

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JH KELLY, LLC, a Washington limited liability company,

Plaintiff,

v.

TIANWEI NEW ENERGY HOLDINGS CO., LTD., a People's Republic of China company, TAO (MIKE) ZHANG, WEI XIA, DAYI (SEAN) LIU, and DOES 1-10,

Defendants.

Case No. 4:13-cv-00368-BLW

MEMORANDUM DECISION AND ORDER

INTRODUCTION

Before the Court is Plaintiff JH Kelly, LLC's Second Motion for an Extension of Time to File an Amended Complaint (Dkt. 77). JH Kelly asks the Court to extend the September 28, 2018 deadline for filing an amended complaint to November 30, 2018. Defendant Tianwei does not oppose the motion, but the other defendants say this case has dragged on for too long already; they ask the Court to deny the motion. *See* Dkts. 79, 80. For the reasons explained below, the Court will grant an extension, but only until November 9, 2018, not until November 30, 2018.

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DISCUSSION

JH Kelly filed this lawsuit in August 2013. The Court dismissed JH Kelly's first complaint with leave to amend and later dismissed JH Kelly's first amended complaint without leave to amend. In December 2017, the Ninth Circuit reversed, concluding that the first amended complaint came "very close to stating a plausible claim of fraud with the requisite particularity." Dkt. 67, at 2.

While the case was on appeal, Defendant Tianwei entered into bankruptcy proceedings in China. In February 2018, the parties reported that because the Chinese bankruptcy could potentially impact this case, JH Kelly should be granted an extension of time in which to file an amended complaint. *See Stipulation*, Dkt. 71, ¶ 5. The Court granted that extension, indicating that Tianwei should notify the Court when the Chinese bankruptcy proceedings had concluded, and further ordering JH Kelly to file an amended complaint within 21 days of the date that notice was filed. *See Order*, Dkt. 72.

On July 20, 2018, Tianwei notified the Court that a company known as Chengdu Shuangliu JuYuan Financing & Investment Management Services Co., Ltd. had purchased Tianwei's assets. Tianwei further informed the Court that JH Kelly, Tianwei, and Chengdu were in the process of negotiating a global settlement of all those entities' claims among one another. Dkt. 73, at 2. Because some of those claims were pending in bankruptcy court, Tianwei indicated that the bankruptcy trustee would need to seek the bankruptcy court's approval of the settlement. *Id.* Tianwei estimated that the bankruptcy court approval would take at least 60 days.

The Court thus granted JH Kelly another extension – this time through September 28, 2018 – for filing an amended complaint. As that deadline approached, JH Kelly asked for another extension. *See* Dkt. 77. JH Kelly indicated that “it took longer than anticipated to finalize the settlement agreement,” and that the motion to approve the settlement was not filed with the bankruptcy court until September 7, 2018. *Id.* at 2. That motion is now set for hearing on October 16, 2018. *Id.*

JH Kelly reports that it cannot dismiss Tianwei as a defendant from this action until (1) the bankruptcy court approves the settlement, and (2) the chapter 7 trustee in the consolidated bankruptcy cases of Hoku Materials, Inc. and Hoku Corporation pays “an amount currently held by the Chapter 7 trustee” to Tianwei’s attorneys. *Id.*

The individual defendants say they “should not be forced to wait on tenterhooks while Plaintiff attempts to resolve its dispute with Defendant Tianwei through settlement negotiations in the bankruptcy proceedings.” *Response*, Dkt. 79, at 2; *see also Response* Dkt. 80 (joining Dkt. 79).

The Court agrees that it is time to move this case along – regardless of whether JH Kelly is ultimately able to settle its dispute with Tianwei. That said, however, and given the October 16, 2018 hearing scheduled in bankruptcy court, the Court will grant a final extension – through and including November 9, 2018 – for JH Kelly to file an amended complaint. This will allow JH Kelly and Tianwei a chance to resolve their differences, but it will also address the other defendants’ desire to move this case forward.

ORDER

IT IS ORDERED that Plaintiff JH Kelly's Second Motion for an Extension of Time to File an Amended Complaint (Dkt. 77) is **GRANTED IN PART and DENIED IN PART**. The motion is granted to the extent that the Court will allow JH Kelly through and including **November 9, 2018** to file an amended complaint. To the extent JH Kelly seeks a lengthier extension, the motion is denied.



DATED: October 30, 2018

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
Chief U.S. District Court Judge