

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

PAUL BATISTE

CIVIL ACTION

VERSUS

NO: 17-04435

RYAN LEWIS ET AL

SECTION: "F" (4)

ORDER

Before the Court is a **Motion for Leave to Amend Complaint (R. Doc. 34)** filed by the Plaintiff seeking an order from the Court granting the Plaintiff leave to file a second amended complaint. The motion is opposed. R. Doc. 36. Oral argument on the motion was heard on January 3, 2018.

I. Background

The instant lawsuit was brought by Paul Batiste d/b/a Artang Publishing, LLC ("Plaintiff"), a New Orleans based musician and founding member of the Batiste Brothers Band. Plaintiff alleges that he has authored and asserts ownership over a number of musical compositions that are registered with the United States Copyright Office. Plaintiff alleges that Ryan Lewis and Ben Haggerty (a musical duo known as Macklemore and Ryan Lewis), Macklemore Publishing, Ryan Lewis Publishing, Macklemore, LLC, Andrew Joslyn, Allen Stone, DB Joslyn Music, and Stickstones Publishing (collectively the "Defendants") have infringed upon and misappropriated the works of the Plaintiff.

The original complaint in this case was filed on May 1, 2017. R. Doc. 1. On September 11, 2017, the Defendants filed a motion to dismiss for failure to state a claim. R. Doc. 12. The Plaintiff filed his amended complaint into the record on October 2, 2017. R. Doc. 19. The Defendants responded filing a motion to dismiss on November 15, 2017, with respect to the amended

complaint, which is currently pending before the District Court. R. Doc. 25. The Plaintiff filed the instant motion for leave to file a second amended complaint on December 13, 2017. R. Doc. 34.

The Plaintiff seeks leave to file the Second Amended Complaint in order to directly address the assertions that the Defendants have raised. R. Doc. 34-1, p. 1. According to the Plaintiff, the second amended complaint is a response to the Defendants' motion to dismiss and Plaintiff states that it provides detail regarding the willful copyright infringement of the Defendants. *Id.* at p. 2. In addition, Plaintiff states that while preparing for the motion to dismiss additional claims against the Defendants were discovered. *Id.* Finally, Plaintiff argues that leave should be freely given because it will facilitate justice by rendering the Defendants' motion to dismiss moot and establishes additional claims. *Id.*

The Defendants oppose the motion for leave to file the second amended complaint. R. Doc. 36. The Defendants argue that a number of factors require that this Court not grant leave to amend. The Defendants argue that the proposed amendments are futile, the newly discovered claims were apparent and available to the Plaintiff at the onset of litigation, and the motion can only be explained by bad faith and dilatory motive. *Id.*

II. Standard of Review

Federal Rule of Civil Procedure 15(a) governs the amendment of pleadings before trial. Rule 15(a) allows a party to amend its pleadings "only with the other party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Moreover, the Rule urges that the Court "should freely give leave when justice so requires." *Id.* In taking this liberal approach, the Rule "reject[s] the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48 (1957).

“Rule 15(a) requires a trial court ‘to grant leave to amend freely,’ and the language of this rule ‘evinces a bias in favor of granting leave to amend.’ ” *Jones v. Robinson Prop. Grp.*, 427 F.3d 987, 994 (5th Cir. 2005) (internal quotations marks omitted) (quoting *Lyn–Lea Travel Corp. v. Am. Airlines*, 283 F.3d 282, 286 (5th Cir. 2002)). When denying a motion to amend, the court must have a “substantial reason” considering such factors as “ ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failures to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party ... and futility of the amendment.’ ” *Marucci Sports, LLC v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378 (5th Cir. 2014) (quoting *Jones*, 427 F.3d at 994). An amendment is deemed to be futile if it would be dismissed under a Rule 12(b)(6) motion. *Id.* (citing *Briggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003)).

III. Analysis

The first factor the court considers when determining whether or not to grant leave to amend pursuant to 15(a) is whether the amendment will cause an undue delay, is in bad faith, or that the movant has some dilatory motive in filing the motion. The Fifth Circuit has stated that “[a] litigant’s failure to assert a claim as soon as he could have is properly a factor to be considered in deciding whether to grant leave to amend. Merely because a claim was not presented as promptly as possible, however, does not vest the district court with authority to punish the litigant.” *Carson v. Polley*, 689 F.2d 562, 584 (5th Cir. 1982). Further, the Fifth Circuit has indicated that “delay alone is an insufficient basis for denial of leave to amend: The delay must be *undue*, i.e., it must prejudice the nonmoving party or impose unwarranted burdens on the court.” *Mayeaux v. Louisiana Health Serv. and Indem. Co.*, 376 F.3d 420, 427 (5th Cir. 2004).

As noted, Plaintiff argues that there is no bad faith or dilatory motive with respect to this motion. Rather, it is a response to the pending motion to dismiss before the District Court. R. Doc.

34-1, p. 2. Further, Plaintiff contends that the additional claims were only discovered during the process of preparing to respond the motion to dismiss. *Id.* Finally, during oral argument and questioning by the Court, Plaintiff's counsel indicated that after this amendment there should be no new additional claims in this case.

Defendants argue that Plaintiff's actions can only be explained by bad faith and dilatory motive as the motion to amend was filed at the time Plaintiff's opposition to their motion to dismiss was due. Defendants also argue that the new claims were readily apparent and available at the onset of litigation. R. Doc. 36, pp. 12-14. According to the Defendants, both the first amendment and now this amendment are being filed to delay the case because they were filed days or hours before Plaintiff's oppositions to the motions to dismiss were due. *Id.* at p. 14. Further, Defendants cite to an earlier case where Plaintiff and counsel alleged 134 infringements of which at summary judgement only 3 infringement claims survived. *Id.* at p. 7. Defendants argue that the Plaintiff has no concern for resources and are "trying to achieve by accretion what they cannot do on merit" to drive up the costs of the litigation and extract a nuisance payment. *Id.*

The Court finds that there is no undue delay, bad faith, or dilatory motive with respect to this motion. Defendants argue that the amendments are timed for maximum delay, however, granting the amendment will not create any unwarranted burden on the Court. It will also not prejudice the Defendants. While the second amended complaint would add two new claims and details for the claims in the original complaint, it does not alter the case or impact the ability for the Defendants to adequately defend themselves in this litigation. There is also not a scheduling order in place and therefore there can be no delay with respect to any deadlines. Therefore, the first factor weighs in favor of granting the motion.

The second factor the court considers when determining whether or not to grant leave to amend pursuant to 15(a) is whether the party has previously filed repeated amendments to cure deficiencies before filing the instant motion. Courts in the Fifth Circuit have found that where a party has been given multiple opportunities to cure a defect, denial of a 15(a) motion is proper. *See, e.g., Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607–08 (5th Cir. 1998) (upholding district court's denial of 15(a) motion where plaintiffs had three prior opportunities to amend their complaint).

This is Plaintiff's first motion for leave to amend its complaint, though the complaint has been previously amended without a motion. It is also the first complaint as it relates to the claims of infringement against the Defendants regarding the works titled "Need to Know" and "Same Love." Thus, there cannot have been a repeated failure with respect to these new claims. Further, even though this would be the second amended complaint no trial date has been set, and the Court finds that this factor still weighs in favor of granting the motion.

The third factor the court considers when determining whether or not to grant leave to amend pursuant to 15(a) is whether the amendment will cause an undue prejudice to the opposing party. The Fifth Circuit has cautioned that amendments should not be permitted where they would "fundamentally alter the nature of the case." *In re American International Refinery, Inc.*, 676 F.3d 455, 467 (5th Cir. 2012) (noting that new allegations of fraud in bankruptcy proceeding would have "fundamentally altered" the nature of a case which had previously been limited to determination of whether one party possessed a conflict of interest warranting disgorgement of monies paid); *Mayeaux*, 376 F.3d at 427–28 (finding that complaint would be "fundamentally altered" where proposed amendment would destroy jurisdiction and "effectively reconstruc[ed] the case anew."). Further, the Fifth Circuit has noted that a defendant is prejudiced if an added

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.