

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

CIVIL ACTION NO. 06-160-JBC

PATRICIA S. HOLT and
CARLA GARRETT,

PLAINTIFFS,

V. MEMORANDUM OPINION AND ORDER

ESTATE OF KATHERINE S. WHALEN,

DEFENDANT.

* * * * *

This matter is before the court upon the motion for summary judgment by the third-party defendant Great American Insurance Company ("GAIC") (R. 87); motion for leave to file an amended third-party complaint by the defendant and third-party plaintiff Estate of Katherine Whalen (R. 95); motions to amend the complaint by the plaintiffs (R. 108, 113); and motions for summary judgment and oral argument by third-party defendants James Blanton and the Estate of Alvin Blanton (R. 112, 120). The court will grant the motions to amend complaints and deny all other pending motions.

The deadline for the defendant and third-party plaintiff Estate of Whalen to amend its pleadings was January 4, 2010. *See* R. 85. The Estate of Whalen filed its motion for leave to amend and tendered an amended third-party complaint on December 10, 2009. *See* R. 95. GAIC objects to the amended third-party complaint because it was tendered after GAIC filed a motion for summary judgment. *See* R. 110. However, the deadlines for the third-party plaintiff to

amend pleadings, January 4, 2010, and for all parties' dispositive motions, February 1, 2010, were agreed upon by the parties, including GAIC, and ordered by the court on July 23, 2009. See R. 85. Because the amended third-party complaint was filed within the time allotted to amend pleadings, shortly after the appearance of new counsel for the Estate of Whalen, and is based on new evidence, the court will grant the Estate of Whalen's motion to file an amended third-party complaint (R. 95). See R. 94, 95, 118; 28 U.S.C. § 1367; Fed. R. Civ. P. 14, 15(a)(2), 18, 20; *Troxel Mfg. Co. v. Schwinn Bicycle Co.*, 489 F.2d 968, 970 (6th Cir. 1973) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The court will also grant the first and second unopposed motions of the plaintiffs to amend the complaint (R. 108, 113), but will deny James Blanton and the Estate of Alvin Blanton's motion for oral argument (R. 120) because oral argument of pending motions is unnecessary for their resolution.

In regard to motions for summary judgment on the Estate of Whalen's claims against the third-party defendants (R. 87, 112), genuine issues as to material facts include but are not limited to 1) the extent of alleged embezzlement and employment of care givers for Katherine Whalen by Alvin Blanton; 2) the circumstances surrounding the conveyance of property located at 1248 Standish Way, Lexington, Kentucky, from Alvin Blanton to James Blanton; and 3) the extent of James Blanton's involvement in alleged destruction of records. See R. 98, 119; KY. REV. STAT. ANN. §§ 62.070, 378, 387.660, 387.690, 396.055 (2010);

Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Estate of Whalen has come forward with more than a scintilla of evidence, and enough on which a jury could reasonably find in its favor on its claims. See Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989). Accordingly,

IT IS ORDERED that the motion for leave to file an amended third-party complaint by the defendant and third-party plaintiff Estate of Katherine Whalen (R. 95) and motions to amend the complaint by the plaintiffs (R. 108, 113) are **GRANTED**.

IT IS FURTHER ORDERED that the motion for summary judgment by the third-party defendant Great American Insurance Company (R. 87), motion for summary judgment by third-party defendants James Blanton and the Estate of Alvin Blanton (R. 112), and the motion for oral argument by James Blanton and the Estate of Alvin Blanton (R. 120) are **DENIED**.

Signed on April 13, 2010



Jennifer B. Coffman

JENNIFER B. COFFMAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY