

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

HOMECOMINGS FINANCIAL	:	
NETWORK, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 05-cv-391
	:	
	:	
CONESTOGA TITLE INSURANCE CO.,	:	
et. al.,	:	
	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

Presently before the court is Plaintiff’s Motion for Leave to File an Amended Complaint (Dkt. #12) and the response thereto.

Defendants in this case are a title insurance company, a title agency corporation and a closing agent, Defendant Deb Barnes, all of whom Plaintiff contends engaged in misconduct in respect to the closing of a real estate loan from Plaintiff’s predecessor-in-interest to an individual purporting to be a Ms. Marie Mitchell (“the Mitchell loan”). Plaintiff is a company in the business of purchasing secured real estate loans and purchased the Mitchell loan. Said loan is now considered void and unenforceable allegedly because Defendant Deb Barnes failed to identify the borrower who signed the loan documents at closing as the real Ms. Marie Mitchell. Plaintiff also claims that the defendant title insurance company, Defendant Conestoga Title Insurance Company (“Defendant Conestoga”), has failed to provide Plaintiff with a Proof of Loss form and to indemnify Plaintiff for its loss in connection with the invalid mortgage.

While Plaintiff’s original Complaint sets forth claims for breach of contract and promissory estoppel against Defendants, Plaintiff now seeks to include claims for fraud and negligent misrepresentation against Defendants in an amended complaint. Plaintiff contends that it learned for the first time on or about November 1, 2005 from an Assistant United States Attorney about prior convictions of Defendant Barnes for preparing false settlement statements and has subsequently learned from speaking with the seller of the property at issue in this

lawsuit that there are discrepancies regarding the sales price of the property stated on two different settlement statements. Realizing that the claims that Plaintiff wishes to now bring against Defendants appear to be barred by the applicable statute of limitations, Plaintiff further argues that “the running of the statute of limitations has been tolled by reason of defendants’ fraudulent concealment.”¹ PI.’s Mot. at P. 4.

In response, Defendant Conestoga argues that Plaintiff has unduly delayed in investigating the details regarding the Mitchell loan and any allegations of fraud against Defendant Deb Barnes. Additionally, Defendant Conestoga argues that Plaintiff’s original Complaint failed to set forth any allegation of fraudulent conduct by Defendants regarding the Mitchell loan. Therefore, Defendant Conestoga affirms that Plaintiff’s Motion should be denied because its claims are barred by the applicable statute of limitations and Plaintiff’s claims do not warrant the amendment of its Complaint at this point in time.

Here, it appears from the pleadings that both parties agree that the claims that Plaintiff seeks to add to its original Complaint are generally barred by the applicable statute of limitations. However, Fed. R. Civ. P. 15(c)(2) provides that “[a]n amendment of a pleading relates back to the date of the original pleading when ... the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading.” “Thus, amendments that restate the original claim with greater particularity or amplify the factual circumstances surrounding the pertinent conduct, transaction or occurrence in the preceding pleading fall within Rule 15(c). Bensel v. Allied Pilots Ass’n., 387 F.3d 298, 310 (3d Cir. 2004). “In essence, application of Rule 15(c) involves a search for a common core of operative facts in the two pleadings.” Id. “As such the court looks to whether the opposing party has had fair notice of the general fact situation and legal theory

¹The closing for the Mitchell loan took place on January 23, 2002. After the closing, Plaintiff purchased the Mitchell loan from Meritage Mortgage Corporation, its predecessor-in-interest. Plaintiff alleges it discovered that the actual Ms. Marie Mitchell never signed the loan documents on or about October 2002. Plaintiff filed its Complaint against Defendants on January 28, 2005. Plaintiff filed the pending Motion on March 13, 2006.

upon which the amending party proceeds.” Id. Additionally, while undue delay is a reason to deny leave to amend a Plaintiff’s complaint, it is not a reason to deny relation back under Fed. R. Civ. P. 15(c). Arthur v. Maersk, Inc., 434 F.3d 196, 203 (3d Cir. 2006).

In the instant matter, this court finds that Defendants had fair notice of Plaintiff’s general claim of misconduct regarding the actions of Defendant Barnes acting as an agent of other Defendants regarding the Mitchell loan. The allegations that Plaintiff seeks to include in its an Amended Complaint amplify the circumstances surrounding the pertinent transaction or occurrence in this case as represented by Plaintiff to be Defendant’s misconduct in regards to the Mitchell loan. Therefore, this court will grant leave for Plaintiff to file an amended complaint to include additional allegations that complement and build upon the common core of operative facts in the two Complaints.

AND NOW, this 4th day of April 2006, upon consideration of the arguments raised by counsel for the parties in their pleadings submitted to this court, **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Leave to File an Amended Complaint (Dkt. #12) is **GRANTED** and that Plaintiff is provided leave to file its amended complaint within seven (7) days of the date of this Order.

BY THE COURT:

S/ Clifford Scott Green
CLIFFORD SCOTT GREEN