



IT IS ORDERED as set forth below:

Date: May 17, 2016

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBER
	:	
GREGORY PAUL CAMP, II,	:	13-10797-WHD
	:	
Debtor.	:	
_____	:	
	:	
FOXHALL INVESTORS LLC,	:	ADVERSARY PROCEEDING
	:	NO. 13-1030-WHD
Plaintiff,	:	
	:	
v.	:	
	:	
GREGORY PAUL CAMP, II,	:	IN PROCEEDINGS UNDER,
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Leave to Amend Consolidated Pretrial Order filed by Foxhall Investors LLC (hereinafter "Foxhall"). This matter arises in connection with Foxhall's complaint filed against Gregory Paul Camp, II

(hereinafter the “Debtor”) and Camp Contracting, Inc. (hereinafter “Camp Contracting”).¹ The complaint objects to the dischargeability of debts allegedly owed to Foxhall. This is a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(a), (b)(2)(I) & 1334.

Background

Foxhall initiated this adversary proceeding on July 9, 2013. Foxhall alleges that it entered into a construction contract with Camp Contracting and the Debtor, who is the president and registered agent of Camp Contracting. Foxhall asserts that the Debtor and Camp Contracting breached that contract in various ways, most notably by allegedly making false representations regarding the payment of subcontractors on the project while misappropriating funds. Foxhall maintains that it has suffered damages as a result of the acts of the Debtor and Camp Contracting, and that its claims for damages should be excepted from discharge pursuant to §

¹ The Court is unsure of Camp Contracting’s current posture in the case. The complaint lists Camp Contracting as a defendant, but Foxhall’s motion does not. While there has been no amended complaint removing Camp Contracting as a defendant, the pretrial order, which supersedes the pleadings, does not list Camp Contracting as a defendant.

523(a)(2)(A), (a)(4), and (a)(6).

On September 26, 2014, the Court held a pretrial conference with the parties. Thereafter, a consolidated pretrial order was submitted, which order the Court approved and entered on December 8, 2014. A trial was scheduled for August 11, 2015, but on May 28, 2015, the trial was cancelled.

From that point, no activity took place in this proceeding until April 20, 2016, when Foxhall filed the instant motion. In its motion, Foxhall asserts that in the time since the filing of the pretrial order, it has obtained bank records that support its claims against the Debtor. According to Foxhall, the District Attorney's Offices of Carroll and Douglas Counties have conducted an investigation of the Debtor. The subject bank records were obtained in the course of that investigation, and Foxhall acquired them through an open records request. Foxhall wishes to amend the pretrial order to include these bank records on its exhibit list in Section 11 of the order.²

² Foxhall never explicitly says how it wishes to amend the pretrial order, but the Court assumes this is what Foxhall intends to do.

On April 28, 2016, the Debtor filed his response to Foxhall's motion. The Debtor does not object to the Court's allowing Foxhall to amend the pretrial order, but seeks relief himself by requesting permission to file an out-of-time motion for summary judgment, and to amend Section 1 of the pretrial order to reflect the pendency of such a motion.

Discussion

A. Foxhall's Request to Amend Pretrial Order

Federal Rule of Civil Procedure 16, applicable to adversary proceedings in bankruptcy by operation of Federal Rule of Bankruptcy Procedure 7016, allows a court to modify a final pretrial order "only to prevent manifest injustice." FED. R. CIV. P. 16(e); *see also* FED. R. BANKR. P. 7016. Nevertheless, the Eleventh Circuit has stated that trial courts have broad discretion concerning the amendment of pretrial orders. *See United States v. Varner*, 13 F.3d 1503, 1507 (11th Cir. 1994). To guide trial courts in the exercise of this discretion, the Eleventh Circuit provides the following test:

[I]n the interest of justice and sound judicial administration, an

amendment of a pretrial order should be permitted where no substantial injury will be occasioned to the opposing party, the refusal to allow the amendment might result in injustice to the movant, and the inconvenience to the court is slight.

Id. (quoting *Sherman v. United States*, 462 F.2d 577, 579 (5th Cir. 1972)). The court has gone so far as to state that there is a “presumption that a pretrial order will be amended in the interest of justice and sound judicial administration.” *Id.* at 1507-08.

Here, the Court concludes that Foxhall’s amendment should be allowed, as there does not appear to be any risk of undue prejudice to the Debtor. On the contrary, the Debtor has indicated that he has no opposition to the amendment. Further, the content of the exhibits could be important to Foxhall’s proving its case, as the records relate to the Debtor’s financial activities during the time at issue in this proceeding. Finally, allowing the amendment will not inconvenience the Court. This proceeding has not yet been rescheduled for trial, and any concern over delaying the setting of trial is negated by the importance of allowing Foxhall to present whatever evidence it may have to support its case. Therefore, Foxhall

will be allowed to amend the pretrial order.

B. The Debtor's Request to File Motion for Summary Judgment and Amend Pretrial Order

Federal Rule of Civil Procedure 56, applicable to adversary proceedings in bankruptcy by operation of Federal Rule of Bankruptcy Procedure 7056, states that, “[u]nless a different time is set by local rule or the court orders otherwise” a party must file a motion for summary judgment before thirty days after the close of discovery. FED. R. CIV. P. 56(b); *see also* FED. R. BANKR. P. 7056. The local rules of this Court require a party to file a motion for summary judgment within 21 days after discovery closes, unless the court orders otherwise. BLR 7056-1(b). As this time limit has long passed in this proceeding, the Debtor must obtain the Court’s approval to file a motion for summary judgment.

As in situations allowing amendments to pretrial orders, trial courts have broad discretion to consider untimely motions for summary judgment. *See Wood v. Atlantic Univ. Bd. of Trustees*, 432 F. App’x 812, 815 (11th Cir. 2011) (*per curiam*); *Enwonwu v. Fulton-Dekalb Hosp. Auth.*, 286 F. App’x 586, 595 (11th Cir.

2008) (per curiam). The Eleventh Circuit has concluded that a court “may consider an otherwise untimely motion if, among other reasons, doing so ‘would be the course of action most consistent with the interest of judicial economy.’” *Thomas v. Kroger, Co.*, 24 F.3d 147, 149 (11th Cir. 1994) (quoting *Matia v. Carpet Trans., Inc.*, 888 F.2d 118, 119 (11th Cir. 1989)). Accordingly, the determinative factor in deciding whether to allow an untimely motion for summary judgment is whether deciding the motion could be more efficient than simply proceeding to trial. *See Wood*, 432 F. App’x at 816 (concluding that trial court did not abuse discretion where it reasonably concluded that motion for summary judgment would promote judicial economy); *Enwonwu*, 286 F. App’x at 595 (concluding that trial court properly denied motion for summary judgment because adjudication of the claim was more efficient).

In the instant case, the Court will allow the Debtor to file a motion for summary judgment. In doing so, the Court notes that the pretrial order indicates that the trial of this proceeding could be lengthy. The Debtor’s motion could avoid this expense of time and energy by resolving the proceeding without a trial.

Furthermore, as the proceeding is not currently set for trial, allowing the parties to contest a motion for summary judgment should not significantly delay the resolution of this matter.

Consequently, the Court will allow the Debtor to file his out-of-time motion for summary judgment; and because it does not present substantial prejudice to Foxhall or cause any inconvenience to the Court, the Debtor may amend Section 1 of the pretrial order so as to reflect the pendency of such a motion.

Conclusion

In accordance with the foregoing, it is hereby **ORDERED** that the Debtor may, within ten (10) days of the entry of this Order, file a motion for summary judgment.

It is **FURTHER ORDERED** that within twenty-one (21) days of the entry of this Order the parties shall submit for this Court's approval an Amended Consolidated Pretrial Order containing Foxhall's amendment to the list of exhibits and the Debtor's amendment to Section 1 indicating its motion for summary judgment, if necessary.

The Clerk is **DIRECTED** to serve a copy of this Order on Foxhall, the Debtor, and respective counsel.

END OF DOCUMENT