

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 09-22815-CIV-COOKE/BANDSTRA

AUEISHUA BUCKNER, *et al.*,

Plaintiffs

vs.

LUTHER CAMPBELL, *et al.*,

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION
FOR LEAVE TO AMEND THE COMPLAINT**

THIS MATTER is before me on Plaintiff's Motion for Leave to Amend the Complaint. [ECF No. 57]. I have reviewed the arguments, the record and the relevant legal authority. For the reasons explained below, Plaintiff's Motion for Leave to Amend is granted.

I. BACKGROUND

This case is a continuation of Plaintiffs' ongoing efforts to secure a judgment against Defendants Luke Records and Films, Inc., Luke Records, Inc., and Luke Entertainment Corporation (the "Luke Corporate Defendants") for the alleged unauthorized appropriation and use of Plaintiff Aueishua Buckner's image. In 2008, default judgments were entered against Defendants Luke Records and Films, Inc., and Luke Records Inc., by the United States District Court for the Eastern District of Louisiana. In 2009, a default judgment was also entered against Luke Entertainment Corporation. Defendant Luther Campbell, as the President, CEO and sole shareholder of the Luke Corporate Defendants, made no attempt to appear or in any way defend the lawsuits in the Eastern District of Louisiana.

On September 18, 2009, Plaintiffs filed a Complaint against Luther Campbell and the Luke Corporate Defendants for fraudulent transfer pursuant to Fla. Stat. § 726.101, *et seq.* (Count I), unjust enrichment (Count II), and personal negligence of an officer (Count III). [ECF No. 1]. From the onset, Plaintiffs have been unable to conduct timely discovery due to Luther Campbell's and the Luke Corporate Defendants' failure to actively participate in litigation, despite numerous Court orders compelling the Defendants to comply with the discovery requests.¹ Plaintiffs finally received limited discovery from the Defendants on September 13, 2010 and deposed Luther Campbell on October 7, 2010. [ECF Nos. 45, 57].

II. LEGAL STANDARD

“Pursuant to Fed. R. Civ. P. 15(a), a party seeking to amend its complaint ... after a responsive pleading has been filed, may amend the complaint ‘only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.’” *Smith v. Sch. Bd. of Orange County*, 487 F.3d 1361, 1366 (11th Cir. 2007) (quoting Fed. R. Civ. P. 15(a)). Rule 15(a) reflects a policy of “liberally permitting amendments” and absent a “substantial reason to deny leave to amend” a plaintiff's request should be granted. *Espey v. Wainwright*, 734 F.2d 748, 750 (11th Cir. 1984).

III. DISCUSSION

Plaintiffs claim that information disclosed during Luther Campbell's deposition revealed that “from 1996 through 2007, including at the time of the unauthorized use of Ms. Buckner's image, Luther Campbell was essentially operating *ultra vires* as the entity known as ‘Luke Records, Inc.’” Plaintiffs also claim that Luther Campbell “made fraudulent representations to the world that he was operating as a corporation when in fact at all times he was acting as an

¹ A Clerk's Default was entered against the Luke Corporate Defendants on February 5, 2010. [ECF No. 20].

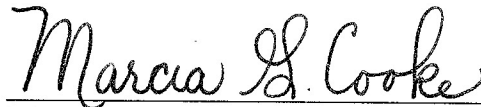
individual.” Now, on the eve of trial, Plaintiffs wish to amend the Complaint to remove the Luke Corporate Defendants and pursue the action against Luther Campbell for personal liability, personal negligence, and fraudulent transfer so that the pleadings conform to the evidence offered during trial. *See* Fed. R. Civ. P. 15(b). In light of the discovery challenges Plaintiffs have faced in this case, I find no reason to deny Plaintiffs’ request for leave to amend the Complaint as the Defendants, who at all times were aware of the recently disclosed information, will not be prejudiced.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED and ADJUGED** that:

1. Plaintiffs’ Motion for Leave to Amend Complaint [ECF No. 57] is **GRANTED**.
2. Defendant Luther Campbell shall file his answer to the Amended Complaint by the Calendar Call scheduled for Wednesday, November 3, 2010 at 3:00 p.m.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of October 2010.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of record