

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>RICHARD S. PANDOLFI,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION</b>
<b>v.</b>	)	<b>NO. 07-cv-914</b>
	)	
<b>CHASE HOME FINANCE LLC, et al.,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	

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**MEMORANDUM OPINION AND ORDER**

**RUFE, J.**

**November 13, 2007**

Plaintiff filed the instant action in the Eastern District of Pennsylvania, alleging that he was injured when Defendant Chase Home Finance, LLC (“Chase”) disavowed a mortgage settlement agreement it entered with him, and when Defendant NKT Land Acquisitions, Inc. (“NKT”) filed a foreclosure action against him for failure to pay. Defendant Chase filed a Motion for Leave to Amend its Answer to Assert a Cross-Claim against NKT for indemnification.<sup>1</sup> For the reasons that follow, the Court grants Defendant Chase’s Motion.

**I. FACTUAL AND PROCEDURAL HISTORY**

Plaintiff, Richard Pandolfi, acquired a home equity loan in the year 2000 to finance real property located in Montgomery County, Pennsylvania. Subsequently, the loan was assigned to Chase, and Chase assigned the mortgage to NKT in 2006. Chase continued servicing the mortgage even after NKT and Chase informed Plaintiff that NKT was acquiring the right to service his mortgage from Chase. In the same year, 2006, Plaintiff fell into arrears on his mortgage.

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<sup>1</sup> Doc. No. 31.

Plaintiff claims to have entered a mortgage settlement agreement with Chase in September 2006, which Chase later repudiated. NKT claims to have no knowledge of any such agreement. Plaintiff asserts that he was damaged as a result of Defendants' collection activities, including the filing of a pending mortgage foreclosure action in the Supreme Court of New York. Plaintiff asserts claims for violation of the Fair Debt Collection Practices Act and Fair Credit Extension Uniformity Act against NKT, as well as claims for violation of the Pennsylvania Fair Credit Extension Uniformity Act and breach of contract against Chase.

Chase's proposed cross-claim against NKT stems from a settlement reached in resolution of a 2004 lawsuit in the Supreme Court of New York,<sup>2</sup> in which NKT agreed to indemnify Chase from any future claims arising out of or incidental to any conduct of NKT in connection with collection efforts regarding certain notes and mortgages, including Plaintiff's mortgage (the "NY Settlement"). Chase alleges that Plaintiff's claims are covered by the indemnification provision in the NY Settlement because they concern NKT's efforts to collect on Plaintiff's mortgage.

In July 2007, NKT filed a complaint against Chase in the Supreme Court of New York, claiming that Chase breached the NY Settlement by servicing Plaintiff's mortgage after assigning it to NKT. Chase removed the matter to the United States District Court for the Northern District of New York on grounds of diversity.

## **II. DISCUSSION**

A cross-claim is permissible under Federal Rule of Civil Procedure 13(g) if it arises out of the transaction or occurrence that is the subject matter either of the original action or of a

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<sup>2</sup> The Enforcer, Inc. v. Chase Manhattan Mortgage Corp., No. 20044636 (Sup. Ct. N.Y., Saratoga County).

counterclaim therein.<sup>3</sup> A cross-claim arises out of the same transaction or occurrence as another claim if it bears a logical relationship to that claim.<sup>4</sup> A logical relationship exists where trial on the claims separately would involve a substantial duplication of time and effort by the parties and the courts because the claims involve many of the same factual or legal issues.<sup>5</sup>

Plaintiff's claims and Chase's proposed cross-claim clearly arise out of the same transaction, namely Plaintiff's mortgage and Defendants' collection efforts thereon. Additionally, the Federal and Local Rules of Civil Procedure suggest that pleading amendments can be considered as late as the Final Pretrial Conference,<sup>6</sup> and because no undue delay is evident here, Chase's request is timely.

The Federal Rules of Civil Procedure establish that leave to amend pleadings "shall be freely given when justice so requires."<sup>7</sup> It is well established by case law that a proposed pleading amendment should be granted unless the non-moving party can show undue delay, bad faith or dilatory motive, the movant's repeated failure to cure deficiencies in previous amendments to pleadings, undue prejudice to the opposing party, or futility of the amendment, among other reasons.<sup>8</sup> Although each reason for denying a pleading amendment is significant, the Third Circuit has held that

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<sup>3</sup>Weiss v. Advest, Inc., 607 F. Supp. 799, 802 (E.D. Pa. 1984).

<sup>4</sup>Id.

<sup>5</sup>Id.

<sup>6</sup>See Fed. R. Civ. P. 16(c)(2); E.D. Pa. R. 16.1(c)(7).

<sup>7</sup> Fed. R. Civ. P. 15(a).

<sup>8</sup>Foman v. Davis, 371 U.S. 178, 182 (1962); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997).

prejudice is the “touchstone” for the denial of a pleading amendment.<sup>9</sup> As NKT hasn’t argued any other grounds for denial of Chase’s request to amend its pleadings, the only question left for the Court to decide on this Motion is whether a cross-claim would prejudice NKT under these circumstances. NKT alleges that allowing Chase’s cross-claim in the instant action will prejudice NKT because it will be burdened with litigating the NY Settlement issue in two forums, and similarly burdensome to the Court because it will require the Court to familiarize itself with the New York claims.

Although Chase’s cross-claim may cause some inconvenience to the parties and the Court, it does not rise to the level of prejudice. Any additional discovery that Chase’s cross-claim may require would not be unduly burdensome to NKT because it concerns issues presented in this case, i.e., which Defendant should have serviced Plaintiff’s mortgage and which Defendant is responsible to pay damages should Plaintiff prevail in this suit. Certainly, NKT was on notice that the question of indemnification may be an issue in this case because that very issue is currently being litigated by NKT and Chase in the Northern District of New York.<sup>10</sup> Accordingly, finding no prejudice to preclude Chase’s proposed cross-claim, the Court herein grants Chase’s Motion for Leave to Amend its Answer to Assert a Cross-Claim against NKT.

An appropriate Order follows:

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<sup>9</sup>Cornell & Co. v. Occupational Safety & Health Review Comm’n, 573 F.2d 820, 823 (3d Cir. 1978).

<sup>10</sup> The dispute between Chase and NKT arises from the settlement and continuing enforcement of a New York State court ruling, over which the New York court maintains jurisdiction. NKT has also filed two cases in New York related to this litigation: a foreclosure action against Pandolfi and a separate lawsuit against Chase. NKT’s foreclosure action gives rise to Plaintiff’s current action in this Court. Although Plaintiff’s suit is properly before this Court, the Northern District of New York is the more appropriate venue for these proceedings because the majority of claims between the parties in this suit arise out of the New York litigation, particularly Chase’s counterclaim against NKT for indemnification, which is identical to its cross-claim here. The Court urges the parties to streamline the related litigation instead of proceeding in the current scattershot approach.

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<b>Defendants.</b>	)	

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**ORDER**

**AND NOW**, this 13th day of November, 2007, upon consideration of Defendant Chase's Motion for Leave to Amend Answer to Assert a Cross-Claim and its brief in support thereof [Doc. Nos. 31 & 32], Defendant NKT's Response [Doc. No. 34], and Defendant Chase's Reply [Doc. No. 37], it is hereby **ORDERED** that Defendant Chase's Motion is **GRANTED**. It is further **ORDERED** that Defendant Chase's First Amended Answer, Affirmative Defenses, and Cross-Claim [Doc. No. 31, Ex. 1] is deemed as filed, and Defendant NKT has twenty (20) days from the date of this Order to respond.

The Clerk of Court is hereby **ORDERED** to enter Exhibit 1 of Document Number 31 as a separate entry on the Docket.

It is so **ORDERED**.

**BY THE COURT:**

*/s/ Cynthia M. Rufe*

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**CYNTHIA M. RUFÉ, J.**