

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:

CENTRAL STORAGE & VAN  
COMPANY,

Debtor.

BK 82-1703

CV 84-0-37

ORDER

This matter is before the Court on appeal from an order of the Bankruptcy Court for the District of Nebraska overruling the objection by appellant, Central Storage & Van Company ("Central Van"), the debtor in this Chapter 11 proceeding, to the proof of claim submitted by appellee, Timmons Building Services, Inc. ("Timmons"), a creditor of Central Van.

In November, 1982, Timmons filed an amended proof of claim for \$54,708.31 based on amounts due under a contract between Timmons and Central Van for building construction services by Timmons. The building was constructed on land owned by Central Transfer & Distribution Company, a business entity related to Central Van.

On September 13, 1983, Central Van filed an objection to the Timmons' claim on the theory that Central Transfer & Distribution Company, not Central Van, was the obligor under the construction contract. The Bankruptcy Court set the claim and objection thereto for trial on January 11, 1984.

After the trial had begun, Central Van, without any prior notice to Timmons or the Court, attempted to introduce evidence of a set-off against the Timmons' claim based on alleged

negligent injury to property caused by Timmons during the course of construction. Timmons objected to the insertion of negligence issues into a trial already in progress on the contract claim and urged that it had received no notice or opportunity to conduct discovery with respect to Central Van's tort claim. For this reason, the Bankruptcy Judge denied Central Van's motion for leave to amend and further denied Central Van's motion for a continuance stating, "we are all here today to try this matter [Timmons' claim and Central Van's objection thereto] and I am going to do so." Central Van has therefore appealed the Bankruptcy Court's denial of its motions for leave to amend and for a continuance and, after the remainder of trial, the denial of its objection to Timmons' contract claim.

The Court finds that Central Van's objection to Timmons' proof of claim in no way provided notice of a negligence cause of action or other basis for set-off. The objection stated only that:

Claim Nos. 1 and 12 filed by Timmons Building Services, Inc. . . . are objected to on the ground that they represent an obligation of Central Transfer & Distribution Company, a Debtor in a separate proceeding. Claim Nos. 1 and 12 should be disallowed in full.

This statement is entirely inadequate to provide notice of the claim for set-off and opportunity to prepare for trial on that matter.

As for denial of the motions to amend and for a continuance, Bankruptcy Rule 7015 incorporates for adversary proceedings the standards of Fed. R. Civ. P. 15 regarding amendments to pleadings.



Central Van also relies on Fed. R. Civ. P. 13(f) which states:

When a pleader fails to set up a counter-claim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counter-claim by amendment.

However, prior reported decisions clearly indicate that denial of leave to amend is not an abuse of discretion when another party would suffer prejudice or trial would be unduly delayed by the amendment. See, e.g., Dart Indus., Inc. v. Plunkett Co. of Okla., Inc., 704 F.2d 496, 500 (10th Cir. 1983); Svoboda v. Trane Co., 655 F.2d 898, 900 (8th Cir. 1981); Beeck v. Aquaslide 'N' Dive Corp., 562 F.2d 537, 540 (8th Cir. 1977); Midwest Pipe Fabricators, Inc. v. Davis Specialties, Inc., 92 F.R.D. 380, 381 (E.D. N.Y. 1981). The denial of leave to amend to avoid prejudice to another party or delay is particularly reasonable when, as in the present case, the record reveals no new facts which had recently come to light or other explanation for failure to amend at an earlier time.

The Court finds, therefore, that the failure to provide Timmons with prior notice and opportunity to conduct discovery and prepare for trial constituted prejudice warranting denial of leave to amend. In addition, the Bankruptcy Court's refusal to abort a trial already in progress and disrupt its crowded docket to accommodate Central Van's last minute request for a continuance did not amount to an abuse of discretion. As the record reveals no other evidence in support of Central Van's objection to Timmons' claim, the Bankruptcy Court properly overruled the objection.

IT IS THEREFORE ORDERED that the order of the Bankruptcy Court is affirmed.

DATED this 21 day of September, 1984.

BY THE COURT:



C. ARLEN BEAM  
UNITED STATES DISTRICT JUDGE

I certify this to be a true copy of  
the original record in my custody.  
WILLIAM L. OLSON, Clerk  
By [Signature] Deputy Clerk