

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

CHERRINGTON ASIA LIMITED)	
and BRIJ MOHAN PUNJ)	
)	
Plaintiffs,)	
)	
v.)	Case No. 05-1214-MLB-DWB
)	
A & L UNDERGROUND, INC,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

Before the Court is Plaintiffs’ Motion to Amend Pleadings (Doc. 64), filed on December 21, 2007, in which Plaintiffs seek to add a claim for fraud as well as to “recast,” “extend,” and “specify” certain other aspects of their Complaint. A copy of the proposed Third Amended Complaint is attached as an exhibit to the motion. Defendants did not file a response, and any response would have been due on or before January 4, 2008. *See* D. Kan. Rule 6.1(d)(1) (responses to non-dispositive motions are to be filed within 14 days).

BACKGROUND

Plaintiff Cherrington Asia Limited filed its Complaint (Doc. 1) on July 13, 2005, and has filed two previous amended complaints. (Doc’s 2, 39.) The Court

entered a Scheduling Order on November 6, 2007, which included a December 21, 2007, deadline to file motions for leave to join additional parties or otherwise amend the pleadings. (Doc. 59, at 5.) The present motion was filed on that date.

Plaintiffs bring their motion to “recast” their “alterative ‘agency agreement’ claim as an alternative ‘business relationship’ claim, in order to clarify that the agreement in question is not intended to be limited to an agreement creating an agency relationship . . .” (Doc. 64, at 2.) Plaintiffs also seek to add a claim for fraud, extend their constructive trust claim, and specify the percentage share of profits Plaintiffs claim are owed to them. (*Id.*)

DISCUSSION

Fed. R. Civ. P. 15(a) provides that leave to amend shall be freely given when justice so requires. In the absence of any apparent or declared reason, such as undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment, leave to amend should, as the rules require, be freely given. ***Foman v. Davis***, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222 (1962); ***Frank v. U.S. West, Inc.***, 3 F.3d 1357, 1365 (10th Cir. 1993).

Further, “[i]f a respondent fails to file a response within the time required by Rule 6.1(d), the motion will be considered and decided as an uncontested motion,

and ordinarily will be granted without further notice.” *D.Kan. Rule 7.4*. As stated previously, Defendants have not filed a response to Plaintiffs’ motion and the time to do so has expired. Plaintiffs’ motion is timely, unopposed and facially valid. The Court, therefore, **GRANTS** Plaintiffs’ Motion to Amend Pleadings.

IT IS THEREFORE ORDERED that Plaintiffs’ Motion to Amend Pleadings (Doc. 64) is **GRANTED**. Plaintiffs shall file their Amended Complaint in the form attached to their motion on or before **January 29, 2008**.

IT IS SO ORDERED.

Dated at Wichita, Kansas on this 15th day of January, 2008.

s/ DONALD W. BOSTWICK
DONALD W. BOSTWICK
United States Magistrate Judge