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Amy McGhee
CLERK
Missoula County District Court
STATE OF MONTANA
By: Justice Restuccio
DV-32-2024-0000119-RP
Marks, Jason
55.00

Jason Marks
District Judge
Montana Fourth Judicial District
200 W. Broadway
Missoula, MT 59801

**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

Mountainside Hospitality, LLC Plaintiff/Counter-Defendant, vs. Laxmi Investments, Inc., Laxmi Hospitality LLC, and Rupam Patel, Defendants/Counter-Claimant.	Dept. No. 4 Cause No. DV-32-2024-119-RP **Order on Motions for Leave to Amend, to Dismiss, and to Stay Discovery**

Before this Court are three distinct, but related, motions.

1. On February 27, 2026, plaintiff Mountainside Hospitality, LLC ("Mountainside") moved for leave to file an amended and supplemental complaint, alleging facts that occurred after filing the original complaint and asserting new and modified claims against the defendants. The amended and supplemental pleading (hereafter, the "Proposed Complaint") would also add a new defendant. The existing defendants oppose that motion. *See* Docs. 31 (motion), 35 (opposition brief), 38 (reply).

2. On April 10, 2026, defendants moved to dismiss this action. Mountainside opposed that motion. *See* Docs. 40, 41 (motion and brief), 44 (opposition brief), 47 (reply).

3. On June 8, 2026, defendants moved for a protective order, shielding them from the obligation to respond to certain written discovery that Mountainside had propounded. The Court granted that motion and then Mountainside filed its opposition brief and cross-motion. *See* Doc. 49 (motion), 51 (order), 52 (opposition brief/cross motion).

The Court held a hearing on July 1, 2026. Mountainside was represented by attorneys Robert K. Baldwin and MacKenzee R. Jester of Baldwin Law, PLLC, Bozeman, Montana. Defendants were represented by Kyle Ryan of Cotner Ryan Blackford Law, PLLC, Missoula, Montana. The Court orally denied Mountainside's cross-motion regarding the discovery issue described in paragraph 3, above. The Court heard argument from counsel on the other motions. Having read the briefs and heard argument of counsel, the Court is now fully apprised and prepared to rule.

For the reasons which follow, the Court:

- Grants Mountainside's motion for leave to file its supplemental and amended complaint;
- Denies defendants' dispositive motion to dismiss; and

- Lifts the stay on discovery.

I. Background.

Mountainside originally filed this action in February 2024, alleging that defendants were in violation of a certain Memorandum of Understanding ("MOU") concerning the sale and purchase of the Bel Aire Motel and the Motel 6, both in Missoula. *See* Doc. 1 (original complaint) Doc. 41, Ex. A (the MOU). The original complaint sought damages and specific performance. Doc. 1. The parties thereafter entered into a stipulation concerning various issues, including performance under the MOU (the "Stipulation"). *See* Doc. 23. The parties then entered a subsequent agreement, also concerning the operation and sale of the two motels (the "Agreement"). *See* Doc. 41, Ex. C.

The parties were apparently unsuccessful in accomplishing the sale/purchase transaction. Mountainside's Proposed Complaint no longer seeks specific performance but seeks damages from the defendants under a variety of claims. It would also add as a defendant Rohit Patel, the husband of the existing defendant Rupam Patel. The Patels, together, own the two Laxmi entity defendants.

Defendants oppose the motion for leave to amend on the theory that the MOU was superseded by the subsequent Stipulation and Agreement, such that the claims contained in the Proposed Complaint are entirely distinct from the claims in the original complaint. According to defendants, therefore, the motion to amend should be denied

Defendants also contend, including in the briefing on the motion to dismiss (addressed more fully below), that the Proposed Complaint should not relate back, that the Court lost jurisdiction at some point in time, and so it is powerless to consider amendment.

The Court disagrees with the defendants. Amendment is to be freely given. Rule 15(a) allows amendment "with the … court's leave," and instructs that the "court should freely give leave when justice so requires." The rule has been construed broadly. *See Lien v. Murphy Corp.*, 201 Mont. 488, 492, 656 P.2d 804, 806 (1982). Furthermore, "it is the rule to allow amendments and the exception to deny them." *Id.* (quoting *Union Interchange, Inc. v. Parker*, 138 Mont. 348, 354, 357 P.2d 339, 342 (1960)). *Lien* noted that the United States Supreme Court has held that "undue delay, bad faith or dilatory motive on the part of the movant" are grounds for disregarding the policy favoring liberal amendment of pleadings. *Id*. Absent such grounds, however, leave to amend should be freely given. *See Mogan v. Harlem*, 238 Mont. 1, 7-8, 775 P.2d 686, 689-90 (1989).

In *Lien*, the Montana Supreme Court held that it was error for the trial court to deny the plaintiff permission to amend its complaint some nine years after it was originally filed. Even though prosecution of the case had been delayed, the delay was not unreasonable and there was no bad faith or dilatory motive on the part of the plaintiff. *Id.*, 201 Mont. at 493-94.

> It is an abuse of discretion for the district court to refuse to permit amendments to pleadings which are offered at a reasonable time and which should be made in the furtherance of justice. 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, etc.—the leave [to amend] sought should, as the rules require, be 'freely given'."

Loomis v. Luraski, 2001 MT 223, ¶ 41, 306 Mont. 478, 36 P.3d 862, 868 (emphasis added) (internal citations, quotations omitted). To justify denial of leave to amend, the delay must be "undue." *Id*.

"[L]eave to amend should be ***freely given absent prejudice*** to the opposing party." *Griffin v. Moseley*, 2010 MT 132, ¶ 29, 356 Mont. 393, 234 P.3d 869 (emphasis added). And, *Loomis* explained that, even then, the prejudice must be "undue." As federal courts have explained, "prejudice is the 'touchstone of the inquiry [whether to allow amendment] under rule 15(a).'" *Lone Star Ladies Investment Club v. Schlotzsky's, Inc*., 238 F.3d 363, 368 (5th Cir. 2001) (quoting *Lowray v. Texas A & M University System*, 117 F.3d 242, 246 (5th Cir. 1997)).

Defendants have not alleged prejudice, and the Court perceives none.

Defendants argue that the claims alleged in the Proposed Complaint are so unrelated to those alleged in the original complaint that amendment should not be allowed. *See* Doc. 35, pp. 10-17. Instead, according to defendants, the Proposed Complaint "presents a separate and distinct matter that could, and should be, asserted in a separate cause of action." *Id*., p. 16. They also accuse Mountainside of "procedural games" because, they say, Mountainside "needs the Original Complaint for the relation back doctrine." Doc. 47, p. 6.

The Court disagrees. First, the Rules "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." Rule 1, M.R.Civ.P. Defendants do not claim that the claims in Mountainside's Proposed Complaint are futile, but only that they should be filed in a new case, with the same parties and involving the same failed transaction regarding the same motels. Forcing such a new and overlapping case would violate the letter and spirit of Rule 1.

Moreover, the claims presented by the Proposed Complaint are not unrelated to the original complaint. Both the original complaint and the Proposed Complaint concern the sale of the two motels and the MOU. While the Proposed Complaint also addresses the Stipulation and Agreement, the subject matter—the sale of the motels—is the same. It is the same transaction; the parties merely revised their contract via the Stipulation and Agreement. This is not so unrelated that a separate case is required. *See also* discussion, *infra*, regarding the motion to dismiss.

Moreover, the relation back doctrine exists precisely so that claims not previously plead can, in the proper circumstances, relate back to the date of the original filing to avoid statute of limitations problems. Rule 15(c), M.R.Civ.P., provides that "[a]n amendment to a pleading relates back to the date of the original pleading when … the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out -- or attempted to be set out -- in the original pleading."

The Montana Supreme Court has described the "***liberal relation back provision*** in Rule 15(c)." *First Sec. Bank v. Gary*, 221 Mont. 329, 334, 718 P.2d 1345, 1348 (1986) (emphasis added). As one court explained:

> The Supreme Court has interpreted the relation back doctrine liberally, to apply if an amended pleading "relate[s] to the same general conduct, transaction and occurrence" as the original pleading. *Tiller v. Atl. Coast Line R.R. Co.*, 323 U.S. 574, 580-81, 65 S. Ct. 421, 89 L. Ed. 465 (1945) (holding, in a rail-road negligence case that even though the amended complaint alleged a different theory of negligence, the new charge related back to the original complaint because "[t]he cause of action now, as it was in the beginning, is the same—it is a suit to recover damages for the alleged wrongful death of the deceased."). That liberal interpretation of the relation back rule reflects the rationale of Rule 15(c), which is that "a party who has been notified of litigation concerning a particular occurrence has been give all the notice that statutes of limitations were intended to provide. *Baldwin Cty. Welcome Ctr. v. Brown*, 466 U.S. 147, 149 n.3, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984).

Anza Tech., Inc. v. Mushkin, Inc., 934 F.3d 1359, 1368 (Fed. Cir. 2019).

The Montana Supreme Court considers federal cases which construe or apply a provision of the federal rules which is identical or similar to the state provision to be persuasive. *See, e.g., U.S. Fidelity and Guar. Co. v. Rodgers*, 267 Mont. 178, 181-182, 882 P.2d 1037, 1039 (1994); *see also Albert v. Hastetter*, 2002 MT 123, ¶ 43, 310 Mont. 82, 310, 48 P.3d 749, 757 ("These provisions are identical to and modeled upon Rule 30(e) of the Federal Rules of Civil Procedure, which confers federal court interpretations of the federal rule persuasive authority"); *Petritz v. Albertsons, Inc.*, 187 Mont. 102, 106, 608 P.2d 1089, 1092 (1980) ("The interpretations under the federal rule [41(a)(2)] have persuasive application to an interpretation of the state rule because of the identical language").

For the foregoing reasons, the Court grants Mountainside's motion for leave to amend (Doc. 31). Mountainside shall file its Proposed Complaint within ten days from the date of this order.

II. DEFENDANTS' MOTION TO DISMISS.

Defendants' motion to dismiss was also premised on the supposed disconnect between the MOU and the subsequent Stipulation and Agreement, and thus the supposed disconnect between the claims in the original complaint and the claims contained in the Proposed Complaint. Although the arguments are couched in different terms, the gravamen of the argument is the same as that discussed above, i.e., that the Proposed Complaint asserts claims so detached from and unrelated to those contained in the original complaint, that the only proper remedy is dismissal. According to defendants, all the claims asserted in the original complaint became moot by the parties' subsequent conduct which rendered the MOU a nullity, whereupon this Court lost subject matter jurisdiction and had to dismiss. The Court disagrees on several levels.

First, factually, it is just not true that the MOU was so entirely supplanted such that no viable claims remained after the stipulation and subsequent agreement. For instance, the original complaint sought monetary damages for breach of the MOU, and an award of attorney fees. Nothing about the Stipulation or Agreement nullified those claims. In fact, the Stipulation attached the MOU and required continued performance under the MOU. Stipulation, p. 4, ¶ 2. The Stipulation expressly reserved "any future arguments of the Parties" and "damages claimed by either Party." *Id.*, p. 7, ¶ 4. And, the Agreement expressly provided that the "MOU … shall remain in full force and effect." Agreement, ¶ 2. It expressly reserved rights and arguments under the MOU. *Id.*, ¶ 21. It provided for how to give notice under the MOU. *Id.*, ¶22. All of this is inconsistent with defendants' theory that the MOU was entirely supplanted and rendered irrelevant.

It is also not true that this Court lost subject matter jurisdiction. "Subject-matter jurisdiction is the power of a court to hear and determine a particular class of cases." *Schuster v. Nw. Energy Co.*, 2013 MT 364, ¶ 7, 373 Mont. 54, 314 P.3d 650. "The district court has original jurisdiction in … all civil matters and cases…." Mont. Const. art. VII, § 4(1). This Court has always had jurisdiction over this case. Regardless of whether the claims in the original complaint at one point became moot (and they did not), this Court was never deprived of jurisdiction to hear this type of case.

Buck v. Buck, 2014 MT 344, 377 Mont. 393, 340 P.3d 546, a marital dissolution action, is instructive. The husband argued that the court lacked subject matter jurisdiction because neither party had been domiciled in Montana for the requisite 90 days before filing. *Id.*, ¶ 14. The wife countered that she had filed an amended petition that alleged she had satisfied the 90-day requirement after the initial filing. *Id.*, ¶ 15.

The Court considered whether a supplemental pleading could cure the jurisdictional defect that existed at the time of the original petition. It noted that "The U.S. Supreme Court has confirmed that supplemental pleadings can even be used to cure subject-matter jurisdiction deficiencies." *Id.*, ¶ 18 (citing *Mathews v. Diaz*, 426 U.S. 67, 75, 96 S. Ct. 1883, 1889, 48 L. Ed. 2d 478 (1976)). The court then adopted that analysis: "These decisions comport with our own jurisprudence." *Id.*, ¶ 19.

The court concluded that, even if the wife had not originally met the domicile requirement,

> [A]ny resulting ***jurisdictional defect was cured*** when she established domicile for 90 days and then alleged as much

> in a ***supplemental pleading***…." Thus, the dissolution proceeding would properly be before the District Court but for the technical distinction between filing a new petition and filing a supplemental petition. We do not adhere to this distinction in this case. To do otherwise ***would serve only to waste the parties' time, their money, and the resources of the judiciary***, without protecting any legislative or other substantive purpose.
>
> No legislative purpose is harmed by allowing Susan's supplemental pleading to cure the alleged jurisdictional defect.

Id., ¶¶ 20-21 (emphasis added).

Buck establishes that, even if Mountainside's original complaint had suffered from a lack of jurisdiction, that defect could be cured by the amended and supplemental pleading. Of course, there is no allegation that the original complaint here was improper. Thus, this case is even stronger than *Buck* for application of the rule that supplemental pleading can cure jurisdictional defects.

Thus, even were the defendants correct that at some point this Court lacked jurisdiction, the Proposed Complaint cures any such defect.

Finally, defendants themselves concede that, if amendment is permitted, then the case should not be dismissed. *See* Doc. 35 (opposition brief), p. 16-17. Defendants state in their brief in opposition that their motion to dismiss is contingent upon this court denying plaintiff's motion for leave. *See id.*

For those reasons, the Court denies the defendant's motion to dismiss this matter.

III. THE MOTION TO STAY DISCOVERY

As noted, the Court temporarily granted the motion for stay while it pondered the pending motions. Having ruled as stated above, this Court now lifts the stay. The Court notes that the first set of written discovery that prompted defendants' motion for stay were served upon the defendants on April 30. Defendants have thus had over two months, so far, to respond to that discovery.

The Court orders them to fully respond to that discovery forthwith, and in no event later than ten days after the date of this order.

ELECTRONICALLY DATED AND SIGNED BELOW

Electronically Signed By:
Hon. Judge Jason Marks
Thu, Jul 16 2026 02:40:57 PM