

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JUAN C. CHAVEZ, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 12-cv-10691-WGY  
 )  
 JPMORGAN CHASE BANK, N.A. )  
 )  
 Defendant. )

**MOTION OF JPMORGAN CHASE BANK, N.A.  
FOR LEAVE TO FILE AMENDED COUNTERCLAIM**

Defendant JPMorgan Chase Bank, N.A. (“Chase”) moves for leave to file an amended counterclaim pursuant to Rule 15 of the Federal Rules of Civil Procedure. Chase seeks leave to amend its counterclaim against the plaintiff, Juan C. Chavez (the “Plaintiff”) to correct factual allegations contained in the Counterclaim. A copy of Chase’s proposed amended counterclaim is attached hereto as Exhibit A. In further support of this motion, Chase states as follows.

**II. ARGUMENT**

Fed. R. Civ. P. 15(a) states that after a responsive pleading has been filed, “a party may amend his pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a) (2). Allowance of such motions should be freely given, absent a good reason to deny the motion, 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, etc. . . .” Castellucci v. United States Fidelity & Guaranty Co., 372 Mass. 288, 290 (1977) (quotation and citation omitted). “Absent a showing of

futility, leave should only be denied if the amendment would be overly prejudicial.” MacNeill Engineering Co., Inc. v. Trisport, Ltd., 59 F.Supp.2d 199, 201 (D. Mass. 1999).

On February 4, 2014, Chase filed its Answer to the Plaintiff’s Amended Complaint and asserted a Counterclaim for breach of contract on the basis that the Plaintiff has failed to pay the amount due and owing under the Note that he executed on March 30, 2006. Chase’s Counterclaim alleges that “Chase acquired the plaintiff’s Mortgage loan as part of the asset sale from the FDIC.” Counterclaim at ¶ 7. Chase further alleges that “By virtue of a valid assignment and other loan sale documents, Chase assigned the Mortgage and Note to Bank of America, N.A.” Id. at ¶ 8. In the course of further investigation of the Plaintiff’s Mortgage loan it was revealed that the above-quoted allegations are factually inaccurate.

Chase did not acquire the Mortgage loan as part of the sale from the FDIC. Instead, pursuant to a Mortgage Loan Purchase and Sale Agreement (“P&S”) by and between Washington Mutual Bank, FA (“WAMU”) and Bank of America, N.A. (“BOA”), WAMU sold the Plaintiff’s Mortgage loan to BOA on or about January 26, 2007. Pursuant to the P&S, WAMU retained servicing rights to the Plaintiff’s Mortgage loan. “On September 25, 2008, the Office of Thrift Supervision (“OTS”) declared WAMU to be insolvent and appointed the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for WAMU. The FDIC accepted the appointment as Receiver on September 25, 2008.” Id. at ¶ 5. “On the same day that the FDIC was appointed as Receiver of WAMU, it sold certain assets and certain liabilities of WAMU to Chase pursuant to a written Purchase and Assumption Agreement.” Id. at ¶ 6. Accordingly, Chase acquired the servicing rights to the Plaintiff’s Mortgage loan as part of the asset sale from the FDIC. “Chase continues to service the plaintiff’s Mortgage loan for [BOA] and is authorized to bring actions against borrowers for breach of their payment obligations.” Id. at ¶ 9.

In sum, Chase asks this Court to allow it to amend its Counterclaim to correct the factual inaccuracies contained in certain paragraphs of the fact section. Its motion should be allowed as there

is no good reason to deny it. The amendment does not change the basis of Chase's Counterclaim nor will it unnecessarily delay this case. Additionally, the parties have recently submitted a joint statement to the Court proposing a discovery deadline of February 26, 2015 and a trial for August, 2015. This provides the Plaintiff plenty of time to engage in discovery concerning the new facts asserted in the Counterclaim. Moreover, counsel for the Plaintiff recently informed Chase's counsel that he has served a purported Chapter 93A demand letter upon BOA and intends to seek leave to file another amended complaint to add BOA as a party. Thus, allowing Chase to file an amended Counterclaim which merely corrects three facts will not prejudice the parties nor will it delay the outcome of the litigation.

WHEREFORE, Chase respectfully requests that the Court allow its Motion for Leave to File an Amended Counterclaim.

JPMORGAN CHASE BANK, N.A.,

By its Attorneys,

/s/ Jamie L. Kessler

Mary Ellen Manganelli, BBO# 641658

Jamie L. Kessler, BBO#681867

Bulkley, Richardson and Gelinas, LLP

125 High Street

Oliver Street Tower, 16<sup>th</sup> Floor

Boston, MA 02110

Tel: (617) 368-2500

Fax: (617) 368-2525

Email: [mmanganelli@bulkley.com](mailto:mmanganelli@bulkley.com)

[jkessler@bulkley.com](mailto:jkessler@bulkley.com)

Dated: July \_\_, 2014

#### **LOCAL RULE 7.1(A)(2) CERTIFICATION**

I hereby certify that I contacted plaintiff's counsel via email on \_\_\_\_\_ and attempted in good faith to resolve or narrow the issue presented in this Motion. Plaintiff's counsel indicated that the plaintiff does not assent to the relief requested in this Motion.

/s/ Jamie L. Kessler  
Jamie L. Kessler

**CERTIFICATE OF SERVICE**

I, Jamie L. Kessler, hereby certify that a true and correct copy of the foregoing document was served upon the parties via this Court's CM/ECF system or, if not registered on this Court's CM/ECF system, then via first class mail, postage prepaid, on July \_\_, 2014.

/s/ Jamie L. Kessler  
Jamie L. Kessler