

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**DOUGLAS E. GRIFFITH, JR.,
an individual; and
iLEASE & RENTALS, LLC,
a West Virginia limited liability company,**

Plaintiffs,

vs.

**Civil Action No. 20-C-231
Presiding Judge: Shawn D. Nines
Resolution Judge: Christopher C. Wilkes**

**MVB BANK, INC., a West Virginia
corporation; and
JARROD FURGASON,
an individual,**

Defendants.

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

On this 27th day of March 2024, this matter came before the Court upon Plaintiff's Motion for Leave to File Amended Complaint. The Plaintiffs, Douglas E. Griffith, Jr. and iLease & Rentals, LLC, by counsel Robert P. Fitzsimmons, Esq. and Holly S. Planinsic, Esq., Counterclaim Plaintiff, MVB Bank, Inc., by counsel Brian A. Glasser, Esq. and Rebecca Pomeroy, Esq., and Intervenor, Christopher P. Sander, by counsel J. Michael Benninger, Esq., have fully briefed and argued the issues. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

FINDINGS OF FACT

1. This case was commenced with the filing of the Complaint on September 14, 2020, wherein Plaintiffs Douglas E. Griffith, Jr. and iLease & Rentals, LLC (hereinafter

“iLease”) alleged the following causes of action against Defendants MVB Bank, Inc. (hereinafter “MVB”) and Jarrod Furgason: Negligence (Count I), Breach of Contract (Count II), Fraud/Fraudulent Misrepresentation (Count III), Unfair Trade Practices, Misrepresentation, and False Advertising of Insurance Policies (Count IV), Violations of Insurance Sales Consumer Protection Act (Count V), Negligent Supervision and Retention (Count VI), Punitive Damages (Count VII), and Damages (Count VIII). *See* Compl., p. 14-25. The causes of action in the Complaint stem from the principal claim in this matter that Defendants induced Plaintiffs to take out a life insurance policy, which involved a complicated scheme of providing funds to different banking institutions to obtain loans, culminating in the purchase of an insurance policy and insurance premium financing. *See* Judicial Reply to Mot. to Refer, p. 1-2. Plaintiffs claim the majority of the money invested by Plaintiffs to secure the loan to obtain financing was to be returned to Plaintiffs within so many days after closing for the loan; however, Plaintiffs allege the financing was not obtained and the funds were not returned to Plaintiff. *Id.* at 2.

2. On April 7, 2021¹, Defendant and Counterclaim Plaintiff MVB filed its MVB Bank, Inc.’s Counterclaim Against iLease & Rentals, LLC and Douglas E. Griffith Jr.², alleging acts of default under commercial loan agreements and guarantees. *See* Ctrclm; *see also* Pl’s Mot. to Refer.

¹ The Court notes the Counterclaim is in the court file stamped March 8, 2021, and the order granting leave to assert the Counterclaim was filed April 7, 2021. Accordingly, the Court treats the Counterclaim as deemed filed April 7, 2021.

² The Counterclaim asserts the following causes of action: Breach of Contract Against iLease for the Equipment-Backed Loan (Count I); Breach of Guaranty Against Griffith for the Equipment-Backed Guaranty (Count II); Breach of Contract Against iLease for the A/R-Backed Loan (Count III); and Breach of Guaranty Against Griffith for the A/R-Backed Guaranty (Count IV). *See* Ctrclm, p. 7-11.

3. On a prior day, this Court granted a motion to intervene filed by Intervenor Christopher P. Sander, allowing him to intervene as a party counterclaim defendant in this civil action. Sander is a signatory to the loan documents attached to the Counterclaim.
4. On January 17, 2024, Plaintiff filed the instant Motion for Leave to File Amended Complaint, moving this Court for leave to file an Amended Complaint, which was attached to the motion as an exhibit. The motion indicated that Intervenor Sander had no objection.
5. On January 22, 2024, a Briefing Order was entered by the undersigned.
6. No response or reply was filed.
7. The Court now finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

The general rule of amendments to civil actions is governed by Rule 15 of the West Virginia Rules of Civil Procedure. Rule 15 of the West Virginia Rules of Civil Procedure provides, in pertinent part,

...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...

W. Va. R. Civ. P. 15.

Further, the rule of civil procedure that leave to amend a pleading “shall be freely given when justice so requires” is to be liberally construed to promote substantial justice and to secure the just, speedy, and inexpensive determination of every action. *Perdue v. S. J. Groves & Sons Co.*, 152 W. Va. 222, 161 S.E.2d 250 (1968). “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.” Syl. pt. 3, *Rosier v. Garron, Inc.*, 156 W.Va. 861, 199 S.E.2d 50 (1973). Syl. Pt. 6, *Berry v. Nationwide Mut. Fire Ins. Co.*, 181 W.Va. 168, 381 S.E.2d 367 (1989); *see also*, Franklin D. Cleckley, Robin J. Davis & Louis J. Palmer, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 334 (2002).

The West Virginia Supreme Court of Appeals has previously held that “[t]he liberality allowed in the amendment of pleadings pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure does not entitle a party to be dilatory in asserting claims... Lack of diligence is justification for a denial of leave to amend where the delay is unreasonable, and places the burden on the moving party to demonstrate some valid reason for his or her...delay”. Syl. Pt. 3, *State ex rel. Vedder v. Zakaib*, 217 W.Va. 528, 618 S.E.2d 537 (2005).

Furthermore, circuit courts are typically afforded broad discretion in ruling upon motions to amend. “A trial court is vested with a sound discretion in granting or refusing leave to amend pleadings in civil actions. Leave to amend should be freely given when justice so requires, but the action of a trial court in refusing to grant leave to amend a pleading will not be regarded as reversible error in the absence of a showing of an abuse of the trial court's discretion in ruling upon a motion for leave to amend.” Syl. Pt. 6, *Perdue v. S.J. Groves & Sons Co.*, 152 W.Va. 222, 161 S.E.2d 250 (1968). *See Lloyd's, Inc. v. Lloyd*, 225 W.Va. 377, 382, 693 S.E.2d 451, 456 (2010).

Here, the Court considers the motion is timely, as it was filed within the deadline for amendments set forth in this civil action's Scheduling Order. Therefore, the Court finds no lack


of diligence or unreasonable delay. Further, the Court considers that Sander had no objection, and no other party filed an objection in the deadline this Court's Briefing Order gave for responses. Additionally, this Court considers the request for leave was based off of discovery that has occurred in this case. The Court considers the fact that no new factual issues are raised by the amended complaint, and discovery is still ongoing. For this reason, the Court finds no prejudice from the amendment. For all of the foregoing reasons, and considering the liberal standard of Rule 15, the Court finds the motion shall be GRANTED.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff's Motion for Leave to Amend Complaint is hereby GRANTED. It is further hereby ADJUDGED and ORDERED that Plaintiff's Amended Complaint, attached as an exhibit to the instant motion, is deemed filed in the case file for the instant civil action. The parties shall proceed with this case pursuant to the West Virginia Rules of Civil Procedure, all other applicable law, and any scheduling orders entered by this Court.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

03-27-2024


JUDGE SHAWN D. NINES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION