

SIGNED.



Dated: May 16, 2008

James M. Marlara
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

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| <p>10 In re:</p> <p>11 DONNEL S. BOEHM,</p> <p>12 _____ Debtor.</p> <p>13 DONNEL S. BOEHM, Debtor and</p> <p>14 DIANNE C. KERNS, Chapter 13 Trustee,</p> <p>15 Plaintiffs,</p> <p>16 vs.</p> <p>17 PLAYHARD TRANSPORT, INC., a</p> <p>18 New Mexico, corporation; and</p> <p>19 JASON ELGERSMA, individually,</p> <p>20 _____ Defendants.</p> | <p>) Chapter 13</p> <p>) No. 4-05-bk-02378-JMM</p> <p>) Adversary No. 4:07-ap-00068-JMM</p> <p>) MEMORANDUM DECISION</p> |
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20 On March 20, 2008, the Defendants in this action filed a motion for summary judgment
21 (Dkt. #33). It is set for hearing on June 3, 2008.

22 To date, the Plaintiffs have not filed a response thereto, but on May 12, 2008, filed a
23 motion to amend their complaint (Dkt. #36). While explaining that the summary judgment motion
24 somehow changed the posture of the case, the Plaintiffs failed to articulate what the nature and
25 theories of the proposed amended complaint will be. Usually, in such circumstances, a copy of the
26 proposed amended complaint is attached.

27 Regardless, the filing of a motion for an amendment to a complaint does not toll, or
28 otherwise affect the motion for summary judgment. Unless the Plaintiffs desire to have the motion

1 for summary judgment ruled on, since they have filed no response thereto, the court strongly
2 suggests that a response to the motion be filed as soon as possible.

3 In the meantime, the motion to amend will be denied, without prejudice, for the
4 Plaintiffs' failure to adequately articulate how their cause of action has now materially changed.¹

5 A separate order will be entered. FED. R. BANKR. P. 9021.

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7 DATED AND SIGNED ABOVE.

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9 COPIES served as indicated below
10 on the date signed above:

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U.S. Mail

27 By /s/ M. B. Thompson
28 Judicial Assistant

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2 The court further notes that, although this chapter 13 case was filed on May 2,
3 2005 (over three years ago), and although having been granted no fewer than eight (8)
4 extensions of time within which to confirm the Debtor's plan, no confirmed plan is yet on file,
5 and the Trustee has filed a motion to dismiss. In addition, the plan has a stated term of 36
6 months, which has now expired. It is time for this Debtor to get serious about what it is he seeks
7 to do, or the case will be dismissed post-haste, and this adversary proceeding will be mooted out
8 by such an event.