



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

STREAM TV NETWORKS, INC.,)
)
Plaintiff,)
)
v.) C.A. No. 2020-0766-JTL
)
SEECUBIC, INC.,)
)
Defendant.)
_____)
SEECUBIC, INC.,)
)
Counterclaim and)
Third-Party Plaintiff,)
)
v.)
)
STREAM TV NETWORKS, INC.,)
)
Counterclaim Defendant,)
)
and)
)
MATHU RAJAN, and RAJA RAJAN,)
)
Third-Party Defendants.)

**ORDER GRANTING SEECUBIC, INC.’S MOTION FOR LEAVE TO FILE A
VERIFIED SUPPLEMENTAL COUNTERCLAIM, DERIVATIVE COMPLAINT,
AND THIRD-PARTY COMPLAINT**

1. Defendant, counterclaim plaintiff, and third-party plaintiff SeeCubic, Inc. has moved for leave to file supplemental counterclaims against Stream TV Networks, Inc. and supplemental third-party claims against Mathu Rajan and Raja Rajan (the “Rajans”). Dkt. 230 (the “Motion”). For simplicity, this order uses the term “counterclaims” to refer to both aspects of the proposed pleading. This order also refers to the positions of Stream

and the Rajans as those of Stream. For the reasons that follow, the Motion is GRANTED, but without prejudice to the ability of Stream and the Rajans to challenge whether the counterclaims state viable claims.

2. On September 8, 2020, Stream initiated this action. Dkt. 1. Stream contended that an Omnibus Agreement, dated May 6, 2020, was invalid and unenforceable. Stream moved for expedited proceedings and sought a temporary restraining order to bar SeeCubic from seeking to enforce the Omnibus Agreement.

3. On September 15, 2020, SeeCubic filed counterclaims against Stream and third-party claims against the Rajans. Dkt. 8. In its principal claim, SeeCubic sought a declaratory judgment that the Omnibus Agreement is valid and binding. SeeCubic also alleged that the Rajans had converted the assets identified in the Omnibus Agreement. Like Stream, SeeCubic moved for expedition and sought a temporary restraining order. Dkts. 9–10.

4. The court entered a status quo order, and the parties' briefed competing motions for preliminary injunction. In a ruling dated December 8, 2020, the court granted SeeCubic's motion and denied Stream's motion. *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 250 A.3d 1016 (Del. Ch. 2020) (subsequent history omitted). As a result of its ruling, the court enjoined Stream and the Rajans from interfering with the Omnibus Agreement or the rights that it granted to SeeCubic regarding control over Stream's assets. Dkt. 111.

5. On January 19, 2021, SeeCubic moved for summary judgment on its request for a declaratory judgment and its claim for conversion. Dkt. 117. The motion also sought

a permanent injunction ordering Stream and the Rajans to comply with the Omnibus Agreement.

6. The court granted SeeCubic's motion in part. *Stream TV Networks, Inc. v. SeeCubic, Inc. (SJ Order)*, 2021 WL 4352732, at *3 (Del. Ch. Sep. 23, 2021). The *SJ Order* granted summary judgment in SeeCubic's favor as to the validity of the Omnibus Agreement. *Id.* The court also granted SeeCubic's motion for a permanent injunction. *Id.* at *2. The court denied SeeCubic's motion for summary judgment as to its conversion claim. *Id.* at *3.

7. On November 10, 2021, the court certified the *SJ Order* as a partial final judgment under Court of Chancery Rule 54(b) and stayed SeeCubic's conversion claim pending resolution of the appeal. *Stream TV Networks, Inc. v. SeeCubic, Inc. (Partial Judgment)*, 2021 WL 5240591, at *1 (Del. Ch. Nov. 10, 2021).

8. Stream and the Rajans appealed from the *Partial Judgment*. On June 15, 2022, the Delaware Supreme Court vacated the *Partial Judgment*, reversed the *SJ Order*, and remanded for further proceedings. *Stream TV Networks, Inc. v. SeeCubic, Inc.*, --- A.3d ---, 2022 WL 2149437, at *1 (Del. June 15, 2022).

9. On June 18, 2022, SeeCubic filed the Motion. The proposed counterclaims add allegations about events that occurred after the filing of the initial counterclaims. The proposed counterclaims assert a derivative claim for breach of fiduciary duty against the Rajans and a direct claim for unjust enrichment against Stream and the Rajans. SeeCubic seeks injunctive relief preserving Stream's assets pending resolution of the previously filed foreclosure action in the Delaware Superior Court.

10. On June 27, 2022, Stream filed its opposition to the Motion. Dkt. 234 (the “Opposition or “Opp’n”). On June 28, 2022, SeeCubic filed its reply. Dkt. 235. Oral argument on the Motion is unnecessary.

11. Stream grounded its Opposition on the contention that that this court lacked jurisdiction to consider the Motion. According to Stream, “[t]he Supreme Court holds exclusive jurisdiction over this case until it issues a [Supreme Court Rule] 19 mandate.” Opp’n ¶ 1. The Delaware Supreme Court issued its mandate on July 1, 2022. Dkt. 237. Assuming that Stream’s position was correct, then once the mandate issued, jurisdiction returned to this court. *Atlas Sanitation Co. v. State*, 595 A.2d 380, 381 (Del. 1991). There is currently no impediment to SeeCubic filing the Motion. There is also nothing to be gained (other than incremental filing fees for the court) from having SeeCubic refile the Motion.

12. Stream’s principal argument—lack of jurisdiction—should therefore be moot. But in its Opposition, Stream contended that because this court lacked jurisdiction over this matter when the Motion was filed, SeeCubic should be compelled to pay the attorneys’ fees and expenses that Stream incurred responding to the Motion. Opp’n ¶ 1. Stream argues that such an award is warranted because “[t]he Motion was filed wrongfully without jurisdiction” and “is facially frivolous.” *Id.*

13. Stream fails to account for the fact that the *Partial Judgment* was just that—a partial final judgment entered under Rule 54(b). Although Stream is correct that an appeal divests this court of jurisdiction over the matters that have been appealed, a trial court “retain[s] jurisdiction over the action for purpose[s] other than the appeals taken by [the

parties].” *Park Oil, Inc. v. Getty Refin. & Mktg. Co.*, 407 A.2d 537, 538 (Del. 1979). The trial court retains jurisdiction over independent or collateral matters. *See Radulski v. Del. State Hosp.*, 541 A.2d 562, 567 (Del. 1988) (“With the exception of interlocutory appeals, the proper perfection of an appeal to this Court generally divests the trial court of its jurisdiction over the cause of action. We recognize that in some instances the trial court may exercise its jurisdiction as to collateral or independent matters.” (cleaned up)); Delaware Appellate Handbook, § 6.08, at 6–xxi (2d ed. 1996) (“The taking of an appeal does not necessarily preclude the trial court from retention of jurisdiction as to collateral or independent matters.”); 4 C.J.S. *Appeal and Error* § 517, Westlaw (database updated May 2022) (“During the pendency of an appellate proceeding, the trial court retains jurisdiction to proceed as to issues collateral to or not affecting the subject matter of the appeal, ancillary issues, and as to matters which are independent of and unrelated to that portion of the proceedings that pends on appeal.” (footnotes omitted)).

14. In an appeal from a final judgment, the number of independent and collateral matters will be few. There might be a need for the trial court to make an award of costs. Or there might be an application to enforce the trial court’s judgment pending the outcome of the appeal (assuming there has not been a stay pending appeal). In an appeal from a partial final judgment under Rule 54(b), the number of independent and collateral matters will be broader, precisely because the partial final judgment is partial.

15. Here, the court certified the *SJ Order* as a partial final judgment under Court of Chancery Rule 54(b). *See Partial Judgment*, 2021 WL 5240591, at *1–2. The entry of that partial final judgment did not resolve the entire case. The appeal from the *Partial*

Judgment divested this court of jurisdiction as to those matters that were the subject of the appeal. The court retained jurisdiction over the balance of the case.

16. As a practical matter, it often will not make sense for a case to move forward at the trial level while a partial final judgment is on appeal. That was the situation here. But whether a case moved forward as a practical matter presents a different question than whether the trial court lacks jurisdiction.

17. The Motion concerns matters that are independent of and collateral to the appeal. A matter is independent and collateral if it does not implicate the issues on appeal or any matters underlying those issues.¹ The Motion takes the outcome of the appeal as a given. It does not seek to challenge or relitigate issues that were the subject of the appeal, and the court has no intention of permitting that to happen.

18. The court therefore retained jurisdiction to consider the Motion notwithstanding the fact that the Delaware Supreme Court had jurisdiction over the *Partial Judgment*. It was not improper for SeeCubic to file the Motion. Stream's request for an award of fees or expenses is denied.

19. Turning to the merits, SeeCubic filed the Motion pursuant to Court of Chancery Rule 15(d). That rule provides that “[u]pon motion of a party the Court may,

¹ See 4 C.J.S. *Appeal and Error*, *supra*, § 517 n.1 (defining “collateral matters’ over which a trial court has jurisdiction despite an appeal” as “those that do not raise any question going behind the judgment appealed from, nor do they raise any question decided by that judgment, and they do not involve the rights and equities relative to the question on appeal”); *Collateral*, Black’s Law Dictionary (11th ed. 2019) (“Supplementary; accompanying, but secondary and subordinate to . . .”).

upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.” Ct. Ch. R. 15(d).

20. “As a general rule, leave to amend is freely given and there is no apparent reason why the same liberality should not apply to a motion to supplement.” *Parnes v. Bally Ent. Corp.*, 2000 WL 193112, at *2 (Del. Ch. Feb. 8, 2000) (cleaned up). The court however may deny leave to amend “if plaintiff inexcusably delayed in making its request *and* defendant is prejudiced as a result.” *Id.* The court analyzes these issues consistent with Rule 15(d)’s purpose of “promot[ing] as complete an adjudication of the dispute between the parties by allowing the addition of claims which arise after the initial pleadings are filed.” *Id.* (cleaned up).

21. Stream asserts that it was procedurally improper for SeeCubic to file the Motion. According to Stream, the only correct procedure was to await the Delaware Supreme Court’s mandate, then for the parties to prepare an appropriate order and submit it to the court pursuant to Court of Chancery Rule 72(c). Opp’n ¶ 1 n.1. Stream argues that the Rule 72(c) order necessarily will “conclude this case.” *Id.* Stream further argues that “Rule 15 no longer applies because a partial final judgment was entered” and that the Motion should be reviewed under the standards for setting aside or vacating a judgment pursuant to Court of Chancery Rules 59 and 60. *Id.* ¶¶ 2, 5.

22. Stream’s arguments rest on the inaccurate premise that the *Partial Judgment* constituted a final judgment and that the Delaware Supreme Court’s mandate disposes of the entire action. To reiterate, the *Partial Judgment* was a partial final judgment. The court

certified the *SJ Order* as such under Rule 54(b) and expressly stated that the order “resolv[ed] some, but not all, of the claims.” *Partial Judgment*, 2021 WL 5240591, at *1. The case is not fully resolved. It was procedurally proper for SeeCubic to file the Motion under Rule 15(d), and it is procedurally proper for the court to evaluate the Motion under that rule.

23. The fact that this action is not fully resolved does not mean that the parties have the ability to litigate issues that have become final as a result of the *Partial Judgment* and the Delaware Supreme Court’s decision. The matters that Stream did not challenge on appeal have become final. The matters that the Delaware Supreme Court addressed in its decision are binding. Any further proceedings in the case must take into account those realities. The case as a whole, however, is not complete. The trial court “is not constrained by the mandate as to issues not addressed on appeal.” *Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26, 38 (Del. 2005). The trial court is constrained by (and of course will respect) “the appellate court’s determinations as to all issues expressly or implicitly disposed of in its decision.” *Id.*

24. Despite resting its Opposition exclusively on its jurisdictional argument, Stream also argued for the sake of completeness that the Motion should be denied based on “all of the ordinary reasons to deny Rule 15 amendment.” Opp’n ¶ 2. That is an odd statement, because motions under Rule 15 are ordinarily granted, not denied.

25. Stream contends that the proposed counterclaims (i) were asserted in bad faith, (ii) will cause undue delay and prejudice, and (iii) are futile. Stream’s sole basis for

contending that the proposed counterclaims were asserted in bad faith is that the Motion was procedurally improper. As explained, the Motion was not procedurally improper.

26. Stream has not demonstrated that SeeCubic engaged in undue delay. The events alleged in the proposed counterclaims post-date the initial pleadings and advance claims that take into account the Delaware Supreme Court's decision. The Motion was filed three days after the Supreme Court issued its decision. There was no delay, much less undue delay. To the contrary, Stream's principal argument was that SeeCubic moved prematurely. Regardless, Stream does not identify prejudice aside from the additional time and resources it will require to litigate this action. The court is cognizant of that factor, but it does not rise to the level of "undue prejudice."

27. The court will not address at this time Stream's argument that the Motion is futile because the counterclaims do not state viable claims. As a general matter, courts will not test the sufficiency of pleadings in ruling on a motion to amend or supplement the pleadings. *See Braga Inv. & Advisory, LLC v. Yenni*, 2021 WL 2190918, at *7 (Del. Ch. May 28, 2021); *NACCO Indus., Inc. v. Applicia Inc.*, 2008 WL 2082145, at *1 (Del. Ch. May 7, 2008). A court may deny a motion to amend or supplement where "the legal insufficiency of the amendment is obvious on its face." *NACCO*, 2008 WL 2082145, at *1; *see Braga*, 2021 WL 2190918, at *7.

28. Here, the legal insufficiency is not obvious, and the parties' briefing is comparatively cursory. Stream asserts that the counterclaim for breach of fiduciary duty is unripe and that SeeCubic is not a proper derivative plaintiff. Opp'n ¶ 16. Those arguments should be explored more fully before the court issues a ruling.

29. Stream also asserts that the unjust enrichment counterclaim is unripe, that “there is no relationship between the enrichment and impoverishment, and it is a *quantum meruit* lien that the Supreme Court has already ruled belongs in a Superior Court case.” *Id.*

a. The court recently spent considerable time pondering unjust enrichment in *Garfield v. Allen*, --- A.3d ---, 2022 WL 1641802 (Del. Ch. May 24, 2022). There are cases that address changes in position based on an erroneous trial court ruling. *See, e.g., Fleeer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060 (Del. 1988). Those cases should be taken into account.

b. It is not obvious that a claim for unjust enrichment would be legally insufficient. The basic idea is that this court’s decisions in 2020 permitted SeeCubic to control Stream’s assets. Now, in 2022, the Delaware Supreme Court has determined that SeeCubic should not have been able to control Stream’s assets. In the interim, SeeCubic’s actions may have inflicted harm on Stream, or it may have conferred benefits on Stream. The parties understandably view the situation differently, Stream contends stridently that SeeCubic harmed Stream and must be held accountable. If, in reality, SeeCubic conferred benefits on Stream, then Stream conceivably could have been unjustly enriched, and SeeCubic could have the ability to recover those benefits. At a minimum, for present purposes, that theory is not obviously inconceivable.

30. Finally, Stream argues that the request for injunctive relief is an attempt to litigate a claim that “could have been pled on the first day of the case” and “is now barred by law of the case.” Opp’n ¶ 16. A prayer for injunctive relief is not a claim. It is a request

for a remedy. Whether SeeCubic's current claims can support a request for injunctive relief is a matter that will be taken up in due course.

31. The Motion is therefore granted. The granting of leave to file the supplemental pleading is without prejudice to any arguments Stream may assert regarding the viability of the claims or the availability of injunctive relief.

/s/ J. Travis Laster _____
Vice Chancellor Laster
July 5, 2022