

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

PATRICIA MOLNER, f/k/a PATRICIA  
TAL,

in her personal capacity, and  
in her capacity as a shareholder  
derivatively on behalf of BCK  
Industries, Inc.,

Plaintiff

v.

ARTHUR D. KARP AND BETTE J. KARP,

Defendants

Civil No. 99-179-P-C

GENE CARTER, District Judge

**MEMORANDUM OF DECISION AND ORDER**

Now before the Court is Plaintiff's Motion to Amend Complaint and Incorporated Memorandum ("Plaintiff's Motion") (Docket No. 8). Plaintiff seeks to add BCK Industries, Inc., ("BCK") as a "party in interest," to add a new claim to pierce the corporate veil, and to drop both Count IV, for Promissory Estoppel as to Employment, and Count XII, as to Federal Securities Fraud, from the Complaint. Defendants object to Plaintiff's Motion on the grounds that Plaintiff cannot amend a sworn and verified form of Complaint with facts inconsistent with those in the original Complaint. Additionally, Defendants dispute the ability of Plaintiff to add BCK as a "party in interest," as opposed to a party Defendant. For the reasons set forth below, the Court will grant Plaintiff's Motion in part and deny Plaintiff's Motion in part.

Fed. R. Civ. P. 15(a) permits a party to amend a pleading by leave of court and instructs that "leave shall be freely given when justice so requires." In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Supreme Court stated:

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave should, as the rules require, be "freely given."

Leave to grant a motion to amend a complaint lies within the discretion of the trial court. *Id.*

Defendants argue that Plaintiff should not be permitted to amend her Verified Complaint with additional factual statements that are inconsistent with other statements within the original Complaint. Defendants offer no authority for this position, nor do Defendants explain how these changes unduly prejudice Defendants. Accordingly, with respect to Plaintiff's amendment of her Complaint, in terms of factual statements and the addition and removal of counts, Plaintiff's Motion will be granted.

The addition of BCK as a "party in interest," however, is more problematic. Plaintiff's efforts to add BCK are apparently a response to Defendants' Motion to Dismiss (Docket No. 3) various claims for failure to join a party (BCK) under Rule 12(b)(7). Plaintiff offers no authority for the joinder of BCK as a "party in interest." Furthermore, it would be unjust to allow Plaintiff to enjoy the benefit of defeating Defendants' Motion to Dismiss under Rule 12(b)(7) by simply adding BCK as a "party in interest," while not bearing the potential costs of having BCK as a

full-fledged party defendant. If the Plaintiff so chooses, however, she will be afforded the opportunity to further amend her Complaint to join BCK as a party defendant in full.

Accordingly, it is **ORDERED** that Plaintiff's Motion to add BCK Industries, Inc., as a "party in interest" be, and it is hereby, **DENIED**. In all other respects, Plaintiff's Motion to Amend the Complaint is hereby **GRANTED**. It is further **ORDERED** that Plaintiff may, within ten (10) days from the date of the docketing of this Order, further amend her Complaint to join BCK Industries, Inc., as a party defendant.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 20<sup>th</sup> day of September, 1999