

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

BERKELEY COUNTY  
CIRCUIT CLERK  
2015 JAN 20 A 11:11  
VIRGINIA M. SINE, CLERK

**M & D RENTAL CORPORATION,**  
a Foreign Corporation,

**Plaintiff,**

vs.

**Civil Action No. 15-C-38**  
**Presiding Judge Thomas C. Evans III**

**FARMER'S AND MERCHANTS BANK  
AND TRUST, INC.,  
DEALERSHIP MANAGEMENT COMPANY, LLC,  
WINCHESTER HOSPITALITY, LLC,  
UNITED BANKSHARES, INC.,  
BGR ASSOCIATES, LLC,  
UNITED BANK, INC.,  
MID-ATLANTIC GROUP, LLC,  
RJCPTP, LLC,  
PATTHOFF FAMILY, LLC,**

**Defendants.**

**ORDER GRANTING PLAINTIFF'S MOTION FOR  
LEAVE TO FILE AMENDED COMPLAINT**

This matter came before the Court on this 1<sup>st</sup> day of December, 2015, upon Plaintiff's Motion for Leave to File Amended Complaint filed with the Court in this matter on the 15<sup>th</sup> day of December, 2015.

The Court notes that it has conducted a full and complete review of the record in this matter, has considered the parties' pleadings, and has considered the numerous legal memoranda (including exhibits) filed by the parties. After carefully considering the above, this matter is now mature for a decision by this Court.

Based upon the above, it is hereby ORDERED and ADJUDGED that Plaintiff's Motion for Leave to File Amended Complaint shall be, and hereby is, GRANTED. It is

the further Order of this Court that Defendants' Motion(s) for Summary Judgment are hereby DENIED. In reaching its decision, the Court makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. Plaintiff filed its original Complaint in this matter against the Defendants alleging claims for breach of contract, and unjust enrichment, and seeking compensatory and statutory damages related to the same.

2. Several of the Defendants filed/joined in a Motion for Summary Judgment seeking judgment as a matter of law on the primary ground that Plaintiff M&D Rental Corporation does not have standing or is not the real party in interest to the Declaration of Storm Water Management Facility Easements and Covenant to Share Costs Agreement executed in 2001.

3. The Court conducted a telephonic hearing on December 7, 2015 to address the pending Motion(s) for Summary Judgment. In the course of said hearing, the Court granted Plaintiff's oral motion for leave to file an amended complaint in this matter.

4. Plaintiff now files the instant Motion for Leave to File Amended Complaint for the sole purpose of adding/substituting L&B Development, LLC as a real party Plaintiff to this civil action. L&B Development, LLC purchased the storm water property utilized by the Defendants and managed by Plaintiff M&D Corporation, and David Dickey and Margaret Greynovsky are the principals/owners of both L&B Development, LLC and M&D Rental Corporation in this matter.

5. Rule 15 of the West Virginia Rules of Civil Procedure provides the following regarding the amendment of pleadings:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is

one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; *and leave shall be freely given when justice so requires*. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders. (Emphasis added).

6. In the instant case, the Plaintiff has moved this Court for leave to amend the Complaint to add L&B Development, LLC as a real party Plaintiff to this civil action because "justice so requires," and no party would be prejudiced by the same. In support of its motion to amend the Complaint by adding L&B Development, LLC, Plaintiff has asserted the following facts:

- (a) The principals/owners of both entities (L&B Development, LLC and named Plaintiff M&D Rental Corporation) are the same-David Dickey and Margaret Greynovsky.
- (b) Any amendment of the pleadings would only be adding a Plaintiff, it would not be adding any new Defendants.
- (c) Any amendment of the pleadings would only be adding a Plaintiff, it would not be adding any new claims or causes of action.
- (d) An amendment to the pleadings to add L&B Development, LLC would not prejudice any of the Defendants because no additional claims will be added, and the Defendants have had notice of Plaintiff's claims since the filing of the Complaint on January 23, 2015 – thus there is no unfair surprise or prejudice to the Defendants.
- (e) Pursuant to the Scheduling Order entered by the Honorable Thomas C. Evans, III, a trial in this matter is not set until July 26, 2016. Thus, there is no prejudice to the Defendants by an amendment of the pleadings because trial is nine (9) months away and the Plaintiff is not asserting any additional claims.

7. In the case of *Lloyd's, Inc. v. Lloyd*, 225 W.Va 377, 693 S.E.2d 451 (W.Va. 2010), the West Virginia Supreme Court reiterated and underscored the scope and liberal



nature of amending pleadings under Rule 15:

5. " 'The purpose of the words "and leave [to amend] shall be freely given when justice so requires" in Rule 15 (a) W. Va. R. Civ. P., is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of procedural impediments; therefore, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue.' Syllabus Point 3, *Rosier v. Garron, Inc.*, 156 W.Va. 861, 199 S.E.2d 50 (1973)." Syllabus point 2, *State ex rel. Vedder v. Zakaib*, 217 W.Va. 528, 618 S.E.2d 537 (2005).

8. The Court in *Lloyd* made clear that "motions to amend should always be granted under Rule 15 when (1) the amendment permits the presentation of the merits of the action, and (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment."

9. In the instant case, amending the Complaint to add L&B Development as a Plaintiff would permit the presentation of the merits of the action or breach of contract as alleged in Count I of the Plaintiff's Complaint. Furthermore, none of the Defendants would be prejudiced by such an amendment to the Complaint because no Defendant can possibly be "prejudiced by the sudden assertion of the subject of the amendment." As stated above, Plaintiff would only be adding a party and would not be adding any additional counts or claims. The only claims asserted would be the claims Defendants have been aware of since January 2015, when the Plaintiff filed its original Complaint.

WHEREFORE, it is hereby ORDERED and ADJUDGED as follows:

1. Plaintiff's Motion for Leave to File Amended Complaint is hereby GRANTED;
2. That the Defendants shall file an answer to the Amended Complaint within

twenty (20) days of the date of entry of this Order.

The Court notes the objections and exceptions by the Defendants to any adverse rulings contained herein.

There being nothing further that remains to be done herein at this time, the Clerk shall enter the foregoing Order and transmit copies to all counsel of record herein.

Enter this 14<sup>th</sup> day of Jan. 2016 ~~December, 2015~~.



HONORABLE THOMAS C. EVANS, III  
BERKELEY COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION

A TRUE COPY  
ATTEST

Order prepared by:

Eric S. Black, Esq.  
Counsel for Plaintiff

Virginia M. Sine  
Clerk Circuit Court  
By: P. Cooper  
Deputy Clerk

