

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Boyd N. Boland

Civil Action No. 11-cv-01540-WYD-BNB

TAYLOR MOVING, LLC, a Colorado limited liability company,

Plaintiff,

v.

MICHAEL VOIGT, an individual,
OPM ENTERPRISES, INC., d/b/a Pride Worldwide Moving & Storage, d/b/a Boulder Valley
Transfer, a Colorado corporation,
TAYLOR MOVING, INC., a Colorado corporation,
TAYLOR MOVING AND STORAGE, INC., a Colorado corporation, and
BOULDER VALLEY TRANSFER, INC.,

Defendants.

ORDER

This matter arises on **Plaintiff's Motion to Amend Verified Complaint to Include Boulder Valley Transfer, Inc.** [Doc. # 35, filed 3/9/2012] (the "Motion to Amend"), which is GRANTED.

The plaintiff seeks leave to amend its complaint to add a claim against Boulder Valley Transfer, Inc. ("BVT"). BVT was identified in the initial Complaint as a trade name utilized by OPM Enterprises. Verified Complaint [Doc. # 1] at ¶3. Subsequently, the defendants answered and filed counterclaims. Answer and Counterclaims [Doc. # 15, filed 12/2/2011]. In the Answer and Counterclaims, the defendants asserted that BVT "is not a legal company and is not D.O.T. compliant." *Id.* at ¶26(b). This allegation notwithstanding, BVT asserted a counterclaim against the plaintiff. *Id.* at p. 6. The plaintiff moved to dismiss BVT's counterclaim because BVT was not a party to the action. Amended Motion to Dismiss [Doc. # 17].

A scheduling conference was held on January 17, 2012. The Scheduling Order indicates that Donald Janklow represented, among others, “OPM Enterprises, Inc. d/b/a Pride Worldwide Moving & Storage d/b/a Boulder Valley Transfer. . . .” Thus, defense counsel continued to represent that BVT was a trade name for OPM Enterprises and not a legal entity. Scheduling Order [Doc. # 23] at p. 1.

New counsel entered its appearance on behalf of the defendants on January 31, 2012. See Defendants’ Response [Doc. # 26]. On February 24, 2012, defendants moved for an extension of time, to and including March 5, 2012, to add parties and amend pleadings. Defendants’ Motion [Doc. # 28]. In particular, Defendants’ Motion stated that “Defendants and their counsel have been discussing whether or not to add Boulder Valley Transfer, Inc. as a party to this case. . . .” Id. at ¶ 2. Defendants’ Motion was granted. Minute Order [Doc. # 30]. On March 5, 2012, the defendants moved to join BVT as a counterclaimant and to amend their counterclaims. Defendants’ Combined Motions [Doc. # 31]. For the first time, BVT was identified as a Colorado corporation. Id. at ¶1. Defendants’ Combined Motions were granted on March 9, 2012. Minute Order [Doc. # 34]. Also on March 9, the plaintiff moved to amend its complaint to add BVT as a defendant. Plaintiff’s Motion to Amend [Doc. # 35] at p. 1.

The defendants oppose the Plaintiff’s Motion to Amend as untimely, arguing that the deadline to join parties and amend pleadings expired on March 5, 2012. However, I find based on the confusion about BVT’s corporate status, which was compounded by the actions of defendants’ counsel, that good cause exists to extend that deadline through the filing of the Plaintiff’s Motion to Amend on March 9, 2012. In addition, the plaintiff acted diligently to seek leave to amend promptly after the corporate status of BVT was clarified. In addition,

amendment of the complaint is appropriate under Rule 15, Fed. R. Civ. P., and the defendants do not contend otherwise.

IT IS ORDERED:

- (1) Plaintiff's Motion to Amend [Doc. # 35] is GRANTED; and
- (2) The Clerk of the Court is directed to accept for filing the Verified Amended

Complaint [Doc. # 35-1].

Dated March 27, 2012.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge