



IT IS ORDERED as set forth below:

Date: October 3, 2014

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

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
TIMOTHY P. HARPER,	:	BANKRUPTCY CASE
	:	NO. 11-14105-WHD
	:	
Debtors.	:	
<hr/>		
JAMES G. BAKER, Chapter 7 Trustee	:	ADVERSARY PROCEEDING
for the Estate of Timothy P. Harper,	:	NO. 13-1036
	:	
Plaintiff.	:	
	:	
v.	:	
	:	
SHARON C. HARPER,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Leave to File First Amended Complaint (hereinafter the "Motion") filed by James G. Baker (hereinafter the "Trustee"),

Chapter 7 Trustee for the bankruptcy estate of Timothy P. Harper (hereinafter the "Debtor"). The Motion arises in connection with Trustee's Complaint to Avoid and Recover Transfers of Property Pursuant to 11 U.S.C. §§ 544, 550, and 551, and the Uniform Fraudulent Transfer Act against Debtor's spouse, Sharon C. Harper (hereinafter the "Defendant"). The Defendant opposes the Motion. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b)(2)(A) & (H); § 1334.

Background

The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code¹ on December 13, 2011. James G. Baker was appointed as the trustee for the estate pursuant to 11 U.S.C. §§ 701 and 702. The Trustee initiated this adversary proceeding on July 23, 2013 by filing a complaint (hereinafter the "Original Complaint") with the Court seeking to avoid alleged fraudulent transfers pursuant to Section 544 of the Code and preserve and recover them for the benefit of the estate under Sections 550 and 551. The Defendant answered the Original Complaint on August 22, 2013, and the parties commenced with discovery. The Court extended the discovery period by consent on numerous occasions, and currently, expert discovery is set to conclude on October 24, 2014.

¹ 11 U.S.C. § 101 *et. seq.*

In the Original Complaint, the Trustee sets forth that throughout their marriage, the Debtor and Defendant "commingled their assets through ownership of various bank accounts, investment accounts and Certificates of Deposit both jointly and individually." Pl.'s Compl. 3, ¶ 12. The Original Complaint specifically identifies three series of transfers, with respect to two jointly held accounts, occurring between the beginning of April and the end of August of 2010: (1) the abatement of \$1,023,243.82 from a joint investment account, referred to as "IFC Account 40," and the transmittal of that money to an account solely in the Defendant's name; (2) a transfer of \$400,000 from a jointly held checking account, referred to as "Regions Account," to an investment account solely in Defendant's name, referred to as "IFC Account 60;" and (3) a second transfer from the Regions Account, in the amount of \$665,987.56, delivered to Defendant for her sole purposes. Pl.'s Compl. 3-4, ¶¶ 13-21. The aggregate of these alleged transfers totals \$2,089,231.38. The Trustee concludes his fact pattern with the "Debtor transferred more than \$2,089,230.00 (the "Transfers") directly to or for the benefit of the Defendant" and seeks in his prayer for relief to have "the Transfers" avoided as fraudulent conveyances. Pl.'s Compl. 4, ¶ 22; Pl.'s Compl. 7.

On August 7, 2014, the Trustee moved this Court for permission to amend his complaint, and a proposed amended complaint (hereinafter the "Amended Complaint") accompanied this Motion. The Amended Complaint seeks to add three

additional alleged transfers, which the Trustee identified during discovery, arising during 2008 and 2009: (1) a transfer of Certificates of Deposit proceeds in the amount of \$4,000,000, maintained in a jointly owned bank account with United Community Bank, referred to as "UCB Account," to Defendant's solely owned IFC Account 60 on October 28, 2008; (2) a third transfer from the Regions Account on or about February 17, 2009, in the amount of \$543,195.75, used for the purpose of buying real estate in Defendant's sole name in Meriwether County, Georgia; and (3) the transfer of Debtor's half interest in real property, identified as the "Hanger Property" and jointly owned by the Debtor and Defendant since 1989, to the Defendant for nominal or no consideration on or about August 1, 2009. Pl.'s Am. Compl. 3-9, ¶¶ 15-55. The Amended Complaint also seeks to add a new theory of recovery for those transfers taking place within two years of the petition date—Section 548 of the Code. Pl.'s Am. Compl. 12-13, ¶¶ 77-86.

The Defendant objected to the Motion on August 21, 2014. Defendant primarily contends that the amendment should not be granted due to futility, as the Trustee made the amended claims after the Section 546 deadline expired, and they do not relate back to the Original Complaint, and, alternatively, those claims are otherwise barred by the applicable four-year Georgia statute of limitations pursuant to Georgia's Uniform Fraudulent Transfer Act. Additionally, the Defendant advances that the Amended Complaint imposes an undue burden on the Defendant due to the

protracted delay being prejudicial to the Defendant, "who now has to either seek to defend these transfers based on what has been discovered thus far in discovery or seek to extend the discovery period beyond the current deadline, thus dragging the case out for many additional months to come." Def.'s Resp. to Pl.'s Am. Compl. 9.

Amendment Standard

Amendments to pleadings are governed by Rule 15 of the Federal Rules of Civil Procedure, made applicable to this case by its incorporation into Rule 7015 of the Federal Rules of Bankruptcy Procedure. See FED. R. CIV. P. 15; FED. R. BANKR. P. 7015. When a plaintiff seeks to amend his complaint at any point beyond twenty-one days after the defendant has answered, he may do so only with the "opposing party's written consent" or by the "court's leave." FED. R. CIV. P. 15(a). Leave shall be "freely give[n] when justice so requires." Id. This liberal amendment standard is fundamentally premised on the "strong preference for resolving disputes on the merits, rather than making decisions based upon procedure or technicality." Eason v. Owens (In re Owens), 483 B.R. 262, 264-65 (Bankr. N.D. Ga. 2012) (Drake, B.J.) (internal quotation omitted).

The denial or granting of leave to amend is left to the discretion of the Court. Jameson v. The Arrow Co., 75 F.3d 1528, 1534-35 (11th Cir. 1996); Perrian v. O'Grady, 958 F.2d 192, 194 (7th Cir. 1992); Maloney v. Weintraub (In re

Weintraub), 2005 WL 6488100, at *2 (Bankr. N.D. Ga. Apr. 25, 2005) (Drake, B.J.). Notwithstanding, there is a general presumption in favor of permitting a party to amend his pleadings. Burch v. Henry Prod., Inc. (In re AE Liquidation, Inc.), 2012 WL 32589, at *2 (Bankr. D. Del. Jan. 6, 2012). Accordingly, a court may not deny a motion to amend on its own discretion, but must provide a "substantial reason" for any denial. Halliburton & Assocs., Inc. v. Henderson, Few & Co., 774 F.2d 441, 443 (11th Cir. 1985); Old Republic Nat'l. Title Ins. Co. v. Presley (In re Presley), 2012 WL 7009710, at *2 (Bankr. N.D. Ga. Nov. 28, 2012) (Diehl, B.J.). "[A] motion to amend may be denied on 'numerous grounds,' including 'undue delay, undue prejudice to the defendants, and futility of the amendment.'" In re Presely, 2012 WL 7009710, at *2 (citing Abramsom v. Gonzalez, 949 F.2d 1567, 1581 (11th Cir. 1992)); see also Foman v. Davis, 371 U.S. 178 (1962) ("In the absence of any apparent or declared 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 amendment, futility of amendment, etc.—the leave should, as the rules require, be freely given."). Here, the only two grounds for denial raised by the Defendant are futility and undue burden.

Futility of Amendment

Amendment is futile if, after permitting the amendment, the new claims would be subject to dismissal on some basis; for instance, the claim fails to state a claim upon which relief can be granted because an applicable statute of limitations bars the claim. See Halliburton, 774 F.2d at 444; In re Weintraub, 2005 WL 6488100, at *2 (Bankr. N.D. Ga. Apr. 25, 2005) (Drake, B.J.); Coan v. O & G Industries (In re Austin Driveway Services, Inc.), 179 B.R. 390, 394 n.2 (D. Conn. 1995). In fact, when assessing whether amended claims are futile, the Court uses the same standard that it would for a motion to dismiss. Coan, 179 B.R. at 394 n.2. The Court accepts the material facts alleged in the complaint as true, draws all inferences in the light most favorable to the plaintiff, and determines whether the Trustee establishes a facially plausible claim for the relief requested. Id.; see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554-56 (2007).

Once a bankruptcy petition is filed, Section 546 sets forth the limitations period for a trustee to initiate a cause of action under Sections 544 and 548 of the Code. Specifically, Section 546 provides that "[a]n action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of . . . 2 years after" the petition is filed or "the time the case is closed or dismissed." 11 U.S.C. § 546(a). The Debtor filed his petition on December 13, 2011.

Although the Trustee filed the Original Complaint within the prescribed time period, the Amended Complaint was filed after the expiration of the statute's two year allowance. Accordingly, the Trustee's additional transfers, standing alone, may not survive a motion to dismiss; however, if the Amended Complaint's additional transfers "relate back" to the Original Complaint, they will be deemed to have arisen within the Code's two-year statute of limitations and survive. Watkins v. Lujan, 922 F.2d 261, 265 (5th Cir. 1991); Golden v. Guardian (In re Lenox Healthcare, Inc.), 343 B.R. 96, 105 (D. Del. 2006).

Rule 15(c) sets forth the circumstances under which amended claims relate back to an original complaint. Essentially, amendments relate back where the claims arose out of the same "conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading." FED. R. CIV. P. 15(c). Conversely, there can be no relation back if the new claims do not arise out of the same conduct, transaction, or occurrence as originally pled. See Moore v. Baker, 989 F.2d 1129, 1131 (11th Cir. 1993).

A review of the disparate case law reveals general themes regarding relation back in these contexts. The primary consideration is whether the general fact situation in the Original Complaint provides adequate notice to the Defendant of the possible need to defend against the matters subsequently raised in the Amended Complaint. Picard v. Madoff (In re Bernard Madoff Inv. Sec. LLC), 468 B.R. 620,

633 (Bankr. S.D.N.Y. 2012); Burtch v. Henry Prod., Inc. (In re AE Liquidation, Inc.), 2012 WL 32589, at *2 (Bankr. D. Del. Jan. 6, 2012); Barber v. IMI Equip. (In re Integrated Agri, Inc.), 2007 WL 605018, at *3 (Bankr. C.D. Ill. Feb. 22, 2007); Hays v. Alabama Gas Corp. (In re RDM Sports Grp.), 253 B.R. 298, 303 (Bankr. N.D. Ga. 2000) (Drake, B.J.); Coan v. O & G Industries (In re Austin Driveway Services, Inc.), 179 B.R. 390, 395 (D. Conn. 1995). Typically, new allegations of fact and distinct transactions will not relate back. See e.g. Old Republic Nat'l Title Ins. Co. v. Presley (In re Presley), 2012 WL 7009710, at *2 (Bankr. N.D. Ga. Nov. 28, 2012) (Diehl, B.J.); Coan, 179 B.R. at 395. However, where the Original Complaint describes a "series of events," the Court must explore whether the events are linked by some underlying course of conduct or unifying scheme, so as to put the Defendant on notice that another event in the series may be added to the complaint after-the-fact. Coan, 179 B.R. at 396-97; see also Picard, 468 B.R. at 633; Spaeth v. Day Air Credit Union (In re Motorwerks, Inc.), 2008 WL 5424120, at *7 (Bankr. S.D. Ohio Nov. 10, 2008) (citing Brandt v. Gerardo (In re Gerardo Leasing, Inc.), 173 B.R. 379, 389-91 (Bankr. N.D. Ill. 1994)); Peltz v. CTC Direct, Inc. (In re MBC Greenhouse, Co.), 307 B.R. 787, 792 (Bankr. D. Del. 2004) (citing Grella v. Zimmerman (In re Art & Co., Inc.), 179 B.R. 757 (Bankr. D. Mass 1995)). Moreover, where fraud is concerned, there is greater prospect that separate transactions are affixed to some kind of "underlying scheme to defraud," and all the Court is required to find is

"sufficient commonality between the new claim[s] and the matters alleged in the original pleading" Coan, 179 B.R. at 397; Silverman v. H.I.L. Assoc. Ltd. (In re Allou Distributors, Inc.), 387 B.R. 365, 397 (Bankr. E.D.N.Y. 2008) (citing Benfield v. Mocatta Metals, 26 F.3d 19, 23 (2d Cir. 1994) (internal quotations omitted)).

I. UCB Account Transfer and Regions Account Transfer

With the proper foundation having been laid, the Court believes that the \$4,000,000 UCB Account transfer of Certificates of Deposit proceeds and the \$543,195.75 Regions Account transfer relate back to the Original Complaint. The Trustee's Original Complaint places the Defendant on notice that the Trustee is complaining about a course of conduct of allegedly fraudulent transfers from "bank accounts, investment accounts and Certificates of Deposit," jointly held by the Debtor and Defendant during the course of their marriage. Pl.'s Compl. 3, ¶ 12. Such a defined course of conduct consistently encompasses transfers from the UCB Account, which is uncontestedly a bank account, and from the Regions Account, which is not only a bank account but the source of two of the Original Complaint's three specifically alleged transactions, thus causing the Defendant to be on notice that potentially fraudulent activity from these accounts may need to be defended.

Additionally, the adjective "various" precedes the description of accounts and Certificates of Deposit. Pl.'s Compl. 3, ¶ 12. Webster's Dictionary defines "various,"

as, among other things, "numerous; many[, and] several." RANDOM HOUSE, WEBSTER'S UNABRIDGED DICTIONARY (2nd Ed. 2001). Webster's also defines "numerous" as "'very many" or "comprising a great number;" "many" as "constituting a large number . . . ;" and "several" as "being more than two but fewer than many in number or kind." Id. The selected adjective, therefore, implies that the Original Complaint's subject matter consists of more than two accounts or Certificates of Deposit, despite initially restraining the Original Complaint to the two specified accounts. By using the term "various," the Trustee placed the Defendant on notice that he was complaining about more than the two specified accounts.

Furthermore, the Original Complaint contains no specified reference to a transfer of Certificates of Deposit proceeds. However, the Trustee included such proceeds in his general fact situation, thereby causing the Defendant to have notice that transfers of these assets were a potential subject of complaint. As Certificates of Deposit proceeds were transferred to the UCB Account prior to being disbursed allegedly to the Defendant's solely owned investment account, the UCB Account links to the general factual situation described in the Original Complaint.

Lastly, the Trustee does not limit his capitalized term "Transfers" to only those specified in the Original Complaint. The capitalized term is used to define the "more than \$2,089,230.00 . . . [transferred] directly to or for the benefit of the Defendant[,]" and it is these transfers that are sought to be avoided in the prayer for relief. Compl.

4, ¶ 22; Pl.'s Compl. 7. Accordingly, by not limiting the amount to only the aggregate of those transactions specified in the Original Complaint, the Trustee notified the Defendant of the possibility of tacking on claims for additionally discovered transfers in the future.

"Rule 15(c) does not set a high bar for relation back, so long as the claims . . . share a reasonable measure of common ground with the allegations in the original pleadings. Picard v. Madoff (In re Bernard Madoff Inv. Sec. LLC), 468 B.R. 620, 633 (Bankr. S.D.N.Y. 2012); Silverman v. H.I.L. Assoc. Ltd. (In re Allou Distributors, Inc.), 387 B.R. 365, 397 (Bankr. E.D.N.Y. 2008). After a review of the general fact situation, the Original Complaint purports to allege a course of allegedly fraudulent conduct concerning numerous bank accounts, investment accounts, and Certificates of Deposit for an aggregate amount of more than \$2,089,230.00. The alleged transfers from the UCB Account and Regions Account are consistent with that general fact situation and demonstrate a "sufficient" degree of "commonality" with the matters raised in the Original Complaint, so as to relate back to the date of the filing of the Original Complaint.

Alternatively, the Defendant contends that even assuming these two transactions relate back to July 23, 2013, the date the Trustee commenced this adversary proceeding, Georgia's applicable four-year statute of limitations bars the Plaintiff from now asserting these claims. Section 544(b) grants a trustee the power

to avoid any transfer that is voidable under the applicable state law by a creditor holding an unsecured claim. 11 U.S.C. § 544(b)(1). The applicable state law in this case is Georgia's Uniform Fraudulent Transfer Act, Official Code of Georgia Annotated (hereinafter "O.C.G.A.") § 18-2-70 *et. seq.* The Defendant insists that because the Court must apply Georgia's substantive law of fraudulent transfers for any actions brought by the Trustee under Section 544(b), the Court is also required to apply Georgia's statute of limitations associated with that substantive law, which is four years. See O.C.G.A. § 18-2-79.

Although there is some support for Defendant's position, see Evans v. Robbins (In re Robbins), 91 B.R. 879, 883 (Bankr. W.D. Mo. 1988), the majority of courts reject the argument. See Global Crossing Estate Representative v. Winnick, 2006 WL 2212776, at *6 (Bankr. S.D.N.Y. Aug. 3, 2006); In re Metro. Mortg. & Sec. Co., Inc., 344 B.R. 138, 141 (Bankr. E.D. Wash. 2006.); In re Martin, 142 B.R. 260, 265-66 (Bankr. N.D. Ill.1992); In re Flexible Artcraft Graphics Unlimited, Inc., 74 B.R. 917, 921 (Bankr. N.D. Ohio 1987); 5 COLLIER ON BANKRUPTCY, ¶ 546.02[b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2014). The majority approach stipulates that the applicable state limitations period is only relevant in determining whether a state-based fraudulent conveyance claim is viable as of the commencement of bankruptcy proceedings. Global Crossing, 2006 WL 2212776, at *6; In re Metro. Mortg., 344 B.R. at 141; In re Martin, 142 B.R. at 265-66; In re Flexible Artcraft, 74

B.R. at 921; 5 COLLIER ON BANKRUPTCY, ¶ 546.02[b]. If such a claim is viable upon commencement, then Section 546 governs, and the Trustee has two years therefrom to pursue a state based cause of action, regardless of whether the cause of action expires after the petition date, but prior to Section 546's two-year limitation's period. Global Crossing, 2006 WL 2212776, at *6; In re Metro. Mortg., 344 B.R. at 141; In re Martin, 142 B.R. at 265-66; In re Flexible Artcraft, 74 B.R. at 921; 5 COLLIER ON BANKRUPTCY, ¶ 546.02[b].

The Court finds the reasoning in the majority approach persuasive, in that it accounts for a number of public policy considerations that the Debtor's approach does not. For instance, the majority approach imposes consistency upon the limitations periods of both Section 544 and Section 548, realizes Congress' overarching statutory scheme to provide "order and predictability to the bankruptcy process[.]" and "recognizes the express provision in § 546(a) that [the limitations period] applies to actions brought under § 544." In re Martin, 142 B.R. at 265. Additionally, to enforce a state limitations statute upon the Trustee runs the risk of abridging the powers granted to the Trustee under the Code, causing the estate potentially to lose assets that should otherwise be distributed to unsecured creditors, a result that contravenes one of the major tenants of the Bankruptcy Code. In re Metro. Mortg., 344 B.R. at 141. But more importantly, the Defendants position ignores the point-in-fact that, despite Section 544's incorporating state law, Section

544 is, nonetheless, a federally created cause of action, upon which state law affixes no limitations. In re Mahoney, 111 B .R. 914, 917-18 (Bankr.S.D.Cal.1990). Accordingly, the Court finds that Georgia's four-year statute of limitations does not apply to render the Original Complaint, as amended, untimely.

II. Hanger Property Transfer

The Court does not believe, however, that the claim to avoid the alleged transfer concerning the Hanger Property relates back to the Original Complaint. As stated above, the course of conduct complained about refers to "bank accounts, investment accounts, and Certificates of Deposit." See Pl.'s Compl. 3, ¶ 12. At no point in the Original Complaint does the Trustee suggest that he intends to avoid transfers of real property, nor was the Hanger Property acquired with proceeds of various bank or investment accounts or Certificates of Deposit. There is absolutely no degree of commonality between the initially claimed course of conduct and this transfer so as to put the Defendant on notice of the possible need to defend against the matter. "The mere allegation that all of the transactions are fraudulent transfers does not make [these transfers] part of the same [course of] conduct." Gordon v. Slaughter (In re Slaughter Co. & Assoc., Inc.), 242 B.R. 97, 103 (Bankr. N.D. Ga. 1999) (Murphy, B.J.). To permit the Trustee to "bootstrap" this transaction onto the others would work an abuse of process that the Court will not condone. See id.

This does not end the inquiry, however. If Section 546's two-year statute of

limitations may be equitably tolled with regard to this claim, then the amendment itself may avoid being denied for futility. The doctrine of equitable tolling is an equitable device that the Court may use to extend the time for bringing an action or to excuse a claim for being brought after a limitations period expires. The doctrine applies only to those federal time limitations that are in the nature of a "true statute of limitations," meaning they are not jurisdictional in character. Sunbelt Developers, Inc. v. Northern (In re Int'l Admin. Serv., Inc.), 408 F.3d 689, 701 (11th Cir. 2005). Eleventh Circuit precedent holds that Section 546(a) constitutes a statute of limitations. Id.

Generally, two types of cases give rise to equitable tolling:

First, when the fraud goes undiscovered because the defendant has taken positive steps after the commission of the fraud to keep it concealed, then the statute of limitations is tolled until the plaintiff actually discovers the fraud. . . . Fraudulent concealment must consist of affirmative acts or representations which are calculated to, and in fact do, prevent the discovery of the cause of action. The second instance is the more mundane circumstance where the defendant has not actively concealed the fraud, and the plaintiff must then exercise due diligence in an attempt to discover the fraud. The limitations clock starts ticking when the plaintiff obtains—or should have obtained—knowledge of the underlying fraud.

Id. (internal citations omitted).

The Trustee states that he was not able to determine that there was no consideration for the Hanger Property until the conclusion of Debtor's and Defendant's depositions in January of 2014 and that he was unable to verify the value

of the property or the fact that it remained unencumbered, and in the Defendant's name, until a subsequently performed real property search. See Pl.'s Reply in Supp. 5. However, the Trustee makes no allegation that the Debtor and Defendant attempted to conceal the transaction. Moreover, even in the event that the Debtor and Defendant attempted to explain away the transaction, the quit-claim deed remained recorded in the real property records of Coweta County and professes to be made "IN CONSIDERATION OF Love and Affection" Pl.'s Am. Compl. Ex. 14. Nothing prevented the Trustee from conducting a routine property check early in his appointment, and a routine property check would have revealed that the transaction took place, that the Defendant gave nominal or no consideration for the transaction, and that the Defendant continued her ownership of the unencumbered property. In sum, neither the Debtor nor the Defendant acted in a manner that "in fact . . . prevent[ed] the discovery of the cause of action." In re Int'l Admin. Serv., Inc., 408 F.3d at 701.

Likewise, with regard to the "more mundane" equitable tolling, due diligence on the Trustee's part entails directing the same real property check, as discussed above. Nothing prevented the Trustee from attending to the matter. Accordingly, the Trustee could have discovered the alleged fraud early in his appointment, thus beginning the "limitations clock." Id. For these reason, the Court declines to equitably toll the limitations period for bringing the alleged fraudulent transfer of the

Hanger Property.

Accordingly, the Court shall deny as futile the Trustee's proposed amendment to include the transfer of the Hanger Property.

III. Addition of 11 U.S.C. § 548 Theory of Recovery

The Court finds no merit in Defendant's objection to the Trustee's proposed amendment to add 11 U.S.C. § 548 as a theory of recovery in this adversary proceeding. Under Section 548, the Trustee may only seek to avoid fraudulent transfers under this Section if they occurred on or within two years of the filing of the bankruptcy case. See 11 U.S.C. § 548. Like Section 544, it is subject to the time limitations of Section 546. The Trustee proposes to apply Section 548 to all transfers in the Original Complaint and Amended Complaint occurring within the two-year period preceding the filing of this case. These transfers include the Original Complaint's three specified transactions and the transfer of the Hanger Property. Plaintiff's Amended Complaint appears consistent with the Court's understanding. See Pl.'s Am. Compl. 10-13, ¶¶ 59, 79.

Rule 15(c) authorizes relation back where an amended complaint asserts a new substantive legal theory, so long as the claim is based on the same core of operating facts advanced in the initial complaint. Barber v. IMI Equip. (In re Integrated Agri, Inc.), 2007 WL 605018, at *4 (Bankr. C.D. Ill. Feb. 22, 2007); see also Peltz v. CTC Direct, Inc. (In re MBC Greenhouse, Co.), 307 B.R. 787, 792 (Bankr. D. Del. 2004)

(citing Fiber-Lite Corp. v. Molded Acoustical Prod., Inc. (In re Molded Acoustical Prod., Inc.), 150 B.R. 608 (E.D. Pa. 1993)); Gordon v. Slaughter (In re Slaughter Co. & Assoc., Inc.), 242 B.R. 97, 101 (Bankr. N.D. Ga. 1999) (Murphy, B.J.). In this case, the new legal theory applies to only those transactions specifically referenced in the Trustee's Original Complaint and the Hanger Property transfer. Because the Court previously denied as futile Trustee's proposed amendment to include the Hanger Property transfer, Section 548 can only apply to the three originally specified transfers. Seeing as how these transfers constitute exactly the same operating facts originally complained about, the new substantive legal theory relates back to the Original Complaint.

Undue Burden

Finally, the Defendant makes an objection that intertwines equitable considerations of undue burden, undue delay, and undue prejudice. The Defendant believes that the protracted delay in bringing these claims (over a year), combined with burdens of confronting over \$4,000,000 in new allegations at such a late stage, unfairly prejudices the Defendant and weighs against granting leave to amend the Original Complaint.

The Court is not persuaded. The Court addressed a very similar occurrence in In re RDM Sports Group. In RDM Sports Group, a Chapter 11 trustee for jointly

administered estates sought to amend his complaint eighteen months after initiating the case to alter the estate on behalf of which he was bringing suit. Hays v. Alabama Gas Corp. (In re RDM Sports Grp.), 253 B.R. 298 (Bankr. N.D. Ga. 2000) (Drake, B.J.). The trustee did not become aware that the defendant's debt belonged to the second estate, and not the first, until late in discovery. The trustee filed his motion six weeks thereafter. Id. at 302 The Court held that "[u]nder the circumstances, [it] w[ould] not prohibit the Trustee's amended complaint simply because many months [] passed since the filing of the original complaint. Id.

This case contains little difference. The parties extended discovery by consent on numerous occasions. Depositions of the Debtor and Defendant did not take place until January of 2014. See Pl.'s Reply in Supp. 5-6. Following the conclusion of those depositions, the Trustee issued a series of subpoenas between February 5, 2014 and June 20, 2014 for bank records of the various institutions mentioned throughout this Order. Approximately seven weeks after issuing the last subpoena, the Trustee sought permission to amend his complaint based on knowledge obtained therefrom. Under the circumstances, the delay does not seem unreasonable.

With respect to the attendant burdens and potential prejudice associated with the delay, the Court notes that these accounts belong to the Defendant and the Debtor, and they should possess unfettered access to any related records. Moreover, although discovery has not officially concluded, the Court is willing to entertain

further requests for extension of discovery, if the parties so require. Prejudice requires that the Defendant show that she "was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which [she] would have been offered had the . . . amendments been timely." Burtch v. Henry Prod., Inc. (In re AE Liquidation, Inc.), 2012 WL 32589, at *3 (Bankr. D. Del. Jan. 6, 2012). With its accommodation, the Court does not anticipate this being an issue. What remaining prejudice and associated burdens Defendant may suffer from having to defend against the Trustee's Amended Complaint are outweighed by this Court's preference for resolving disputes on the merits.

Conclusion

Having given this matter thorough consideration, the Court finds that, other than with respect to the alleged transfer of the Hanger Property, Trustee's Motion for Leave to File First Amended Complaint should be granted. Accordingly, it is

ORDERED that Trustee's Motion is **GRANTED in part** and **DENIED in Part**. The Court grants the Trustee leave to amend the Original Complaint to include the claims to avoid the alleged UCB Account transfer and the alleged third Regions Account transfer and grants the Trustee leave to add the Trustee's alternative theory of relief—11 U.S.C. § 548—to the three transfers discussed in the Original Complaint. Those amendments shall relate back to the commencement of this

adversary proceeding, July 23, 2013. Leave to amend the Original Complaint to add any claim to avoid the alleged Hanger Property transfer is denied.

FURTHER ORDERED that the Trustee shall be given fourteen (14) days from the entry of this Order to file his Amended Complaint with the Court and serve it on the Defendant. Defendant shall have fourteen (14) days from receipt of service to answer, as provided by Rule 15(a)(3) of the Federal Rules of Civil Procedure. See FED. R. CIV. P. 15(a)(3).

The Clerk is **DIRECTED** to serve a copy of this Order on the Trustee, the Defendant, respective counsel, and the United States Trustee.

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