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CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: June 4, 2009
Decided: June 5, 2009

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Re: *Grace Brothers, Ltd. v. Siena Holdings, Inc., et al.*
Civil Action No. 184-CC

Dear Counsel:

This is my decision on two motions currently before the Court: plaintiff Grace Brothers' motion for leave to file an amended complaint, and defendants' motion to strike plaintiff's motion for summary judgment or, in the alternative, to postpone briefing and decision on that motion until after trial or, in the further alternative, to set June 8, 2009 as the date for defendants' answering brief. For the reasons set forth briefly below, plaintiff's motion is granted, and defendants' motion is granted in that briefing on plaintiff's motion for summary judgment will be postponed until after trial.

Court of Chancery Rule 15(a) instructs that leave to amend a pleading "shall be freely given when justice so requires." Consistent with this instruction, this

Court generally grants leave to amend "unless there is evidence of bad faith, undue delay, dilatory motive, undue prejudice or futility of amendment."[1]

Plaintiff filed its complaint in January 2004, challenging a reverse stock split by Siena as a violation of 8 *Del. C.* § 155. Plaintiff now seeks leave to amend its complaint to clarify that it is seeking relief for defendant John P. Kneafsey's breach of fiduciary duty as an officer of Siena, and to reflect certain additional facts that plaintiff has allegedly uncovered during discovery. Defendants object to plaintiff's motion, arguing that defendant Kneafsey would be prejudiced by plaintiff's delay in adding the claim after discovery is completed, and that the requested amendment would be futile because the proposed new claim comes more than three years after the alleged breach of fiduciary duty.[2]

I am not convinced that Kneafsey, who was already a named defendant in this action, will suffer undue prejudice as a result of the amendment to the complaint. The complaint, as it currently stands, alleges that Kneafsey is an officer as well as a director of Siena Holdings, Inc., and that Kneafsey breached his fiduciary duties in connection with the reverse stock split transaction around which this case revolves. The new count in the proposed amended complaint alleges that Kneafsey breached his fiduciary duties as an officer of Siena in connection with the same reverse stock split transaction. As the Delaware Supreme Court recently clarified, "corporate officers owe fiduciary duties that are identical to those owed by corporate directors."[3] Given these circumstances, I am unable to conclude that Kneafsey would be prejudiced by the proposed amendment to the complaint. Indeed, although defendants' objection to the motion to amend states that Kneafsey will be prejudiced by plaintiff's delay in adding the claim after discovery is completed, defendants fail to provide a convincing explanation of any such prejudice.

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[1] *U.S. Bank Nat'l Ass'n. v. U.S. Timberlands Klamath Falls, L.L.C.*, 2005 WL 2093694, at *1 (Del. Ch. Mar. 30, 2005) (quoting *Fox v. Christina Square Assoc.*, 1995 WL 405744, at *2 (Del. Ch. June 19, 1995)).

[2] Defendants also suggest that plaintiff's motion is untimely because plaintiff refused to amend when defendants offered on February 24, 2009 to allow plaintiff to amend. Defendants, however, offer no support for the proposition that plaintiff should now be denied leave to amend because plaintiff refused defendants offer. Moreover, plaintiff's reply brief in support of its motion alleges that plaintiff did not have knowledge of some of the facts underlying the amendment until Kneafsey's deposition on April 15, 2009.

[3] *Gantler v. Stephens*, 965 A.2d 695, 708 (Del. 2009).

I am also not convinced that the requested amendment should be denied as futile. Defendants argue that the claim against Kneafsey in his capacity as an officer is barred by the statute of limitations because it comes more than three years after the alleged breach of fiduciary duty. While I need not and do not decide the issue of whether the claim against Kneafsey in the proposed amended complaint is timely, I am not convinced that such a defense renders the proposed amendment futile. Court of Chancery Rule 15(c)(2) provides that "[a]n amendment of a pleading relates back to the date of the original pleading when . . . the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading." In making this determination, "[t]he crucial consideration is whether a defendant had notice from the original pleadings that the plaintiff's new claim might be asserted against him."[4] As the claim against Kneafsey in his capacity as an officer appears to relate to the reverse stock split transaction at issue in this case, and in light of the circumstances described in the previous paragraph, I am unable to conclude that the proposed amendment to the complaint is futile.[5] Accordingly, and for the reasons stated above, I conclude that the interests of justice require granting plaintiff's motion for leave to amend.

Turning to defendants' motion to strike or postpone briefing, I should note that a three day trial is scheduled to commence in this case on June 15, 2009. On April 17, 2009, defendants filed a motion for summary judgment and an opening brief in support of that motion. On May 8, 2009, plaintiff filed its own motion for partial summary judgment, along with its answering brief in response to defendants' motion for summary judgment. On May 13, 2009, defendants withdrew their motion for summary judgment because, according to defendants, proceeding on either motion for summary judgment would not shorten the trial. The same day, defendants filed their motion to strike or postpone briefing, arguing that plaintiff's motion for summary judgment will not in any way shorten the trial, and that plaintiff has presented the Court with contradictory statements as to whether there are genuine issues of material fact on the basis of its motion for summary judgment. Defendants also argue that plaintiff's motion will be unduly burdensome to defendants as they prepare for trial.

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[4] *Telxon Corp. v. Bogomolny*, 792 A.2d 964, 972 (Del. Ch. 2001).

[5] Again, I need not and do not make any determination on whether plaintiff's claim is time barred, and defendants remain free to assert a timeliness defense.

As the Delaware Supreme Court has stated, "[t]here is no 'right' to a summary judgment."[6] Perhaps more important for present purposes, however, is the inherent power of this Court to manage its docket and the scheduling of cases.[7] Plaintiff's motion for partial summary judgment may not shorten the trial, and even if granted, will not completely obviate the need for a trial.[8] Moreover, given the limited time remaining until trial is scheduled to commence, and the length of time plaintiff had to file its motion previously, it is not in the interest of judicial economy to force briefing and decision on plaintiff's motion before trial. Rather, plaintiff will be able to present argument in favor of its motion in post-trial briefing. Proceeding in this manner allows the parties and the Court to focus their energies on the trial, rather than hastily resolving a summary judgment motion that, even if granted, will not obviate the need for a trial.

For the foregoing reasons, plaintiff's motion for leave to file an amended complaint is granted, and defendants' motion to postpone briefing is granted. Briefing on plaintiff's motion for summary judgment is held in abeyance until after completion of the trial. If plaintiff still desires to pursue its motion, it can present argument in favor of the motion in its post-trial briefs.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

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WBCIII:jmb

[6] *Empire Fin. Services, Inc. v. Bank of New York (Delaware)*, 900 A.2d 92, 97 (Del. 2006) (quoting *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002)).

[7] *See Washington v. State*, 844 A.2d 293, 295-96 (Del. 2004).

[8] Although plaintiff argues that resolving the issue of who bears the burden of entire fairness will allow the parties to tailor and focus their presentations at trial, I am not convinced that plaintiff's motion will save trial time sufficient to warrant briefing and deciding the motion before trial, which is scheduled to begin in just over a week.