

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VISTA FOOD EXCHANGE, INC.,

Plaintiff,

14 Civ. 804

-against-

OPINION

CHAMPION FOODSERVICE, LLC,
BC&G WEITHMAN CONSTRUCTION CO., INC.,
TYRONE WEITHMAN, ASHLEY SIMPSON,
and LINDA ATKINSON,

Defendants.

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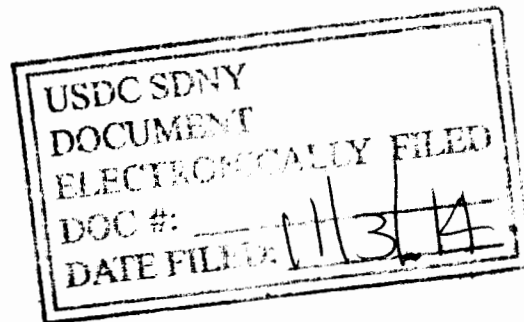
A P P E A R A N C E S:

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Sweet, D.J.

The plaintiff Vista Food Exchange, Inc. ("Vista" or the "Plaintiff") has moved pursuant to Federal Rule of Civil Procedure 59(e) to alter or amend the judgment of this court entered August 7, 2014 (the "August 7 Judgment") and pursuant to Rule 15(a) for leave to file the amended complaint ("AC"). The motion to alter or amend the August 7 Judgment is denied, and the motion for leave to file the AC is granted.

Prior Proceedings

The prior proceedings were set forth in the 50-page opinion of the court filed August 5, 2014 (the "August 5 Opinion") upon which the August 7 Judgment was based.

The instant motions were heard and marked fully submitted on September 24, 2014.

The Motion to Alter or Amend the August 7 Judgment is Denied

No adequate grounds to satisfy the requirements of Rule 59(e) have been set forth by the Plaintiff. The motion to alter or amend the August 7 Judgment is denied.

Leave to File the AC is Granted

The Defendants Champion Food Service, LLC ("Champion), BC&G Weithman Construction Co. Inc. ("BC&G"), Tyrone Weithman ("Weithman"), Ashley Simpson ("Simpson") and Linda Atkinson ("Atkinson"), collectively (the "Defendants") have opposed the Plaintiff's Rule 15(a) motion on the grounds of futility, asserting that the AC has been proposed in bad faith and fails to cure the deficiencies noted in the August 5 Opinion.

While these issues may ultimately be resolved in the Defendants' favor, "Fed. R. Civ. P. 15(a) requires that leave [to amend] shall be freely given when justice so requires." Ronzani v. Sanofi S.A., 899 F.2d 195, 198 (2d Cir. 1990); Foman v. Davis, 371 U.S. 178, 182 (1962). The standard is a "'permissive' one that is informed by a 'strong preference for resolving disputes on the merits'" Crawford v. Recovery Partners, No. 12 Civ. 8520, 2014 U.S. Dist. LEXIS 59310, at *3-4 (S.D.N.Y. Apr. 28, 2014) (citing Williams v. Citigroup Inc., 659 F.3d 208, 212-13 (2d Cir. 2011), which is reflected as a "strong preference for allowing plaintiffs to amend" pleadings that have been dismissed as inadequate. In re Bear Stearns Cos., No. 08 MDL 1963; 07 Civ. 10453, 2011 U.S. Dist. LEXIS 103061, at *7

(S.D.N.Y. Sept. 6, 2011); see Ronzani, 899 F.2d at 198 (“When a motion to dismiss is granted, the usual practice is to grant leave to amend the complaint”).

Because a direct resolution of these issues presented by the Defendants is desirable, leave to file the AC is granted.

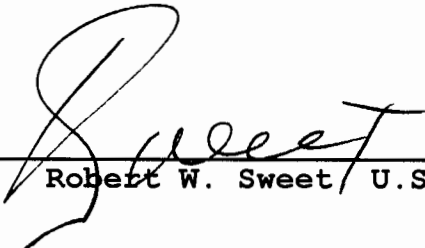
However, it should be noted that the Defendants’ opposition constitutes fair warning to the Plaintiff that could give rise to sanctions should grounds for the Defendants’ opposition be established.

Conclusion

The Plaintiff’s motion to alter or amend the August 7 Judgment is denied. Leave to file the AC is granted.

It is so ordered.

Dated: New York, New York
November 3, 2014



Robert W. Sweet U.S.D.J.