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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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BLX CAPITAL, LLC,
Plaintiff,

NO. CIV. 2:09-2356 WBS EFB

v.

ORDER RE: MOTION TO AMEND AND
SUBSTITUTE REAL PARTY IN
INTEREST AND FURTHER HEARING
ON MOTION FOR JUDGMENT ON THE
PLEADINGS

DARA PETROLEUM, INC. dba WATT
AVENUE EXXON, a California
corporation; SARBJIT S. KANG,
an individual; NARGES
EGHTESADI, an individual;
EXXON MOBIL CORPORATION fka
EXXON CORPORATION, a New
Jersey corporation; U.S. SMALL
BUSINESS ASSOCIATION, a United
States government agency; and
DOES 1 through 20, inclusive,

Defendants,

_____ /

AND RELATED CROSSCLAIMS AND
COUNTERCLAIMS.

_____ /

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Plaintiff BLX Capital, LLC ("BLX") brought this action

1 against defendants Dara Petroleum, Inc. dba Watt Avenue Exxon
2 ("Dara"), Sarbjit S. Kang, Narges Eghtesadi, Exxon Mobil
3 Corporation ("Exxon") and the United States Small Business
4 Association ("SBA") for judicial foreclosure and breach of
5 written guarantee stemming from a default on a commercial loan
6 plaintiff originated. Before the court is plaintiff's motion to
7 amend the Complaint and substitute a real party in interest as
8 plaintiff.

9 Generally, a motion to amend is subject to Rule 15(a)
10 of the Federal Rules of Civil Procedure, which provides that
11 "[t]he court should freely give leave [to amend] when justice so
12 requires." Fed. R. Civ. P. 15(a)(2). However, "[o]nce the
13 district court ha[s] filed a pretrial scheduling order pursuant
14 to Federal Rule of Civil Procedure 16[,] which establishe[s] a
15 timetable for amending pleadings[,] that rule's standards
16 control[]." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
17 607-08 (9th Cir. 1992). Here, the court issued a Status
18 (Pretrial Scheduling) Order on January 22, 2010, which prohibited
19 further amendments to pleadings or joinder of parties "except
20 with leave of court, good cause having been shown under Federal
21 Rule of Civil Procedure 16(b)." (Docket No. 40.)

22 Under Rule 16(b), a party seeking leave to amend must
23 demonstrate "good cause." Fed. R. Civ. P. 16(b). "Rule 16(b)'s
24 'good cause' standard primarily considers the diligence of the
25 party seeking the amendment." Johnson, 975 F.2d at 609. "If
26 that party was not diligent, the inquiry should end." Id.
27 Although "the focus of the inquiry is upon the moving party's
28 reasons for seeking modification[,]" a court may make its

1 determination by noting the prejudice to other parties. Id.
2 (finding that "the existence or degree of prejudice to the party
3 opposing the modification might supply additional reasons to deny
4 a motion" under Rule 16(b)).

5 If "good cause" is found, the court may then evaluate
6 the request to amend the complaint in light of Rule 15(a)'s
7 liberal standard. Id. at 608; McConnell v. Lassen County, No.
8 05-0909 FCD DAD, 2007 WL 1931603, at *12 (E.D. Cal. June 29,
9 2007). Courts commonly consider four factors when deciding
10 whether to grant a motion for leave to amend a complaint under
11 Rule 15(a): bad faith, undue delay, prejudice, and futility of
12 amendment. Roth v. Marquez, 942 F.2d 617, 628 (9th Cir. 1991).
13 Because Rule 16(b)'s "good cause" inquiry essentially
14 incorporates the first three factors, the court should deny
15 plaintiffs' motion for leave to amend only if such amendment
16 would be futile.

17 Plaintiff requests the court to amend the complaint to
18 substitute HSBC Bank USA, National Association, as Indenture
19 Trustee for the benefit of the Noteholders and the
20 Certificateholders of Business Loan Express Business Loan Trust
21 2005-A ("HSBC"), the apparent real party in interest to this
22 action, as plaintiff instead of BLX. Federal Rule of Civil
23 Procedure 17(a)(1) provides that "[a]n action must be prosecuted
24 in the name of the real party in interest." The real party in
25 interest is the person who has the right to sue under the
26 substantive law at issue. In general, it is the person holding
27 title to the claim or property involved, as opposed to others who
28 may have an interest in the litigation. U-Haul Int'l, Inc. v.

1 Jartran, Inc., 793 F.2d 1034, 1038 (9th Cir. 1986). Substitution
2 of plaintiffs under Rule 17(a) to join as the real party in
3 interest is liberally allowed when the change does not alter the
4 factual allegations in the original pleading as to the events or
5 the participants. See Advanced Magnetics, Inc. v. Bayfront
6 Partners, Inc., 106 F.3d 11, 20 (2d Cir. 1997). When
7 substitution of the real party in interest is permitted, "the
8 action proceeds as if it had been originally commenced by the
9 real party in interest." Fed R. Civ. P. 17(a)(3).

10 Plaintiff contends that it discovered it had
11 erroneously filed and prosecuted this action due to a change in
12 plaintiff's company policy. Plaintiff not only owns loans, but
13 also securitizes loans for sale to investors, which it assigns
14 and then services while remaining the beneficiary of record.
15 (Segars Decl. ¶ 16.) On August 16, 2004, plaintiff assigned the
16 loan at issue to an affiliate, BLC Capital Funding, LLC, which
17 then assigned the loan to HSBC Bank USA as trustee for BLX
18 Conventional Funding Trust II. (Id. ¶¶ 17-18.) On June 10,
19 2005, BLC Capital Funding, LLC transferred the interests under
20 the Note and Deed of Trust to HSBC, as trustee of a new
21 securitization trust. (Id. ¶ 19.)

22 Under plaintiff's previous policy, it would repurchase
23 any loans facing foreclosure from the securitization trust
24 containing them and proceed in foreclosure under its own name.
25 (Id. ¶ 20.) However, plaintiff subsequently changed its policy
26 and no longer repurchases loans from securitization trusts in the
27 event of foreclosure. (Id. ¶ 21.) This policy change was
28 allegedly miscommunicated to plaintiff's agents and counsel,

1 resulting in BLX inappropriately being named as plaintiff in this
2 action instead of HSBC, who currently holds the beneficial
3 interest in Dara's Note. (Id.)

4 Plaintiff has shown good cause for leave to amend the
5 Complaint. Plaintiff was diligent in requesting leave to amend,
6 filing this motion almost immediately after notification about
7 the BLX policy change and consultation with the defendants. (See
8 Mertens Decl. ¶¶ 2-3.) No evidence exists to indicate bad faith
9 on the part of plaintiff. There is little risk of prejudice to
10 defendants if plaintiff is granted leave to amend, as plaintiff
11 will not change any of the substantive claims in the Complaint
12 and only requests the court to change all references in the
13 Complaint from BLX to HSBC and add facts describing the transfers
14 that resulted in HSBC holding Dara's loan. (See Segars Decl. ¶
15 22.) In fact, no defendants filed an opposition to plaintiff's
16 motion to amend, and the SBA filed a Notice of Non-Opposition to
17 plaintiff's motion. (See Docket No. 46.) Finally, there is no
18 evidence that amendment to plaintiff's Complaint would be futile.
19 Rather, plaintiff's amendment is essential to ensure that this
20 action complies with Rule 17. Accordingly, the court will grant
21 plaintiff's motion to amend the Complaint to substitute HSBC as
22 plaintiff.

23 IT IS THEREFORE ORDERED that plaintiff's motion for
24 leave to amend the Complaint for the limited purpose of (1)
25 substituting HSBC as plaintiff and (2) adding factual allegations
26 addressing how HSBC became the holder of the Note be, and the
27 same hereby is, GRANTED. Plaintiff shall file an amended
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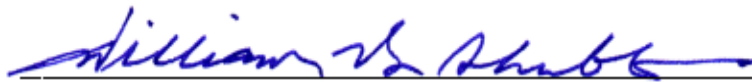
1 complaint within twenty days of the date of this Order.¹

2 IT IS FURTHER ORDERED that the hearing on plaintiff's
3 motion for judgment on the pleadings be, and the same hereby is,
4 CONTINUED until May 24, 2010, at 2 p.m. The parties are ordered
5 to produce expert witnesses on the question of the interpretation
6 of the term "[t]he 30-Day LIBOR equivalent to the Wall Street
7 Journal Prime + 2.75% adjusted on the 1st day of each calendar
8 month (Margin over 30-Day LIBOR will be determined at time of
9 closing)" in the letter loan agreement at this hearing.

10 (Dara/Kang Countercl. Ex. 1 at 1; Eghtesadi Countercl. Ex. 1 at
11 1.) Counsel shall have the witnesses in court available to
12 testify.

13 AND IT IS FURTHER ORDERED that all further discovery in
14 this action is hereby stayed pending the court's ruling on
15 plaintiff's motion for judgment on the pleadings.

16 DATED: April 13, 2010

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18 WILLIAM B. SHUBB
19 UNITED STATES DISTRICT JUDGE
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27 _____
28 ¹ These pleadings as amended shall relate back to the
original date of filing. Fed. R. Civ. P. 17(a)(3).