

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02021-WJM-CBS

RONALD MUKASA MAITEKI,  
Plaintiff,

v.

MARTEN TRANSPORT LTD., with corporate offices at 129 Marten Street, Mondovi, WI 54755,  
KNIGHT TRANSPORTATION INC., 5601 W. Buckeye Rd, Phoenix Arizona 85043, and  
SWIFT TRANSPORTATION CORPORATION INC., 2200 S. 75th Ave. Phoenix Arizona 85043,  
Defendants.

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ORDER

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Magistrate Judge Craig B. Shaffer

This civil action comes before the court on: (1) "Plaintiff's Motion for Leave of Court to Amend Complaint;" (2) "Defendant Knight Transportation's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(6);" and (3) "Defendant Swift's Motion to Dismiss Plaintiffs' Complaint Pursuant to Fed. R. Civ. P. 12(b)(6)." Pursuant to the Order Referring Case dated August 3, 2012 (Doc. # 5) and the memoranda dated September 14, 2012 (Doc. # 23), September 25, 2012 (Doc. # 35), and November 26, 2012 (Doc. # 51), these matters were referred to the Magistrate Judge. The court has reviewed the Motions, the Responses (filed September 20, 2012, October 10, 2012, December 10, 2012, and December 14, 2012) (Docs. # 28, 39, # 52, and # 54), the Replies (filed October 4, 2012, October 29, 2012, January 4, 2013, and January 11, 2014) (Docs. # 38, # 41, # 55, and # 56), the pleadings, the entire case file, the proceedings held on October 31, 2012 (see Courtroom Minutes/Minute Order (Doc. # 45)) and November 13, 2012 (see Courtroom Minutes/Minute Order (Doc. # 47)), and the applicable law and is sufficiently advised in the premises.

Proceeding *pro se*, Mr. Maiteki filed his initial Complaint on August 2, 2012. (See Doc. # 1). Defendants Swift and Knight filed the instant Motions to Dismiss the Complaint.

Defendant Marten filed an Answer. (See Doc. # 10). Counsel for Mr. Maiteki entered his appearance on November 13, 2012 (see Doc. # 48) and filed the instant Motion for Leave to Amend on November 23, 2012. Defendants Swift and Knight object to Mr. Maiteki's Motion for Leave to Amend, arguing that the proposed amendment is futile for failing to remedy the deficiencies in the Complaint and raising the arguments set forth in their Motions to Dismiss. (See Docs. # 52, # 54).

The District Court for the District of Colorado has noted that “[r]ather than force a Rule 12(b)(6) motion into a Rule 15(a) opposition brief, the defendants may be better served by waiting to assert Rule 12 motions until the operative complaint is in place.” *General Steel Domestic Sales, LLC v. Steelwise, LLC*, No. 07-cv-01145-DME-KMT, 2008 WL 2520423, at \* 4 (D. Colo. 2008). If Defendants have viable grounds for dismissing Mr. Maiteki's proposed Amended Complaint, such arguments are more efficiently raised in the context of Rule 12 motions, rather than indirectly under Rule 15(a). See *id.* (recognizing that a futility argument under Rule 15(a) effectively places “the cart before the horse”). At the very least, proceeding under Rule 12 would avoid one round of objections under either Fed. R. Civ. P. 72(a) or (b).<sup>1</sup> Cf. *In re K-Dur Antitrust Litigation*, 338 F. Supp.2d 517, 528 (D. N.J. 2004) (noting efficiencies of disposing of a motion to amend along with a Rule 12 motion); *Leach v. Northern Telecom, Inc.*, 790 F. Supp. 572, 573-74 (E.D.N.C. 1992) (reasoning that a pragmatic approach to plaintiff's motion to amend assured the best use of judicial time and resources). As Defendants' arguments asserted in their Motions to Dismiss also apply to Mr. Maiteki's proposed Amended Complaint, the court will permit the amended pleading and address Defendants' arguments to Mr. Maiteki's Amended Complaint.

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<sup>1</sup> An order denying a motion to amend may be dispositive if the order effectively removes a claim or a party from the action. See *Pedro v. Armour Swift-Eckrich*, 118 F. Supp.2d 1155, 1157 (D. Kan. 2000)).

Accordingly, IT IS ORDERED that:

1. "Plaintiff's Motion for Leave of Court to Amend Complaint" (filed November 23, 2012) (Doc. # 50) is GRANTED.
2. Plaintiff's proposed Amended Complaint (Doc. # 50-1) is accepted for filing as of the date of this Order. The Clerk of the Court shall docket Doc. # 50-1 as the Amended Complaint.
3. "Defendant Knight Transportation's Motion to Dismiss Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(6)" (filed September 24, 2012) (Doc. # 33) is DENIED without prejudice in light of the filing of the Amended Complaint.
4. "Defendant Swift's Motion to Dismiss Plaintiffs' Complaint Pursuant to Fed. R. Civ. P. 12(b)(6)" (filed September 14, 2012) (Doc. # 20) is DENIED without prejudice in light of the filing of the Amended Complaint.
5. Defendants shall answer or otherwise respond to the Amended Complaint on or before Monday, March 4, 2013.

DATED at Denver, Colorado, this 14th day of February, 2013.

BY THE COURT:

s/Craig B. Shaffer  
United States Magistrate Judge