

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

MRPC CHRISTIANA LLC,	)	
et al.,	)	
	)	C.A. No. N15C-02-010 EMD
Plaintiffs/Counterclaim Defendants ,	)	
	)	
v.	)	
	)	
CROWN BANK,	)	
	)	
Defendant/Counterclaim Plaintiff.	)	
	)	

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS’ MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Upon consideration of the Plaintiffs’ Motion for Leave to File an Amended Complaint (the “Motion”) filed by Plaintiffs MRPC Christiana LLC, *et al.* (collectively, “MRPC”); the exhibits attached to the Motion; Crown Bank’s Opposition to Plaintiffs’ Motion for Leave to File an Amended Complaint (the “Opposition”) filed by Crown Bank; the arguments made by the parties at the hearing (the “Hearing”) held on the Motion and the Opposition on July 11, 2016;

1. After a responsive pleading has been served, parties may amend a complaint, under Superior Court Civil Rule 15(a), only with leave of the Court, which “shall be freely given when justice so requires,”<sup>1</sup> unless an opposing party would be “seriously prejudiced thereby.”<sup>2</sup> While a party’s delay in moving to amend a pleading is not alone justification to deny a motion to amend, it is proper to deny relief where delay is “coupled with either improper motive or undue prejudice.”<sup>3</sup> Moreover, the Court may deny a request to amend where there has been inexcusable delay.<sup>4</sup>

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<sup>1</sup> Super. Ct. Civ. R. 15(a).  
<sup>2</sup> *Paul v. Chromalytics Corp.*, 343 A.2d 622, 625 (Del. Super. 1975).  
<sup>3</sup> *Martinez v. E.I. DuPont de Nemours & Co., Inc.*, N10C-04-209, 2012 WL 4479164, \*2 (Del. Super. Sept. 21, 2012).  
<sup>4</sup> *See Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 259, 263 (Del. 1993).

2. The Motion seeks leave to file an amended complaint (the “First Amended Complaint”). The Court held a hearing (the “Hearing”) on the Motion and the Opposition on July 11, 2016. At the Hearing, the Court heard arguments from the parties on the relief sought in the Motion.

3. MRPC filed its complaint (the “Complaint”) in this civil proceeding on February 2, 2015. MRPC filed the Motion on June 29, 2016. The parties have completed discovery. Prior to the filing of the Motion, Crown Bank had moved for partial summary judgment (the “Summary Judgment Motions”). The trial in this civil proceeding is set to begin on August 1, 2016.

4. The Court also heard argument on the Summary Judgment Motions at the Hearing. During the oral argument on the Summary Judgment Motions, MRPC withdrew its claims for negligence (Count I) and unjust enrichment (Count V). As such, the Court finds that MRPC’s request for leave to amend Counts I and V is now moot.

5. Crown Bank does not raise any specific objections as to why the Complaint cannot be amended as to the claims for breach of contract (Count II) and breach of the implied covenant of good faith and fair dealing (Count III). The Court will, therefore, grant the Motion as to any amendments relating to Counts II and III.

6. The Court will not grant leave to amend as to MRPC’s claim for tortious interference of contract (Count IV). MRPC originally plead a claim for tortious interference of contract that sought damages from Crown Bank for Crown Bank’s purported intentional and deliberate delay in funding under the loan agreement (the “Loan Agreement”) between MRPC and Crown Bank.<sup>5</sup> The First Amended Complaint no longer seeks to recover on a claim of tortious interference as to the Loan Agreement. Instead, MRPC seeks to assert a claim of

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<sup>5</sup> Complaint at ¶¶ 11, 12, 78-83.

tortious interference as to two entirely different agreements – (i) MRPC’s construction agreement with BCD Associates, and (ii) MRPC’s deposit agreement with TD Bank. In reality, Count IV is an entirely new tortious interference of contract claim.

7. The Court understands that the underlying allegations regarding the funding of construction of the hotel and the purported consequential damages from the alleged breach of the Loan Agreement have not changed. However, the First Amended Complaint presents a whole new theory of recovery – one relating to Crown Bank’s purported tortious interference with the contractual relations of MRPC and BCD Associates, or the contractual relations of MRPC and TD Bank.

8. The Court, utilizing its discretion, finds that such an amendment at this late date would seriously prejudice Crown Bank. This civil action is on the very eve of trial. Discovery has closed. Crown Bank moved for summary judgment as to Court IV of the Complaint. If leave to file an amended complaint had been sought even three months ago, the Court may have granted the request but it is just too late at this stage to amend the Complaint for an entirely new cause of action. Three months ago, the parties could have modified their discovery plans, deposed witnesses differently, engaged different experts or had previously retained experts modify their opinions. Now, though, the Court finds that undue (and, mostly, inexcusable) delay has created a situation where Crown Bank’s defense in this civil action would be seriously prejudiced.

9. The Court also discussed its reasoning regarding the Motion at the Hearing. This Order incorporates by reference the record from the Hearing.

**IT IS HEREBY ORDERED**, for the reasons set forth herein and at the Hearing, that the Motion is **GRANTED IN PART AND DENIED IN PART**;

**IT IS HEREBY FURTHER ORDERED** that the Motion is **GRANTED** as to Counts II and III and MRPC has leave to file an amended Complaint as to those counts;

**IT IS HEREBY FURTHER ORDERED** that the Motion is deemed **MOOT** as to Counts I and V;

**IT IS HEREBY FURTHER ORDERED** that the Motion is **DENIED** as to Count IV; and

**IT IS HEREBY FURTHER ORDERED** that MRPC shall file the First Amended Complaint (revised to conform to the rulings of this Order) no later than 4:00 p.m. on July 22, 2016 and Crown Bank has until 4:00 p.m. on July 27, 2016 to file an amended answer to the revised First Amended Complaint.

Dated: July 19, 2016  
Wilmington, Delaware

*/s/ Eric M. Davis* \_\_\_\_\_  
Eric M. Davis, Judge