IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 7
	)	
Bayou Steel BD Holdings, L.L.C., *et al.*,[1]	)	Case No. 19-12153 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	
GEORGE L. MILLER, in his capacity as Chapter 7 Trustee of Bayou Steel BD Holdings, L.L.C., *et al.*,	)	
	)	
Plaintiff,	)	
	)	Adv. Proc. No. 21-50240 (KBO)
v.	)	
	)	
Steel and Pipe Supply Company, Inc.,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION AND ORDER ON (I) DEFENDANT'S MOTION (1) TO DISMISS COUNTS FIVE AND SIX OF THE AMENDED COMPLAINT, AND (2) FOR A MORE DEFINITE STATEMENT AS TO COUNTS ONE THROUGH FOUR OF THE AMENDED COMPLAINT [ADV. D.I. 35] AND (II) CHAPTER 7 TRUSTEE'S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT [ADV. D.I. 38]

Before the Court is the *Defendant's Motion (1) To Dismiss Counts Five And Six Of The Amended Complaint, And (2) For A More Definite Statement As To Counts One Through Four Of The Amended Complaint* [Adv. D.I. 35] (the "Motion to Dismiss") and the *Chapter 7 Trustee's Motion For Leave To File A Second Amended Complaint* [Adv. D.I. 38] (the "Motion for Leave"). Briefing on the two motions completed on April 1, 2022. The parties did not request oral argument.

I. RELEVANT BACKGROUND

On October 1, 2019, the above-captioned debtors (the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On February 25, 2020, the

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are Bayou Steel BD Holdings, L.L.C., a Delaware limited liability company (1984), BD Bayou Steel Investment, LLC, a Delaware limited liability company (1222), and BD LaPlace, LLC, a Delaware limited liability company (5783).

Debtors' chapter 11 cases were converted to ones under chapter 7, and George L. Miller was appointed as trustee.

On January 19, 2022, Mr. Miller, in his capacity as chapter 7 trustee of the Debtors, (the "Plaintiff") filed his *First Amended Complaint for Breach of Contract, Account Stated, Goods Sold and Delivered, Improper Setoff and Avoidance and Recovery of Unauthorized Post-Petition Transfers* ("First Amended Complaint") against Steel and Pipe Supply Company, Inc. (the "Defendant").[2] The First Amended Complaint asserts six claims for relief against the Defendant. Counts one through three assert claims for breach of contract, "account stated", and "goods sold and delivered" arising from Defendant's alleged failure to pay Debtors for certain steel or related products sold to Defendant in the amount of $17,287.81.[3] Count four asserts claims for breach of contract, "account stated", and "goods sold and delivered" with respect to $2,600,000 worth of products that Debtors allegedly sold to the Defendant postpetition in return for $2,304,000 in cash.[4] The remaining value of the sold product was allegedly satisfied by Debtors' application of $526,152 in rebate credits to which Defendant became entitled prepetition.[5] Plaintiff alleges that the application of the rebate credits was not legally authorized by the Bankruptcy Code or other applicable law and expressly violated this Court's *Final Order Authorizing the Debtors to Maintain and Administer Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto*[6] ("Customer Programs Order").[7] Accordingly, Plaintiff alleges that Defendant remains obligated to pay the Debtors' estates $526,152.[8] Counts five and six seek to avoid and recover the unauthorized credit offset pursuant to sections 544, 549, and 550 of the Bankruptcy Code.[9]

Shortly following the filing of the First Amended Complaint, Defendant filed its Motion to Dismiss, requesting dismissal of counts five and six, arguing that the Plaintiff failed to correct the pleading deficiencies with respect to those claims that gave rise the First Amended Complaint.[10] The Motion to Dismiss also requests a more definite statement as to counts one through four regarding the governing contract between the Debtors and the Defendant and the particular state law(s) alleged to govern Plaintiff's claims.

In response to the Motion to Dismiss, Plaintiff filed the Motion for Leave, requesting to file a further amended complaint. Attached to the Motion for Leave is Plaintiff's proposed

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[2] *See* Adv. D.I. 30.

[3] *Id.* ¶¶ 10, 15-28.

[4] *Id.* ¶¶ 11, 30.

[5] *Id.* ¶¶ 12, 30.

[6] Case No. 19-12153, D.I. 184.

[7] First Am. Compl. ¶ 31.

[8] *Id.* ¶ 32.

[9] *Id.* ¶¶ 34-39.

[10] *See* Adv. D.I. 28 (*Order Regarding Defendant's Motion To Dismiss Counts Two Through Six Of The Complaint*).

Second Amended Complaint for Breach of Contract, Account Stated, Goods Sold and Delivered, Breach of Contract and Common Counts – Improper Rebate Application (the "Second Amended Complaint"). The Second Amended Complaint removes counts five and six. With respect to the remaining claims, it clarifies that the relationship between the Debtors and the Defendant was not governed by an overarching written agreement but rather by agreed terms and conditions set forth in various exchanged purchase orders, acknowledgments, and invoices.[11] The Plaintiff defines and refers to these collective documents as the "Contract".[12] Moreover, Plaintiff alleges that the Contract does not expressly provide what state law governs the parties' relationship but that "[t]he Debtor was based in Louisiana and its invoices would appear to suggest that Louisiana law applies, without expressly so stating."[13]

In requesting leave to amend, the Plaintiff argues that the Second Amended Complaint is intended to address the issues raised in the Motion to Dismiss so that the proceeding can proceed on the merits without further waste of judicial or party resources. Plaintiff argues that leave to amend is freely given and typically denied only where undue delay, bad faith, dilatory motive, prejudice, or futility is found. Plaintiff contends that none of those circumstances is present.

Defendant opposes the Motion for Leave in part. It does not object to the removal of counts five and six or the use of the amendment's new facts to augment Plaintiff's breach of contract claim in count one. Defendant does object, however, to the application of the new facts to counts two, three, and four, arguing that it would be a futile exercise.[14]

II. DISCUSSION

Rule 15(a) of the Federal Rules of Civil Procedure provides that "[t]he court should freely give leave [to amend] when justice so requires."[15] The decision to do so is left to the discretion of the Court.[16] Among the grounds that could justify a denial of an amendment is futility.[17] Futility means that "the complaint, as amended, would fail to state a claim upon which relief could be granted."[18] In assessing "futility," a court applies the same standard of legal

[11] Second Am. Compl. ¶ 9.

[12] *Id.*

[13] *Id.* ¶ 9 n.2.

[14] Plaintiff did not reply to Defendant's arguments in opposition to the Motion for Leave.

[15] FED. R. CIV. P. 15(a).

[16] *See Dole v. Arco Chem. Co.*, 921 F.2d 484, 486 (3d Cir. 1990).

[17] *Foman v. Davis*, 371 U.S. 178, 182 (1962); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) ("Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility.").

[18] *Burlington*, 114 F.3d at 1434; *Stanziale v. Richards, Layton & Finger, P.A. (In re EP Liquidation, LLC)*, 583 B.R. 304, 313 (Bankr. D. Del. Apr. 9, 2018).

sufficiency under Rule 12(b)(6) and may properly deny leave to amend where the amendment would not withstand a motion to dismiss.[19]

Defendant argues that Plaintiff has failed to sufficiently allege the claims of counts two through four under Louisiana law. Specifically, Defendant contends that the Plaintiff has failed to allege sufficient facts to support claims for "account stated" and breach of contract under Louisiana law, and that Louisiana law does not recognize a cause of action for "goods sold and delivered." Determining whether the Plaintiff has sufficiently alleged claims under Louisiana law, however, is premature because Plaintiff does not contend that his claims arise under such law. Rather, the Second Amended Complaint alleges facts that the Plaintiff acknowledges "would appear to suggest that Louisiana law applies" but he does not go as far as to argue with certainty its application.[20] Even Defendant refuses to concede that Louisiana law governs the parties' relationship[21] and suggests that Kansas, Texas, Missouri, Oklahoma, Tennessee, and Illinois law may also apply based on facts outside the Second Amended Complaint.[22] Therefore, to determine what state's laws apply to Plaintiff's claims, the Court must conduct a choice of law analysis.[23] That analysis is more appropriate at the summary judgment stage when facts outside

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[19] *See id.*; *Charys Liquidating Trust v. Hades Advisors, LLC (In re Charys Holding Co., Inc.)*, 443 B.R. 638, 643 (Bankr. D. Del. Jan. 20, 2011).

[20] Plaintiff's failure does not require dismissal of the claims. Courts have recognized that plaintiffs need not plead the applicable state law for their claims to be well-pled. *See, e.g.*, *Blue Cross of Cal. Inc. v. Insys Therapeutics Inc.*, 390 F. Supp. 3d 996, 1007-08 (D. Ariz. 2019) (refusing to dismiss plaintiff's state-law claims due to its failure to plead the applicable state law with respect to each claim); *Canada Pipeline Accessories, Co.* v. *Canalta Controls, Ltd.*, No. 3:12-8448, 2013 WL 3233464, at *8 (S.D. W. Va. June 25, 2013) (refusing to dismiss a defamation claim where plaintiff failed to plead specific facts alleging which forum's law applied because the choice of law analysis is often premature at the motion-to-dismiss stage); *Biovail Corp. v. Aktiengesellschaft*, 49 F. Supp. 2d 750, 776 (D.N.J. 1999) (explaining that, even if New Jersey law did not apply to the alleged claim, "it does not follow that dismissal is warranted. A choice of law analysis may result in a claim being dismissed but only if the court determines, by employing such an analysis, that another state's law applies to the claim and under *that* law, the claim is unsustainable."); *see also* 5 FED. PRAC. & PROC. CIV. § 1253 (4th ed) ("The federal courts are required to take judicial notice of the laws of every state of the union. Consequently, it is not necessary to plead state law, whether it be the forum state's law or the law of another state.").

[21] Adv. D.I. 42 at ¶ 36.

[22] According to Defendant, Kansas is its home state; Kansas, Texas, and Missouri are the states in which deliveries were made; and Oklahoma, Tennessee, Illinois, and Louisiana are the states from which the Debtors made their deliveries. Adv. D.I. 20 at 13-14 n.11.

[23] "It is well settled that a federal court applies the choice of law principles of the state in which it sits." *NHB Assignments LLC v. Gen. Atl. LLC (In re PMTS Liquidating Corp.)*, 452 B.R. 498, 507 (Bankr. D. Del. 2011). "Delaware courts will generally honor a contractually-designated choice of law provision so long as the jurisdiction selected bears some material relationship to the transaction." *J.S. Alberici Const. Co., Inc. v. Mid-West Conveyor Co., Inc.*, 70 A.2d 518, 520 (Del. 2000); *see also Abry Partners V, L.P. v. F&W Acquisition LLC*, 891 A.2d 1032, 1049 (Del. Ct. Ch. Feb 14, 2006) ("When parties have chosen a state's contract law to govern their contract, it is illogical to assume that they wished to have the enforceability of that contract judged by another state's law."). In the absence of an effective choice of law provision, the court must "evaluate which state has the most significant relationship to the transaction and to the Contracting Parties by considering the following contacts: the place of contracting, the place of

the pleadings may be considered. For now, it is clear that the Plaintiff's allegations are sufficient to put the Defendant on notice of the gravamen of his plausible claims.

Defendant takes strong issue with the plausibility of Plaintiff's count 4 claim, arguing that the Customer Programs Order was applied correctly and that even if it was not, the Plaintiff has not identified a specific contractual provision that was breached to sufficiently allege a breach of contract claim under any state's laws. To survive a Rule 12(b)(6) motion, a complaint must contain sufficient factual matter, accepted as true, "to state a claim to relief that is plausible on its face."[24] A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[25] Determining whether a complaint is "facially plausible" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."[26] In doing so, the Court should conduct a two-part analysis.[27] "First, the factual and legal elements of a claim should be separated," with the reviewing court accepting "all of the complaint's well-pleaded facts as true, but … disregard[ing] any legal conclusions."[28] Second, the reviewing court must "determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a plausible claim for relief."[29]

A review of the Second Amended Complaint as a whole renders the basis for the Plaintiff's claim clear. Plaintiff asserts that Defendant made a postpetition purchase of $2.6 million of product from the Debtors for which it was contractually obligated to pay. Debtors allegedly satisfied a portion of that postpetition receivable through the application of $526,152 worth of rebate-credits earned by the Defendant prepetition. The Customer Programs Order does not appear to permit prepetition rebate credits to be applied to amounts owed by customers postpetition.[30] Moreover, Defendant appears to suggest in its briefing that it did not enter into any new postpetition purchases, which is a condition to receiving the benefits allowed under the

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negotiation of the contract, the place of performance, the location of the subject matter of the contract, and the domicile, residence, nationality, place of incorporation and place of business of the parties." *In re Welded Constr., L.P.*, 616 B.R. 649, 659 (Bankr. D. Del. 2020); *see* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 188.

[24] *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007) (citation omitted).

[25] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[26] *Id.* at 679.

[27] *See Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009).

[28] *Id.* at 210-11.

[29] *Id.* at 211 (internal quotation omitted).

[30] *See* Customer Programs Order ¶ 3 ("The Debtors are authorized to continue in their sole discretion to maintain and administer the Customer Programs described in the Motion in the ordinary course of business *solely to permit* customers who are entering into *a new postpetition purchase* from the Debtors to apply *pre-Petition Date amounts owed to such customers* under Customer Programs against *pre-petition amounts owed by such customers to the Debtors* . . . ." (emphasis added)).

Customer Programs Order.[31] As such, Plaintiff has sufficiently alleged that Defendant still owes the Debtors' estates $526,152.

It is clear that the Defendant understands the Plaintiff's claim but believes it has strong defenses, including that it has a right to recoup and that it did not agree to pay cash for any portion of the product it bought postpetition against which the prepetition rebates were applied.[32] The Court will consider all of the parties' arguments and evidence at the appropriate time following discovery. Accordingly, the Court does not agree with the Defendant that the Plaintiff's proposed amendments are futile.

III. CONCLUSION

For the aforementioned reasons, the Court hereby **GRANTS** the relief requested in the Motion for Leave and **DENIES** as moot[33] the relief requested in the Motion to Dismiss.

May 11, 2022

Karen B. Owens
United States Bankruptcy Judge

[31] *See, e.g.*, Adv. D.I. 42 ¶ 4 ("But SPS made use of [the credits], *completing* purchases pursuant to which SPS paid Bayou Steel over $2.1 million in cash after application of the credits . . . ."); *accord id.* ¶ 9 (alleging that Plaintiff had time to investigate relevant facts underlying his claim seeking cash for "purchases *completed* post-petition" against which the rebate credits were applied).

[32] *See generally id.* ¶¶ 56 & n.18, 66; *see also id.* ¶¶ 8, 13, 15, 66 (describing the Plaintiff's claim as "preposterous", "feckless", "baseless", and "implausible").

[33] Defendant has argued that the filing of the Motion for Leave does not moot the pending Motion to Dismiss. *See* Adv. D.I. 41 at 2. Because the Second Amended Complaint removes counts five and six of the First Amended Complaint, the relief requested by the Defendant in the Motion to Dismiss (*i.e.* to dismiss counts five and six of the First Amended Complaint) can no longer be granted and is therefore moot. The Defendant's additional requests in the Motion to Dismiss for the Plaintiff to identify the applicable contract(s) and state law has also been addressed by the additional facts contained in the Second Amended Complaint. As noted, the Defendant is well familiar with the bases of the Plaintiff's claims. The parties fleshed out the claims in a previous round of dismissal briefing, *see* Adv. D.I. 19, 20, 22, 23, and have engaged in informal discussions and document exchange regarding the claims, *see, e.g.*, Adv. D.I. 42 ¶ 11. Rather than having the Plaintiff further amend the complaint with additional facts already known, the parties and this proceeding will be better served by moving forward on the merits.