

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**PASQUALE J. VESCIO and
VATSALA VESCIO,
Confirmed Chapter 11 Debtors**

**Case # 96-10153
Chapter 11**

**PASQUALE J. VESCIO and
VATSALA VESCIO,
Plaintiffs,
v.
NCS 1, L.L.C.,
Defendant.**

A.P. # 02-1005

ORDER

UPON CONSIDERATION of Debtors' F.R.B.P. Rule 7015(a) Motion for Leave to File Amended Objection to Proof of Claims Held by NCS 1, L.L.C. (doc. #45), Defendant NCS 1, L.L.C.'s ("NCS") Opposition to Debtors' Motion to Amend (doc. #63), as well as the integrally related hearing the Court held on October 29, 2002 on the Debtors' Amended Complaint (doc. #32) and NCS's objection (doc. #34) to the Amended Complaint,

THE COURT FINDS Fed. R. Bankr .P. Rule 7015(a) should be construed liberally, and a movant should be allowed to test his or her claim on the merits. See, e.g., Foman v. Davis, 371 U.S. 178, 182 (1962). The Court further finds that, within the Second Circuit, a motion to amend should be denied only for reasons such as undue delay, bad faith, futility of the amendment or resulting prejudice to the opposing party. See Richardson Greenshields Sec., Inc. v. Lau, 825 F.2d 647, 653 n.6 (2d Cir. 1987).

In this instance, the Court finds NCS has been on notice since mid-September 2002 as to the proposed amendments the Debtors now seek. The Court further finds, NCS's objection to the Debtors' Motion for Leave does not raise a basis to deny the Debtors' Motion. Within the Second Circuit, in determining whether a party's interests will be unduly prejudiced by allowing an amendment to the complaint, a court needs to consider whether the assertion of a new claim would require the opponent to expend significant additional

resources to conduct discovery and prepare for trial or would significantly delay the resolution of the parties' dispute. See Rissman v. City of New York, 2001 WL 1398655, *1 (S.D.N.Y. 2001) (quoting Block v. First Blood Assoc., 988 F.2d 344, 350 (2d Cir. 1993)). Since: (a) NCS has failed to make such a showing; (b) the parties are presently in the midst of discovery; (c) the Court finds no significant delay will result from granting the Debtors' Motion; and (d) the granting or denying a motion to amend is within the discretion of the court, see Foman v. Davis, 371 U.S. at 182;

IT IS HEREBY ORDERED that Debtor's Motion for Leave to File Amended Objection to Proof of Claims Held by NCS 1, L.L.C. (doc. #45) is GRANTED;

IT IS FURTHER ORDERED that the Debtors Amended Objection to Proof of Claim Held by NCS 1, L.L.C. (doc. #32) shall be treated as the "Amended Complaint" and, for sake of clarity, shall be referred to hereafter as the "Amended Complaint;""*

IT IS FURTHER ORDERED that NCS shall have ten days from the date of entry of this Order to file an Amended Answer to the Amended Complaint.

SO ORDERED.

December 10, 2002
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

*Although the Debtors' motion was captioned as a "Motion for Leave to File Amended Objection to Proof of Claims Held by NCS 1, L.L.C.," it was actually a motion to amend the complaint. As the Court made clear at the status hearing held on August 30, 2002, the objection to claim is now to be wholly included in the adversary proceeding complaint so that all of the Debtors' claims against NCS and all of NCS's counterclaims against the Debtors are in the amended complaint. Any reference to the objection to claim at this time only seeks to confuse the record.