

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENERAL ELECTRIC CAPITAL CORPORATION; CEF FUNDING II, LLC; and CEF FUNDING V, LLC,)	Case No. 2:09-CV-03296-JAM-EFB
)	
Plaintiffs,)	<u>ORDER GRANTING COUNTER-CLAIMANT EQUITY LENDERS, LLC'S MOTION FOR LEAVE OF COURT TO FILE AND SERVE SUPPLEMENTAL COUNTERCLAIMS</u>
v.)	
TEN FORWARD DINING, INC.; et al.;)	
)	
Defendants.)	

This matter is before the Court on Equity Lenders, LLC's ("Counter-Claimant"), an Indiana corporation, Motion For Leave of Court To File and Serve Supplemental Counterclaims (Doc. #112), which is supported by a Memorandum of Points and Authorities (Doc. #116).¹ Plaintiffs/Counter-Defendants General Electric Capital Corporation, a Delaware Corporation; CEF Funding II, LLC, a Delaware company; and CEF Funding V, LLC, a Delaware company, (collectively "Counter-Defendants") oppose the motion (Doc. #121). Counter-Claimant filed a reply to the opposition (Doc. #122).

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled on January 25, 2012.

1 I. FACTUAL ALLEGATIONS & PROCEDURAL BACKGROUND

2 This action originated when Counter-Defendants filed their
3 complaint on November 29, 2009. The complaint alleges that several
4 defendants, not including Counter-Claimant, defaulted on or
5 breached seven written loan contracts made with Counter-Defendants.
6 The loans were allegedly secured by real and personal property
7 generally associated with restaurants. Counter-Defendants'
8 complaint also seeks declaratory relief against Counter-Claimant
9 because Counter-Claimant may have liens against a subset of the
10 Properties known as the "19373 Kobra Properties" and Counter-
11 Defendants seek to establish the superiority of their own liens to
12 Counter-Claimant's.

13 Counter-Claimant alleges that the owners of the 19373 Kobra
14 Properties, also defendants in this action, defaulted on their
15 obligations to Counter-Claimant in 2009, and Counter-Claimant
16 foreclosed on November 19 or 20, 2009. In early 2010, Counter-
17 Claimant alleges that it negotiated a pay-off amount for Counter-
18 Defendants' interest in the 19373 Kobra Properties, but that there
19 was a dispute as to the final pay-off amount. Counter-Claimant
20 paid the pay-off amount demanded by Counter-Defendants under
21 protest, and now seeks to supplement its existing counterclaims
22 with three new counterclaims: 1) a counter-claim for an accounting
23 of the actual amount due to Counter-Defendants after the default on
24 the 19373 Kobra Properties, 2) a counter-claim for declaratory
25 relief as to the parties' interests in the 19373 Kobra Properties,
26 and 3) a counter-claim for restitution of any overpayments made by
27 Counter-Claimant to Counter-Defendants in relation to the 19373
28 Kobra Properties. Counter-Claimant alleges that \$338,800 in

1 default interest was overpaid to Counter-Defendants and \$49,225.12
2 in attorney fees were also paid, but the fees were not specifically
3 attributed to matters involving the 19373 Kobra Properties.

4 This Court has jurisdiction pursuant to 28 U.S.C. § 1332
5 because the lawsuit is between citizens of different states and the
6 amount in controversy exceeds \$75,000.

8 II. OPINION

9 A. Legal Standard

10 The circumstances under which a party may amend and supplement
11 their pleadings is governed by Federal Rule of Civil Procedure
12 15(d) which provides, "On motion and reasonable notice, the court
13 may, on just terms, permit a party to serve a supplemental pleading
14 setting out any transaction, occurrence, or event that happened
15 after the date of the pleading to be supplemented." Fed.R.Civ.P.
16 15(d).

17 Rule 15(d) is a tool that gives district courts broad
18 discretion to allow supplemental pleadings. Keith v. Volpe, 858
19 F.2d 467, 473 (9th Cir. 1988). It is also a rule intended to
20 promote judicial economy. San Luis & Delta-Mendota Water Auth. v.
21 U.S. Dept. of Interior, 236 F.R.D. 491, 496 (E.D. Cal. 2006). Rule
22 15(d) does not require supplemental claims to be part of the same
23 transaction or occurrence associated with the original lawsuit.
24 Volpe, 858 F.2d at 474. The rule merely requires "some
25 relationship . . . between the newly alleged matters and the
26 subject of the original action. . . ." Id.; but see Planned
27 Parenthood of S. Ariz. v. Neely, 130 F.3d 400, 402-403 (9th Cir.
28 1997) (Rule 15(d) should not be used to introduce an entirely new

1 and separate cause of action). Thus, in the absence of bad faith
2 or undue delay, leave should be given to supplement a pleading with
3 a related cause of action that accrued after the filing of the
4 original complaint. San Luis & Delta-Mendota Water Auth., 236
5 F.R.D. at 496 (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

6 When ruling on a rule 15(d) motion, courts consider a number
7 of factors to determine whether leave to file supplemental
8 pleadings is proper. In San Luis & Delta-Mendota Water Auth. v.
9 U.S. Dep't of Interior, the court collected nine factors that are
10 used in the Ninth Circuit to determine whether supplementation is
11 appropriate:

- 12 (1) The relatedness of the original and supplemental
13 complaints;
- 14 (2) Whether allowing supplementation would serve the
15 interests of judicial economy;
- 16 (3) Whether there is evidence of delay, bad faith or
17 dilatory motive on the part of the movant, or
18 evidence of repeated failure to cure deficiencies by
19 amendments previously allowed;
- 20 (4) Whether amendment would impose undue prejudice upon
21 the opposing party;
- 22 (5) Whether amendment would be futile;
- 23 (6) Whether final judgment had been rendered;
- 24 (7) Whether the district court retains jurisdiction over
25 the case;
- 26 (8) Whether any prior court orders imposed a future
27 affirmative duty upon defendant; and
- 28 (9) Whether the proposed supplemental complaint alleges
that defendants defied a prior court order.

23 San Luis & Delta-Mendota Water Auth., 236 F.R.D. at 497.

24 1. Discussion

25 In this case, Counter-Claimant argues that its supplemental
26 counterclaims are appropriate because they arose from events that
27 occurred after Counter-Defendants filed their complaint. Namely,
28 Counter-Claimant alleges that when they bought out Counter-

1 Defendants' position in the 19373 Kobra Properties subsequent to
2 the filing of this lawsuit, they overpaid and are now seeking an
3 accounting of the actual amount due and restitution of any amount
4 overpaid. Counter-Defendants respond that supplemental
5 counterclaims should not be allowed because the counterclaims are
6 not part of the same transaction or occurrence that gave rise to
7 the allegations in their complaint, as required by Federal Rule of
8 Civil Procedure 13(a). Counter-Defendants also argue that the
9 supplemental pleading lacks a logical relationship to the claims
10 alleged in their complaint.

11 Counter-Defendants' first argument in opposition to Counter-
12 Claimant's motion fails because it applies the incorrect legal
13 standard to a Rule 15(d) motion. Counter-Defendants' argument
14 relies on a transactional requirement, but Rule 15(d) does not
15 contain a transactional requirement. Volpe, 858 F.2d at 474.
16 Thus, whether or not the supplemental counterclaims are part of the
17 same transaction or occurrence alleged in the original complaint is
18 irrelevant.

19 Counter-Defendants' second argument that the supplemental
20 counter-claims are not logically related to the claims in the
21 original complaint bears closer scrutiny because that is a factor
22 that courts should consider when deciding a Rule 15(d) motion. San
23 Luis & Delta-Mendota Water Auth., 236 F.R.D. at 497. The gist of
24 Counter-Defendants' argument is that since the original claims in
25 this lawsuit deal with the default on loans in 2008 and 2009 but
26 the proposed supplemental counterclaims deal with the 2011 pay-off
27 and request for an accounting by Counter-Claimant, the proposed
28 counterclaims are not sufficiently related to the ongoing

1 litigation to merit inclusion. Counter-Claimant responds that its
2 already-pleaded counterclaims contain both a claim for an
3 accounting and a claim for declaratory relief that alleges improper
4 accounting of the amount due on the 19373 Kobra Properties. Each
5 claim was pleaded against Counter-Defendants in a timely answer.
6 Counter-Claimant also argues that Counter-Defendants sought to
7 strip Counter-Claimant of its rights to the 19373 Kobra Properties
8 in the original complaint. Thus, it is Counter-Claimant's position
9 that the supplemental counterclaims are related not only to their
10 already pleaded counterclaims, but also to the claims in the
11 original complaint.

12 In this case, Counter-Claimant's argument is more persuasive.
13 The original action was filed to protect Counter-Defendants'
14 interest in the properties, and to that end they sought declaratory
15 relief that would strip Counter-Claimant of any rights in the 19373
16 Kobra Properties. The lawsuit was not limited to a mere
17 foreclosure action, but was instead designed to obtain a
18 declaration as to the rights of all parties to the subject
19 properties. Thus, the proposed supplemental counterclaims, seeking
20 a similar resolution, bear a logical relationship to this lawsuit,
21 and this factor favors granting Counter-Claimant's motion.

22 The next factor, whether the supplemental pleading serves
23 judicial economy, favors Counter-Claimant. The Court sees little
24 reason to require a separate action to litigate this closely
25 related issue when all claims can be resolved in the present
26 litigation.

27 There is no evidence of delay, bad faith, or dilatory motive
28 on the part of Counter-Claimant. This factor favors granting the

1 Rule 15(d) motion.

2 The Court next considers whether granting the motion would
3 create undue prejudice to Counter-Defendants. Counter-Defendants
4 claim that they will experience hardship if the motion is granted,
5 but they do not say what that hardship will be. Without more
6 specificity as to hardship, the Court cannot find that Counter-
7 Defendants will be prejudiced. This factor favors granting the
8 motion.

9 The remaining factors all favor granting the motion. There is
10 no evidence that the supplemental counterclaims are futile. No
11 final judgment has been rendered. There is no indication that the
12 supplemental claims will affect the Court's jurisdiction in any way
13 because jurisdiction is predicated on diversity of citizenship,
14 which is not affected by the supplemental counterclaims. Finally,
15 there are no prior orders at issue in this motion.

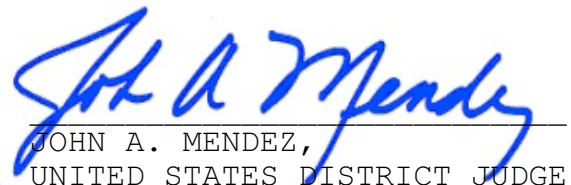
16 In summary, all of the factors considered by the Court support
17 granting Counter-Claimant's Rule 15(d) motion to supplement the
18 pleadings. Accordingly, leave to file and serve the supplemental
19 pleading should be granted.

20 III. ORDER

21 The Court has carefully reviewed all of the papers filed in
22 support of and in opposition to this motion. For the reasons
23 stated above, Counter-Claimant's motion is GRANTED. The
24 supplemental counterclaims (Doc. #112) shall be deemed filed as of
25 the date of this order. Counter-Defendants shall respond to this
26 supplemental pleading within 20 days of this order.

27 IT IS SO ORDERED.

28 Dated: February 9, 2012


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE