

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT CROIX

UMLIC VP LLC, Successor in Interest
and assigns to the United States Small
Business Administration,

Plaintiff,

D.C.Civ. No. 2003/0037

v.

GRACIANO BELARDO, ALICE BELARDO,
ANASTASIE JACKSON, GERARD LUZ JAMES,
ASTA K. JAMES, VARGRAVE RICHARDS,
GOVERNMENT OF THE VIRGIN ISLANDS
UNITED STATES INTERNAL REVENUE SERVICE,
and OLIVE A. KLYVERT,

Defendants.

GRACIANO BELARDO and ALICE BELARDO,

Third Party Plaintiffs,

v.

THE UNITED STATES OF AMERICA
SMALL BUSINESS ADMINISTRATION,

Third Party Defendant.

**ORDER GRANTING DEFENDANT ASTA JAMES'
LEAVE TO FILE COUNTERCLAIM**

THIS MATTER is before the Court on a motion by defendant Asta K. James ["James"] for leave to file a counterclaim pursuant to Rule 13 of the Federal Rules of Civil Procedure. The plaintiff ["UMLIC"] has filed an opposition and James filed a reply.

James' motion seeks leave to file a claim of "slander of title" against UMLIC for failure to remove a mortgage lien recorded against her property located at No. 83 Anna's Hope. James

claims that a recent title search indicates that she never signed the mortgage instrument creating the lien. She argues that UMLIC's refusal to remove the mortgage lien creates "an improper cloud on the title and constitutes slander of said title." James also requests punitive damages.

UMLIC counters that James' spouse, Gerard Luz James, executed the mortgage against the property and subsequently redeemed the said property in his name only.¹ UMLIC argues that the slander of title claim cannot stand because UMLIC is conditionally privileged to continue its claim. It maintains that the amendment should be denied as futile.

DISCUSSION

Rule 13 of the Fed.R.Civ.P. allows persons who are already parties to an action to assert counterclaims against an opposing party. Claims which arise out of the same transaction or occurrence as the original claim must be asserted as a compulsory counterclaim pursuant to Rule 13(a). Such a claim must bear a logical relationship to the plaintiff's claim. The distinction between Rule 13(a) – compulsory counterclaims – and Rule 13(b) – permissive counterclaims – was not discussed by the parties. Courts generally agree that the standard for identifying compulsory counterclaims should be construed liberally, so as to further judicial economy. The broadest application of the same transaction or occurrence standard finds a compulsory counterclaim when there is any significant logical relationship between the plaintiff's claim and the counterclaim. *Transamerica Occidental Life Ins. Co. v. Aviation Office of America, Inc.*, 292 F.3d 384, 389-90 (3d Cir. 2002) (“[T]he objective of Rule 13(a) is to promote judicial economy,

¹UMLIC offered no exhibit in support thereof and such redemption is not shown on the title search proffered by James as Defendant's Exhibit "A". That search, dated March 10, 2003, shows title as "vested in Asta K. James, only".

so the term 'transaction or occurrence' is construed generously to further this purpose."); *Wells v. Woodlums, III*, 1997 WL 471723 *6 (D.Kans. July 30, 1997)(Plaintiff's claims for, *inter alia*, slander of title were held to be compulsory counterclaims to a prior state action to quiet title to the property).

Additionally, the cases instruct that Rule 13 should be read together with Rule 15 governing amendments. The United States Supreme Court has emphasized that leave to amend should be denied only under limited circumstances: In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, --the leave should, as the rules require, "be freely given." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Accordingly, the Third Circuit has held that a "motion to amend should be denied only for such reasons as 'undue delay, bad faith, futility of the amendment, and perhaps most important, the resulting prejudice to the opposing party.'" *Alvin v. Suzuki*, 227 F.3d 107, 121 (3d Cir. 2000).

In deciding whether to grant a defendant leave to amend its answer to add a counterclaim, a court should consider whether the counterclaim is compulsory, whether the pleader has acted in good faith and has not unduly delayed filing the counterclaim, whether undue prejudice would result to the plaintiff, or whether the counterclaim raises meritorious claims. . . . "When a counterclaim is compulsory under Fed.R.Civ.P. 13(a), the argument for allowing the amendment is 'especially compelling.'" *Delaware Trust Co. v. Lal*, 1997 WL 256958 *3 (E.D.Pa. May 15, 1997).

The Court finds that the proposed counterclaim is compulsory because it arises out of the same set of facts or transaction as the original claim, and there is a significant relationship between plaintiff's claim and the counterclaim. *Transamerica*, 292 F.3d at 389. It does not seek to add new parties. Because it is compulsory, there must be compelling reasons for its denial.

Plaintiff does not argue, nor does the Court find, that James acted in bad faith by filing this motion. The counterclaim was filed after a title search revealed that James had not signed the subject mortgage, and after James' counsel requested that UMLIC dismiss its claim. Thus, the Court cannot find any evidence of bad faith on the part of James.

An amendment will be denied if the movant establishes that it "was unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the ... amendments been timely." *Id.* "Prejudice to the nonmoving party is the touchstone for the denial of the amendment." *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1413 (3d Cir. 1993) citing *Cornell & Co., Inc., v. OSHRC*, 573 F.2d 820, 823 (3d Cir.1978). Plaintiff claims no prejudice and the Court can find none. This case is in its initial stages with discovery still incomplete. Allowing the amendment will cause no undue burden to plaintiff.

Plaintiff argues that James should not be allowed to file her counterclaim because such a claim would not survive a motion to dismiss. Plaintiff also argues that it has a defense which would defeat the counterclaim. It is well settled that an amendment will be denied if it is futile, however, futility does not turn on the court's discussion of the merits of the proposed claim but rather on substantive or procedural considerations. *See, Delaware Trust Co.*, 1997 WL 256958 at *4 (adding counterclaim should not be interpreted to mean that claim will survive a motion to

dismiss for failure to state a claim). Accordingly, a claim is legally insufficient if, even taking all the factual allegations as true and making every favorable inference in favor of the pleader, no relief could be granted because the complaint states a wrong for which there clearly is no legal remedy or because the plaintiff is without the right or the power to assert that particular claim. *U.S. v. Union Corp.*, 194 F.R.D. 223, 237 (3d Cir. 2000). The inquiry is not whether defendant will ultimately prevail in a trial on the merits, but whether she should be afforded an opportunity to offer evidence in support of her claims. *In Re Rockefeller Properties Inc., Securities Litigation*, 311 F.3d 198, 216 (3d Cir. 2002).

In this case, the plaintiff does not argue that James has failed to state a claim but argues, instead, that it has a privilege to defeat such a claim. This Court finds that plaintiff's argument goes to the merits of the claim sought to be asserted and does not dictate denial of the proposed amendment at this juncture.

Based on the foregoing, the Court finds that James should be allowed to amend her Answer to add the counterclaim. The claim is closely related to the original set of facts, it is timely, was not filed in bad faith, and is not prejudicial to plaintiff. Plaintiff's argument that the claim is susceptible to a motion to dismiss is better left for adjudication before the District Judge on a dispositive motion fully briefed by the parties.

Accordingly, it is hereby

ORDERED that James' motion for leave to file a counterclaim is GRANTED.

Date: May 8, 2003 ENTER:

UMLIC, et al. v. James, et. al.
Civ. No. 2003/0037
Order
Page 6

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:
Wilfredo F. Morales, Clerk of Court
by: _____
Deputy Clerk

cc: Joel Holt, Esq.
Carol Rich, Esq. (FAX 776-8442)
Gerald T. Groner, Esq.)
Lee J. Rohn, Esq.) Co-Counsel for Belardos
Eric S. Chancellor, Esq.
Dept. Of Justice - FAX 773-1425 (former Prendergast case)
AUSA Ernest Batenga