

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
SHANNON A. PARKER)	CASE NO. 13-59225 – MHM
)	
Debtor.)	
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KIMBERLY RUSSELL,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 13-5230
)	
SHANNON PARKER,)	
)	
Defendant.)	

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT AND ANSWER TO MOTION TO DISMISS**

This matter is before the Court on Plaintiff's *Motion for Leave to File Amended Complaint and Answer to Motion to Dismiss Complaint* filed September 17, 2013 (Doc. No. 8) (the "Motion"). Plaintiff, then a *pro se* creditor, filed a complaint July 7, 2013, challenging Debtor/Defendant's discharge of her lease obligations and damages for destruction of Plaintiff's property. In response, Debtor filed an *Answer to Complaint* and *Motion to Dismiss* on August 19, 2013, seeking a determination that Plaintiff's Complaint be dismissed for failure to state a claim for which relief can be granted (Doc. No. 6). In the Motion, Plaintiff seeks the court's leave to amend the complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure.

CONCLUSIONS OF LAW

Rule 15 of the Federal Rules of Civil Procedure, which applies in adversary proceedings via Rule 7015 of the Federal Rules of Bankruptcy Procedure, states that “a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15. “Leave to amend should be liberally granted in the interest of justice.” *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1319 (11th Cir. 1999).

It is established in the Eleventh Circuit that a plaintiff must be given the opportunity to amend the complaint at least one time if a more carefully drafted complaint may state a claim. *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001). However, an amendment may be denied “(1) [for] undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile.” *Dupree*, 252 F.3d at 1163 (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

In determining whether to grant or deny a motion for leave to amend a complaint, courts frequently examine whether new claims were added to the amended complaint. *But see First Am. Title Ins. Co. v. Frazier (In re Frazier)*, 2007 WL 7138347, *1 (Bankr. N.D. Ga. April 6, 2007) (court granted motion for leave to amend complaint when amended complaint sought to “discuss in greater detail circumstances giving rise to [d]efendant's allegedly fraudulent conduct” and occurred within four months of

defendant's answer). *See generally* *Lowe's Home Ctrs., Inc. v. Olin Corp.*, 313 F.3d 1307 (11th Cir. 2002) (Court denied motion for leave to amend Lowe's' first amended complaint because Lowe's sought to add two extra claims that would reduce the likelihood that it would receive an adverse summary judgment ruling and because it did not file the motion to amend until a month had elapsed from the filing of its response to Olin's motion for summary judgment.); *Burger King*, 169 F.3d at 1319 (court denied a motion "because forty months had passed since the filing of the original counterclaim, the new counts would require proof of different facts, and the only apparent reason for the new claims was Weaver's retention of new counsel").

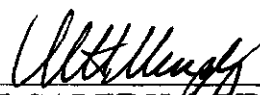
DISCUSSION

Debtor seeks the denial of the Motion because of Plaintiff's undue delay in filing the Amended Complaint. To support its position, Debtor quotes from *Lowe's* that "it is not an abuse of discretion for a district court to deny a motion for leave to amend following the close of discovery, past the deadline for amendments and past the deadline for filing dispositive motions." 313 F.3d 1307, 1315 (11th Cir. 2002). In *Lowe's*, the Eleventh Circuit ruled that the district court did not abuse its discretion in denying a motion for leave to amend Lowe's' first amended complaint, which sought to add two additional claims to avoid an adverse summary judgment ruling. *Id.* The present case may be distinguished because Plaintiff does not seek to add new causes of action. Moreover, it does not follow that the court would have abused its discretion had it granted a motion for leave to amend the complaint under the same circumstances.

Here, Plaintiff started out as a *pro se* litigant and retained counsel on July 19, 2013. The proposed amended complaint, filed after Plaintiff retained new counsel, is merely a clarification of the items that were set forth in the original complaint. No new claims were made by Plaintiff. Indeed, Plaintiff's proposed amendment is on point with what the court in *Dupree* alluded to, which is to permit the Plaintiff to file an amendment if the clarification allows them state a claim that is more likely to avoid dismissal by the court. *See Dupree*, 252 F.3d at 1163. Allowing the amended complaint in this case would not cause the type of undue delay or prejudice contemplated by the Eleventh Circuit. *See Id* at 1164 (three-year litigation, without evidence of bad faith or delaying tactics by plaintiffs, does not support a denial of leave to amend). Accordingly, it is hereby

ORDERED that Plaintiff's Motion is *granted*.

IT IS SO ORDERED, this the 29th day of October, 2013.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE