

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

Case No. 21-10038

JASON R. DYKEN,

Debtor.

Terrie S. Owens,

Plaintiff,

v.

Adversary Case No. 23-1001

Jason R. Dyken and Renee A. Dyken,

Defendants.

ORDER DENYING MOTION TO RECONSIDER (DOC. 24)

The court has reviewed the parties' briefs and the applicable law and heard the argument of counsel at a hearing held on June 13, 2023. Having done so, the court denies the defendants' motion to reconsider its order granting the plaintiff leave to file an amended complaint.

The defendants argue that the amended complaint is time-barred under Bankruptcy Code § 546 and, thus, amendment was futile. Specifically, they contend that the amendment does not relate back to the timely filing of the original complaint under Federal Rule of Civil Procedure 15(c)(1) (made applicable by Federal Rule of Bankruptcy Procedure 7015) because "many of Trustee's new allegations and claims are based on different facts than those in the Original Complaint." (*See* def. reply brief, doc. 31, at p.2).

Rule 15(c)(1)(B) allows amendment that "asserts a claim . . . that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading" Having carefully reviewed the original and amended complaints, the court finds that this standard has been met

here.¹ The new defendant, Capital Mass Limited Partnership (“CMLP”), is mentioned throughout the original complaint and is allegedly related to the other defendants. The new allegations arise out of the same series of transactions alleged in the original complaint.

Even if the amended complaint did not relate back, Bankruptcy Code “546 is . . . a statute of limitations, subject to waiver, equitable tolling, and equitable estoppel.” *See In re Int’l Admin. Servs., Inc.*, 408 F.3d 689, 699 (11th Cir. 2005). Whether equitable tolling applies “is a fact-based decision” *See id.* at 701-02. That decision is premature at this stage, as the amended complaint does not foreclose a finding of equitable tolling. *See generally Myers v. Provident Life & Accident Ins. Co.*, No. 8:19-cv-724-CEH-CPT, 2023 WL 3304825 (M.D. Fla. May 8, 2023). Similarly, to the extent the defendants now assert factual matters (for example, that there was no “transfer” of ATM machines because Capital Mass Limited Partnership merely invested in a fund that consisted of the machines), those are issues for the summary judgment or trial stage, not a motion to reconsider the court’s order allowing the amended complaint. Indeed, all parties have gone well beyond the pleadings in their briefs.

To the extent the court has not specifically addressed any of the parties’ arguments, it has considered them and determined that they would not alter the result. For the reasons set out above, the court denies the motion to reconsider. The defendants should file a responsive pleading to the amended complaint within 14 days of the date of this order.

Dated: June 13, 2023


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

¹ While not raised by the defendants, the court also finds that the amendment would satisfy Rule 15(c)(1)(C).