# UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

ZAZA PACHULIA and TINATIN ALAVIDZE,

Plaintiffs,

v. Case No. 16-CV-1531

RANDY USOW ACCOUNTING, INC. and RANDY USOW,

Defendants,

and

CAROLINA CASUALTY INSURANCE COMPANY,

Intervenor Defendant.

# PLANTIFFS’ CIVIL L.R. 7(h) EXPEDITED NON-DISPOSITIVE MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Plaintiffs ZAZA PACHULIA and TINATIN ALAVIDZE (“Plaintiffs”), by and through their undersigned attorneys, move for leave to file a Second Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). Plaintiffs seek leave to amend their Complaint to: (1) re-name R. Usow Account, LLC, as a defendant; and (2) clarify that their claims embody Defendants’ alleged wrongful acts relating to tax year 2012. Plaintiffs requested that Defendants and Intervenor-Defendants consent to Plaintiffs filing their Second Amended Complaint. A meet and confer discussion took place on July 10, 2017. (Spahn Aff. ¶ 2.) Plaintiffs’ counsel provided a copy of the Second Amended Complaint to counsel on July 13, 2017. Intervenor Defendants have chosen not to take a position. Despite Plaintiffs’ efforts to address concerns raised by Defendants’ counsel, Defendants have not consented to Plaintiffs’ filing a Second Amended Complaint, prompting the need for this motion.1 (Spahn Aff. ¶¶ 2, 3; Ex. A)

# BACKGROUND

Plaintiffs filed their initial Complaint on November 16, 2016 (Docket #1), and later filed an Amended Complaint naming Randy Usow Accounting, Inc. as defendant in place of R. Usow Accounting, LLC (Docket #16) after Defendants represented in their initial Answer that “R. Usow Accounting, LLC is an improperly named defendant” (Docket #9 ¶ 5). Both Plaintiffs’ initial Complaint and Amended Complaint focused primarily—though not exclusively—on Defendants’ actions relating to tax years 2011, 2013, 2014.

1 During conferences between Plaintiffs’ and Defendants’ counsel, Defendants’ attorney raised concern that Plaintiffs’ proposed Second Amended Complaint *adds* claims relating to state tax liability. This is not the case. Other than add allegations related to tax year 2012, the Second Amended Complaint does not add new claims related to state tax liability. As addressed below, discovery has been exchanged with respect to tax year 2012. Moreover, Defendants have been on notice of Plaintiffs’ allegations related to state tax liability since the filing of the First Amended Complaint as well as after receiving Plaintiffs’ initial disclosures on March 1, 2017 which included by reference a computation of damages for state tax exposure. (Spahn Aff. ¶ 4, Ex. B.)

Discovery has revealed that R. Usow Accounting, LLC was just as involved in the wrongdoing giving rise to Plaintiffs’ claims as Randy Usow Accounting, Inc. For instance, the IRS and Georgia Department of Revenue made deposits related to Plaintiffs’ tax refunds into R. Usow Accounting, LLC’s bank account on at least five occasions in 2012 and 2013. (Spahn Aff.

¶ 6, Ex. C). This, of course, is contrary to Defendants’ representation that “R. Usow Accounting, LLC is an improperly named defendant.”

# ANALYSIS

Rule 15(a)(2) requires courts to “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Seventh Circuit has repeatedly emphasized that this standard is a generous one and that, “[a]s a general rule, district courts should liberally grant leave to amend pleadings.” *Mulvania v. Sheriff of Rock Island County*, 850 F.3d 849, 854 (7th Cir. 2017). *See also Barry Aviation Inc. v. Land O’Lakes Municipal Airport Comm’n*, 377 F.3d 682, 687 & n.3 (collecting cases). Denial of leave to amend is only appropriate “where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to defendants, or where the amendment would be futile.” *Arreola v. Godinez*, 546 F.3d 788, 796 (7th Cir. 2008). None of those circumstances are present here.

While the parties have worked in good faith to address issues during discovery, challenges with Defendants’ information-collection efforts have caused delay. (Spahn Aff. ¶ 5.) Despite Plaintiffs’ repeated efforts, Defendants *still* have not fully responded to Plaintiffs’ two sets of discovery requests. (Spahn Aff. ¶ 5.) Defendants contend that the computer that Mr. Usow used while providing tax preparation services for Plaintiffs crashed in January of 2017 which may have resulted in the loss of certain relevant data. Plaintiffs served a second set of discovery requests seeking additional information on this topic on June 7, 2017. Defendants’

responses were due on July 7, 2017, however, to date, Defendants have not provided any responses to Plaintiffs’ interrogatories or production requests.

Nevertheless, the discovery Plaintiffs have received has revealed that Mr. Usow’s misconduct occurred in tax year 2012 just as it did in 2011, 2013, and 2014. Discovery has also revealed that R. Usow Accounting, LLC, played a direct role in that misconduct. (Spahn Aff. ¶ 6, Ex. C.) Plaintiffs have worked diligently in reviewing the information produced in discovery and have moved as quickly as possible. (Spahn Aff. ¶ 7.) In sum, there is no undue delay here as any delay in filing Plaintiffs’ Second Amended Complaint has been the result of Defendants’ own conduct in discovery.

Nor does the filing of Plaintiffs’ Second Amended Complaint unduly prejudice Defendants. The parties have engaged in discovery regarding tax year 2012’s returns and R. Usow Accounting LLC. (Spahn Aff. ¶ 8; Exs. C, D.) Accordingly, not only have Defendants been on notice of issues related to R. Usow Accounting LLC and tax year 2012, their discovery strategy demonstrates a belief that the 2012 tax year is at issue in this case.

# CONCLUSION

Plaintiffs respectfully request that the Court grant them leave to file a Second Amended Complaint, re-naming R. Usow Accounting, LLC as a defendant and clarifying that actions relating to the 2012 tax year form a basis for their causes of action.

Dated this 17th day of July, 2017.

GODFREY & KAHN, S.C.

By: */s/Brian C. Spahn*

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