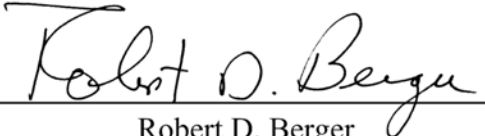


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 9th day of June, 2020.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JOHN Q. HAMMONS FALL 2006, LLC, et al.,

Debtors.

Case No. 16-21142

Chapter 11

Jointly Administered

ORDER GRANTING MOTION TO AMEND PROOF OF CLAIM

This matter comes before the Court on creditor Interquest North No. 1, LLC's motion to amend its proof of claim.¹ For the reasons stated below, Interquest's motion to amend will be granted.

Jacqueline Dowdy is a trustee of the debtor The Revocable Trust of John Q.

¹ [ECF 2871](#).

Hammons dated December 28, 1989 as Amended and Restated (the “Trust”). In 2014, Interquest sued Dowdy and a number of non-debtor entities in Greene County, Missouri, in a case arising out of an agreement (the “Operating Agreement”)² between Interquest and non-debtor John Q. Hammons Colorado Springs, LLC, and a failed hotel development in Colorado. Counts I through IV of Interquest’s petition (“Breach of the LLC Operating Agreement,” “Breach of Fiduciary Duty,” “Fraud,” and “Negligent Misrepresentation”) asserted claims against all the defendants, including Dowdy in her individual capacity and as trustee of the Trust; Count V (“Tortious Interference with Business Relationship”) asserted one claim against Dowdy in particular, both as an individual and as a trustee. The petition alleged (among other things) that Dowdy and the other defendants deliberately withheld money from the hotel development in order to inflate Dowdy’s compensation while leading Interquest to believe that financing would continue, and that Interquest’s damages included \$4,297,411.80 for the 19.731 acres of real property Interquest had contributed to the development.

After Debtors³ filed for bankruptcy in 2016, Interquest timely filed a proof of claim against the Trust for \$4,297,411.80, attaching copies of its Greene County petition and the Operating Agreement.⁴ Debtors objected to Interquest’s claim via

² The Operating Agreement created JQH Colorado Springs, LLC, a Missouri limited liability company, whose stated purpose was to develop, construct, own, and operate a hotel and convention center (the “Hotel”) in El Paso County, Colorado.

³ The “Debtors” in these jointly-administered cases are the Trust and 75 of its subsidiaries and affiliates.

⁴ Proof of Claim 416-1.

its Sixth Omnibus Objection in May 2018, arguing (without elaboration) that the claim “seek[s] recovery of amounts for which the Debtors are not liable.”⁵ A few weeks later, Debtors’ joint Chapter 11 plans (the “Plans”) were confirmed. Article VIII.G of the Plans released the “Trustees Released Parties” (which included Dowdy) from all claims by “each present and former Holder of a Claim or Equity Interest” (which included Interquest) arising out of, inter alia, “the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is the subject of the Plans.”⁶ Section II(3) of the order confirming the Plans (the “Confirmation Order”) narrowed Article VIII.G, specifying that those releases “do not relieve any Person of liability arising out of an act or omission constituting willful misconduct or fraud.”⁷

In June 2019, the Court granted the Trust “30 days to file a more exhaustive objection” to Interquest’s claim.⁸ The Trust did so in July 2019, arguing that the Plans and Confirmation Order released Dowdy (and thus, presumably, the Trust) from the claim.⁹ Interquest then filed an amended proof of claim in March 2020, attaching an amended petition.¹⁰ The amended petition asserted the same five causes of action against Dowdy and the other non-debtor entities as the original

⁵ [ECF 2167](#).

⁶ [ECF 1946](#).

⁷ [ECF 2188](#).

⁸ [ECF 2695](#).

⁹ [ECF 2712](#).

¹⁰ Claim 416-2. The automatic stay currently prevents Interquest from filing its amended petition in Greene County.

petition,¹¹ but—in response to the Trust’s objection that the Plans and Confirmation Order released Dowdy from liability—pleaded willful misconduct and fraud with greater particularity. The Trust moved to “strike” the amended claim, arguing that because Interquest had filed it without court authorization, it was automatically disallowed under Article X.E of the Plans.¹² This Court denied the motion to strike,¹³ but held that the amended claim was disallowed without prejudice under the Plans.¹⁴ Interquest responded with the motion to amend now before the Court.

The Trust bases its opposition to Interquest’s motion entirely on paragraph 60 of Interquest’s initial petition, which alleges: “Since assuming *de facto* control of Hammons’ corporations, including John Q. Hammons – Colorado Springs and JQH, neither Dowdy nor any other Defendants have made any effort to contact Interquest to discuss development of the hotel and other business matters.” According to the Trust, Interquest’s amended petition—which alleges that “Dowdy and other

¹¹ Count III, initially titled “Fraud,” became “Fraudulent Misrepresentation” in the amended petition.

¹² [ECF 2841](#). Article X.E of the Plans states: “A Claim may not be filed or amended after the Confirmation Hearing commences without the prior authorization of the Bankruptcy Court or JD Holdings, and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to, or action, or, or approval of the Bankruptcy Court or any other entity.”

¹³ [Fed. R. Civ. P. 12\(f\)](#) allows a court to strike from “a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” The Court denied the Trust’s motion to strike because (1) a proof of claim is not a pleading and (2) and courts “will usually deny a motion to strike unless the allegations have no possible relation to the controversy and are likely to cause prejudice to one of the parties.” *See, e.g., Ngiendo v. Sedgwick Claims Mgmt. Servs., Inc.*, No. 13-4008-JAR-JPO, [2014 WL 326877](#), at *3 (D. Kan. Jan. 29, 2014) (citation omitted).

¹⁴ [ECF 2895](#).

Defendants made repeated false and fraudulent representations to Interquest,” an allegation that might be read as inconsistent with paragraph 60 of the initial petition—impermissibly introduces “new and different theories upon which to base their claim.” The Trust is incorrect.

“Ordinarily, amendment of a proof of claim is freely permitted so long as the claim initially provided adequate notice of the existence, nature, and amount of the claim as well as the creditor’s intent to hold the estate liable.” *Unioil v. H.E. Elledge (In re Unioil, Inc.)*, [962 F.2d 988, 992](#) (10th Cir. 1992). Here, Interquest’s initial claim put the Trust on notice that Interquest intended to hold it liable for \$4,297,411.80 under five different theories. Interquest’s amended claim seeks the same amount of money¹⁵ under the same five theories—it simply pleads those theories with greater particularity. This is precisely the type of claim amendment approved by other courts, including the Tenth Circuit. *See, e.g., LeaseAmerica Corp. v. Eckel*, [710 F.2d 1470, 1474](#) (10th Cir. 1983) (affirming leave to amend where amended complaint “referred to the same chattels, the same consideration, and the

¹⁵ The Trust relies on *Holstein v. Brill*, [987 F.2d 1268](#) (7th Cir. 1993), in arguing that the Court should not allow Interquest to amend its claim. However, the issue in *Holstein* was whether a creditor could increase his claim from \$11,475 to \$28,000, without explanation, six years after filing the original claim. *See Holstein*, [987 F.2d at 1269, 1271](#). Here, because Interquest does not seek to increase the amount of its claim, *Holstein* is easily distinguishable, as are other cases in which a creditor sought to amend its claim upward after plan confirmation. *Cf. In re Winn-Dixie Stores, Inc.*, [639 F.3d 1053, 1055-57](#) (11th Cir. 2011) (holding that creditors could not, after plan was confirmed and claims were satisfied, increase claims to nearly ten times the original amount); *In re Tanaka Bros. Farms, Inc.*, [36 F.3d 996, 998-99](#) (10th Cir. 1994) (applying equitable factors set forth in *In re Oasis Petroleum Corp.*, [130 B.R. 89, 91-92](#) (Bankr. C.D. Cal. 1991), and holding that the IRS should have been allowed to increase its claim to four times the original amount).

same transaction which was the basis for the original complaint”); *Matter of Commonwealth Corp.*, [617 F.2d 415, 420](#) (5th Cir. 1980) (“One of the most common reasons for allowing an amendment to a proof of claim has been to permit the creditor to state the claim with greater particularity . . .”). And while paragraph 60 of Interquest’s initial petition alleges that “neither Dowdy nor any other Defendants have made any effort to contact Interquest,” other allegations in the petition clearly put the Trust on notice of Interquest’s fraudulent-misrepresentation theory:¹⁶

- “[T]he information supplied intentionally by Defendants to Interquest . . . was in fact false and designed to mislead . . .” (paragraph 117);
- “Dowdy knew that Defendants’ representations about financing or completing the project were false . . .” (paragraph 110);
- “Said representations were made by Defendants with the intent that Interquest would rely on the representations and not pursue other options . . .” (paragraph 118);
- “Interquest relied on Defendants’ statements and did not pursue other options to ensure completion of the hotel and/or return of the real property . . .” (paragraph 107);
- “Interquest’s reliance was reasonable under the circumstances of this case . . .” (paragraph 120);
- “As a result of the misrepresentations of Defendants as set forth above, Interquest has been damaged.” (paragraph 122)
- “Interquest’s damages include, but are not limited to . . . [l]oss of 19.731 acres of real property valued at \$4,297,411.80 . . .” (paragraph 123).

Because Interquest’s amended claim thus meets the standard set forth by the Tenth

¹⁶ This order expresses no opinion as to whether Interquest’s petition states a claim upon which relief can be granted under any theory.

Circuit in *Unioil*, Interquest's motion for leave to amend is hereby granted.

IT IS SO ORDERED.

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