

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

THE WORTH COLLECTION, LTD.,
Debtor

Chapter 7

Case No. 20-10337 (BLS)

DOUGLAS T. TABACHNIK, in his
capacity as the Chapter 7 Trustee of the
bankruptcy estate of The Worth
Collection, Ltd.,

Plaintiff,

v.

IPFS OF NEW YORK, LLC,

Defendant.

Adv. Pro. No. 23-50766 (BLS)
D.I. 15, 16, 17, 23

**MEMORANDUM ORDER GRANTING, IN PART, AND
DENYING, IN PART, TRUSTEE'S
MOTION FOR LEAVE TO AMEND COMPLAINT**

Before the Court is the Trustee's Motion for Leave to Amend Complaint (the "Motion to Amend").¹ Defendant IPFS of New York, LLC ("IPFS") opposes the Motion to Amend.² The Trustee filed a reply³ and this matter is ripe for consideration.⁴ For the reasons stated below, the Motion to Amend will be granted, in part, and denied, in part.

¹ Adv. Docket No. 15.

² Adv. Docket No. 17.

³ Adv. Docket No. 23.

⁴ Although a request for oral argument has been made, the Court does not deem it necessary to resolve this motion.

Procedural Background

On February 14, 2020 (the “Petition Date”), an involuntary Chapter 7 petition was filed in this Court against The Worth Collection, Ltd. (the “Debtor”). On March 25, 2021 (the “Relief Date”), the Bankruptcy Court entered an Order for Relief against the Debtor, thereby allowing the Chapter 7 case to proceed. On June 23, 2021, the Trustee was appointed.

On November 15, 2023, the Trustee filed a complaint against IPFS (the “Original Complaint”) asserting nine claims, including claims to avoid and recover preferential transfers under Bankruptcy Code § 547, claims to avoid and recover fraudulent transfers claims under Bankruptcy Code § 548(a)(1), and claims to avoid and recover fraudulent transfers under Bankruptcy Code § 544 and the Delaware Uniform Fraudulent Transfer Act.⁵ The Original Complaint attached two exhibits listing seven allegedly avoidable transfers in the total amount of \$60,981.22. IPFS filed an answer to the Original Complaint.

The Trustee seeks leave to amend the Original Complaint to include additional transfers from the Debtor to IPFS that the Trustee identified after “sifting through materials provided to the Trustee in response to the Trustee’s demands and discovery on third parties.”⁶ The Trustee’s proposed amendments include a revised exhibit listing seven additional transfers that, together with the original transfers, total \$178,543.91.⁷ The Trustee later filed a Notice of Amended

⁵ 6 Del. C. § 1301 *et seq.*

⁶ Adv. Docket No. 23, p. 4.

⁷ Adv. Docket No. 16.

Exhibit A listing a total of 21 allegedly avoidable transfers in the aggregate amount of \$287,295.59.⁸ The Trustee asserts that the additional transfers follow the same pattern of monthly payments as the transactions identified in the exhibits to the Original Complaint.⁹

IPFS opposes the Motion to Amend, arguing that amendment is futile because the statute of limitations bars claims based on the newly identified transfers and the amendments do not relate back to the Original Complaint. IPFS also argues that proposed amendment is barred by the Delaware Uniform Fraudulent Transfer Act's statute of repose.

Discussion

Federal Rule of Civil Procedure 15(a)(2), made applicable to this proceeding by Fed. R. Bankr. P. 7015, provides that a court should freely give leave to amend a pleading "when justice so requires."¹⁰ Courts may deny leave to amend upon finding (1) undue delay; (2) bad faith or dilatory motive; (3) repeated failures to cure deficiencies by amendments previously allowed; (4) undue prejudice to the opposing party by virtue of allowing the amendment; and (5) futility.¹¹ The decision to grant or deny a motion for leave to amend is within the sound discretion of the court.¹²

Here, IPFS argues that allowing an amendment would be futile and would not withstand a motion to dismiss under Fed.R.Civ.P 12 because the new claims are

⁸ Adv. Docket No. 20.

⁹ *Id.*

¹⁰ Fed.R.Civ.P. 15(a)(2). *Tilton v. MBIA Inc. (In re Zohar III, Corp.)*, 639 B.R. 73, 116 (Bankr. D. Del. 2022), *aff'd* 620 F. Supp. 3d 147 (D. Del. 2022).

¹¹ *Zohar*, 639 B.R. at 116 (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962));

¹² *Zohar*, 639 B.R. at 116; *Winer Family Trust v. Queen*, 503 F.3d 319, 331 (3d Cir. 2007).

barred by the statute of limitations for asserting avoidance claims under Bankruptcy Code § 546(a)(1). That statute provides (in pertinent part) that avoidance actions under sections 544, 547 and 548 must be brought within the later of: (A) two years after entry of the order for relief, or (B) 1 year after the appointment or election of the first trustee under section 702 (if the appointment or election occurs before the expiration of the period specified in subparagraph (A)).¹³ Here, the deadline for bringing avoidance actions was March 23, 2023, but IPFS agreed to toll the Section 546(a) statute of limitations to November 15, 2023, and the Original Complaint was filed on that date. The Motion to Amend Complaint was filed on July 13, 2024, and the Notice of Amended Exhibit A was filed on July 28, 2024.

When a plaintiff seeks to amend a complaint after the statute of limitations has run, the amendment may relate back to the date of the original complaint when “the amendment asserts a claim ... that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.”¹⁴ The central consideration of Rule 15(c)(1)(B) is whether there is a nexus between the factual allegations in the original pleading and those in the amended complaint that give the defendant sufficient notice of what must be defended in the amended pleading.¹⁵ “The test for determining whether a sufficient factual nexus exists is

¹³ 11 U.S.C. § 546(a)(1).

¹⁴ Fed.R.Civ.P. 15(c)(1)(B), made applicable hereto by Fed.R.Bankr.P. 7015. *See Powermate Corp. v. Phoenix Int’l Freight (In re Powermate Holding Corp.)*, Adv. No. 10-50810, 2011 WL 3654436, *2 (Bankr. D. Del. Aug. 18, 2011) (citing *Peltz v. CTC Direct, Inc. (In re MBC Greenhouse Co.)*, 307 B.R. 787, 789 (Bankr. D. Del. 2004)).

¹⁵ *Powermate*, 2011 WL 3654436, *2.

whether the evidence with respect to the second set of allegations could have been introduced under the original complaint, liberally construed.”¹⁶ “A factual nexus must exist between the original and amended complaints even where the original complaint reserves a right to include additional transfers.”¹⁷

In the *Circle Y* case, the bankruptcy court found a sufficient factual nexus when transfers listed in the original complaint and those sought to be added by amendment followed a pattern or were schematic in nature.¹⁸ In that case, most of the amended transfers were made in monthly intervals in the amount of either \$20,000 or \$40,000.¹⁹ The Court determined that there was a nexus between the \$20,000 monthly payments listed in the original complaint and the transfers added in the amended complaint.

In this matter, when the amended exhibit’s transfers are viewed with the Original Complaint’s transfers, a pattern appears of mostly monthly payments in the amount of \$15,425.77, then changing to monthly payments of \$11,957.10. There are a few smaller payments that fall outside the pattern, but the Court takes notice of the fact that the Trustee here did not have the benefit of filed schedules or statements of financial affairs.²⁰ Therefore, in light of Rule 15(a)(2)’s instruction that court should freely grant leave when justice requires, the pattern of payments in the amended exhibits, and the particular circumstances of this case, the Court

¹⁶ *Id.*, *3 (internal punctuation altered).

¹⁷ *Id.* (citing *Burtch v. Dent (In re Circle Y of Yoakum, Texas)*, 354 B.R. 349, 357 (Bankr. D. Del. 2006)).

¹⁸ *Circle Y*, 354 B.R. at 358.

¹⁹ *Id.*

²⁰ See Main Case Docket Nos. 103, 108, and 110.

finds that the transfers listed on Amended Exhibit A relate back to the original complaint.

However, IPFS also argues that, even if the additional transfers relate back to the filing of the Original Complaint, allowing claims to avoid the additional transfers under the Delaware Uniform Fraudulent Transfer Act would be futile because § 1309 provides that:

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

- (1) Under § 1304(a)(1) of this title, within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) Under § 1304(a)(2) or § 1305(a) of this title, within 4 years after the transfer was made or the obligation was incurred;
- or
- (3) Under § 1305(b) of this title, within 1 year after the transfer was made or the obligation was incurred.²¹

Other courts have recognized that § 1309 - - as it relates to constructive fraud claims - - “is not a statute of limitations, but rather a statute of repose.”²² “Unlike statutes of limitations, which were designed to deter plaintiffs from sitting on their rights, statutes of repose are typically enacted for the purpose of protecting defendants by creating a finite period within which a defendant can be sued for a

²¹ Del. Code Ann. tit. 6, §1309.

²² *Miller v. Fallas (In re J&M Sales, Inc.)*, Adv. No. 20-50775, 2021 Bankr. LEXIS 2268, *67 (Bankr. D. Del. Aug. 20, 2021). *See also Opiod Master Disb. Trust II v. Covidien Unlimited Co. (In re Mallinckrodt PLC)*, Adv. No. 22-50433, 2024 WL 206682, *20 (Bankr. D. Del. Jan. 18, 2024) (deciding that the UFTA’s extinguishment provision applicable to constructive fraudulent transfer claims is a statute of repose, but the subsection applicable to claims for actual fraudulent transfers -- §1304(a)(1)).

particular transaction.”²³ Accordingly, even if the amendment relates back to the date the Original Complaint was filed (i.e., November 15, 2023), § 1309(2) extinguishes the Trustee’s ability to avoid any transfers under § 1304(a)(2) or §1305(a) that were made prior to November 15, 2019. All of the transfers added to amended Exhibit A were made prior to November 15, 2019.

Therefore, the Trustee’s Motion to Amend will be denied, in part, to the extent it seeks to amend the Original Complaint to avoid constructive fraudulent transfers under Del. Code tit. 6 § 1304(a)(2) or § 1305(a) or (b).

AND NOW, for the reasons set forth above, it is hereby ORDERED that:

- (i) the Trustee’s Motion to Amend is hereby GRANTED, in part, to allow the Trustee to amend the Original Complaint with respect to avoidance claims brought under Bankruptcy Code § 547 and 548, and Del. Code tit. 6 § 1304(a)(1); and
- (ii) the Trustee’s Motion to Amend is hereby DENIED, in part, with respect to avoidance claims brought under Del. Code tit. 6 § 1304(a)(2) and § 1305.

²³ *J&M Sales*, 2021 Bankr. LEXIS 2268, *68-69 (citing *Goad v. Celotex*, 831 F.2d 508, 511 (4th Cir. 1987)).

The parties shall confer and submit a scheduling order setting deadlines related to the Amended Complaint within 30 days of this Order.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "Brendan Linehan Shannon", written over a horizontal line.

BRENDAN LINEHAN SHANNON
UNITED STATES BANKRUPTCY JUDGE

December 18, 2025