

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

Final Report: May 15, 2013
Date Submitted: May 13, 2013

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Re: Danuta Saitis, executrix of the Estate of Stefan Szewczyk, deceased v.
Elizabeth L. Malatesta
C. A. No. 7492-ML

Dear Counsel:

I have reviewed the parties' submissions in connection with the plaintiff's motion to amend the complaint. In my judgment, the motion to amend should be granted.

A party's motion for leave to amend her complaint should be "freely given when justice so requires."¹ Amendments to the pleadings typically are permitted unless (1) the amendment

¹ Ct. Ch. R. 15(a).

would result in undue prejudice or undue delay, (2) the amendment would be futile, or (3) the party seeking leave to amend is acting in bad faith or in an effort to delay the proceedings.²

The plaintiff, who is the executrix of her father's estate, initiated this action on May 3, 2012, seeking an accounting from the defendant, who was the decedent's wife. The defendant filed counterclaims on July 25, 2012. Trial in this matter is scheduled to begin on July 29, 2013. The parties have completed discovery and have begun briefing a partial motion for summary judgment. In the proposed amended complaint, the plaintiff seeks to add two new counts: a claim for interference with estate plans, and a claim for breach of contract. The plaintiff contends the new counts are based on information obtained during discovery.

The defendant first contends that the motion should be denied because the scheduling order entered by the Court does not provide for amendment to the pleadings, and the scheduling order states that it will not be changed except upon a timely application and a showing of good cause. According to the defendant, the motion to amend does not meet that standard. That argument is unpersuasive. The fact that the parties did not anticipate the need to amend the pleadings at the time the scheduling order was entered does not mean that the order bars such amendment except upon a timely application and a showing of good cause. The scheduling order does not address amendments to the pleadings and the plaintiff contends that none of the dates provided in the scheduling order need to be altered as a result of the motion to amend. Because the plaintiff is not seeking to amend the scheduling order, a showing of "good cause" is not required.

² *In re TGM Enters., L.L.C.*, 2008 WL 4261035, at *2 (Del. Ch. Sept. 12, 2008) (citing *Cantor Fitzgerald, L.P. v. Cantor*, 1999 WL 413394, at *4 (Del. Ch. June 15, 1999)).

The defendant next argues that she would be unduly prejudiced if the motion to amend is granted, because she would be required to conduct additional discovery and possibly move for summary judgment on the newly pled claims. The plaintiff responds that no additional discovery or motion practice will be necessary, and that the case can proceed along the current schedule even if the motion to amend is granted. Although I appreciate that the parties desire to bring this case promptly to resolution, I do not believe that granting the motion would cause undue prejudice to the defendant. If the defendant chooses to pursue additional discovery, it does not appear that such discovery will be extensive or time-consuming. I will, however, allow the defendant to elect whether to (1) seek additional discovery, in which case the current schedule will need to be adjusted and new dates set for summary judgment motions and trial, or (2) proceed with the current schedule, but without seeking additional discovery or filing a motion for summary judgment with respect to the newly pled claims.

For the foregoing reasons, I recommend that the Court grant the motion to amend. This is my final report on the motion. Exceptions should be taken in accordance with Court of Chancery Rule 144. If no exceptions are taken, the defendant should notify the plaintiff and the Court by May 24, 2013 whether she will proceed under the current schedule.

Respectfully Submitted,

/s/ Abigail M. LeGrow
Master in Chancery