Motion on July 24, 2008, along with a supporting brief. (Docket No. 32). The parties consented to extending the time for Delta Family Partnership, L.P., Capital Family Partnership, L.P., Citizens Family Partnership, L.P., Hewett Management, Inc., Citizens Reinsurance Ltd, Delta Boone Life Insurance Company, Ltd., Life of Georgia Reinsurance, Ltd, and Bennie E. Hewett (collectively, “Defendants”) to file a response to Plaintiff’s Motion. (Docket No. 42, 43). Prior to Defendants’ filing any response, Plaintiff filed his Amended Motion to Amend (“Amended Motion”) on September 2, 2008. (Docket No. 40). Defendants filed an Objection and Memorandum of Law in Opposition to Plaintiff’s Motion (“Objection”) on September 19, 2008. (Docket No. 45). On October 7, 2008, Plaintiff filed a Reply to Defendants’ Objection (“Reply”). (Docket No. 47). No hearing being necessary on the matter, the Court has considered all the arguments of counsel and finds that Plaintiff is entitled to amend his complaint to join additional parties and to add new claims. Defendants’ Objection did not oppose Plaintiff’s request to extend the discovery period.

I. FACTS

Titan Financial Group II, LLC, III Creek Financial Group, Inc., Capital Loan Company of Gainesville, Inc., Delta Management of Aiken, Inc., Berrien Financial Services, Inc., Titan Financial Group, LLC, and Titan Financial Group Texas I, LLC, (collectively, “Debtors”) each

filed Chapter 11 petitions on September 3, 2006. (Case Nos. 06-70852, 06-70854, 06-70855, 06-70856, 06-70858, 06-70859, 06-70863). The Court ordered joint administration of all these cases under Case No. 06-70852. (Case No. 06-70852, Docket No. 49). On September 18, 2006, Debtors filed the present adversary proceeding. Just over a month later, on October 27, 2006, Debtors' cases were converted to Chapter 7 and Plaintiff was appointed Chapter 7 Trustee. (Case No. 06-70852, Docket No. 220, 221). Following various requests by Defendants for extensions of time, and consent orders granting those extensions, Defendants filed their Answer to Complaint on March 1, 2007. (Docket No. 19). Following a joint stipulation to extend time for his reply, Plaintiff filed his Reply to Counterclaim on April 23, 2007. (Docket No. 21). From August 11, 2007, through September 30, 2008, the parties conducted discovery with multiple consent orders, and orders following unopposed motions, extending the discovery period. (Docket No. 23, 26, 29, 35). On August 24, 2008, Plaintiff filed his present Motion. (Docket No. 31). Defendant Bennie Hewett filed a final Motion to Extend Time to Complete Discovery on September 1, 2008, which was followed by a final Consent Order Extending Time. (Docket No. 34, 35).

The original complaint, which was filed before Debtors' cases were converted to Chapter 7 and, therefore, before Plaintiff was assigned as Chapter 7 Trustee, raised claims of fraudulent transfers, recovery of fraudulent transfers, avoidance of liens, avoidance of an option agreement, and breach of fiduciary duty. Under Plaintiff's Amended Motion, Plaintiff seeks to add several defendants, to dismiss some of the prior claims against the existing Defendants, to revise some of the prior claims, and to add newly discovered claims against the existing Defendants. (Docket No. 40, § 1). To justify the joinder of new defendants, Plaintiff alleges that he possesses claims

against Benjamin Jason Hewett, William Roger Hewett, Julie Rebecca Hewett, and Matthew Taylor Hewett (collectively, “Proposed Defendants”), who are limited partners of Defendants Delta Family Partnership, L.P., Capital Family Partnership, L.P., and Citizens Family Partnershi, L.P., and who may be mediate and immediate transferees of those Defendants. (Docket No. 40, § 2). Finally, Plaintiff seeks to extend the discovery period for four months from the date of Defendants’ answer to the Amended Complaint.

Defendants object to Plaintiff’s Amended Motion on two grounds. First, Defendants argue that Plaintiff should not be permitted to join the Proposed Defendants because the Proposed Defendants are not indispensable parties and that any claims against them will not include common questions of law or fact compared to Plaintiff’s claims against Defendants. Second, Defendants argue that Plaintiff should not be permitted to add new claims against Defendants because of the delay between the filing of the original Complaint and Plaintiff’s Motion.

II. JOINDER OF PROPOSED DEFENDANTS

Joinder of parties in adversary proceedings is governed by Federal Rules of Bankruptcy Procedure 7019, 7020, and 7021, which in turn apply Federal Rules of Civil Procedure 19, 20, and 21. Rule 21 states that “the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. Rule 19 governs which parties must be joined out of necessity and Rule 20 addresses the permissive joinder of parties. While Plaintiff argues that the Proposed Defendants should be joined as necessary parties under Rule 19, the Court finds it unnecessary to determine whether the Proposed Defendants are necessary parties if they may be joined under Rule 20.

Rule 20 provides the Court with a two-part test to determine whether parties may be

joined as defendants in one action. First, the claim against the defendants must “aris[e] out of the same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. P. 20. There are no hard rules for determining what constitutes a single transaction or a series of transactions, but a logical relationship between the existing Defendants and the Proposed Defendants can satisfy this requirement. *See, e.g., Mosley v. General Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974). Here, Plaintiff’s claim against Defendants address alleged fraudulent transfers between Debtors and Defendants and the recovery of those transfers. Plaintiff asserts that the Proposed Defendants ultimately received distributions of the proceeds transferred from Debtors to Defendants. The claims Plaintiff alleges it holds against the Proposed Defendants ultimately arise out of the transactions between Debtors and Defendants, and the series of transactions beginning with Debtors’ transfers to Defendants and Defendants’ transfers to the Proposed Defendants.

Second, Rule 20 requires that “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20. As Defendants argue in their Reply, “a recovery action under Section 550 is predicated on a prior determination that earlier transfers occurred which may be avoided.” Here, Plaintiff’s claims against Defendants involve whether such transfers occurred and Plaintiff’s claims against the Proposed Defendants “[are] predicated on” the Court’s determination of the same issues of fact and law. Thus, the factual issues of under what circumstances any transfers between Debtors and Defendants took place and the legal issues of whether such transfers were fraudulent transfers will be common to Plaintiff’s claims against Defendants and Plaintiff’s claims against the Proposed Defendants. While the provisions of § 550(f) permit Plaintiff to wait until after the Court determines the liability of Defendants to

initiate its case against the Proposed Defendants, nothing in § 550 restricts Plaintiff from bringing its claims against Defendants and the Proposed Defendants at the same time.

Defendants also argue that § 550(b) provides defenses that are unique to mediate and immediate transferees, and which therefore cannot be common to claims against Defendants. While the claims against the Proposed Defendants will require that the Court determine whether transfers occurred between Defendants and the Proposed Defendants and whether those transfers can be linked to avoidable transfers between Debtors and Defendants, these additional issues and the defenses that the Proposed Defendants may raise do not eliminate the common issues noted above.

As Plaintiff has demonstrated that the Proposed Defendants may be joined under Rule 20, the Court does not reach the issue of whether the Proposed Defendants are necessary parties. It is proper to join the Proposed Defendants under Rule 20.

III. AMENDMENT OF CLAIMS

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.” The Supreme Court has held that in the absence of reasons “such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the proposed amendment, futility of the amendment, etc.,” courts should “freely” grant parties leave to amend their pleadings. *Foman v. Davis*, 371 U.S. 178, 182 (1962). 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).

Defendants argue that there has been an undue delay between the filing of the Complaint and Plaintiff’s Motion to Amend. The Court notes that Plaintiff was named Chapter 7 Trustee after the initial filing of the Complaint. Further, the extensive time the parties have spent in the case thus far has been the result of joint stipulations, consent orders, and unopposed requests for extensions of time on behalf of both parties. Defendants have expressed no objections to the delays up to this point. In fact, Defendants sought extensions of time to delay their Answer until nearly six months had passed since the filing of the initial Complaint. Additionally, 11 U.S.C. § 546(a)(1) permits a trustee to initiate avoidance proceedings within two years of a debtor’s petition or within one year of the first trustee’s appointment, whichever comes later. Both Plaintiff’s Motion and Amended Motion were within two years of Debtors’ petition dates. Plaintiff was free to initiate new proceedings against Defendants at that time, so there is no prejudice to Defendants in permitting Plaintiff to amend the Complaint now.

Finally, Defendants argue that permitting Plaintiff to add additional claims and defendants at this time will cause them and the Proposed Defendants to incur significant additional expense and time spent in discovery. Under Federal Rule of Civil Procedure 42(b), as made applicable by Federal Rule of Bankruptcy Procedure 7042, the Court, “in the furtherance of convenience or to avoid prejudice,” may order the separate trial of any claims or issues. Thus, with respect to the Proposed Defendants, the Court can limit prejudice to them, should there be any, by severing issues related to the Proposed Defendants if that later appears appropriate. Accordingly, it is

ORDERED that Plaintiff’s Motion to Amend Complaint and to Extend Discovery Period

is hereby **GRANTED**.

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

END OF DOCUMENT