

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

GABRIEL G. ATAMIAN, MD, MSEE, JD, :
 : C.A. No. 03C-12-038 HDR
Plaintiff, :
 :
v. :
 :
MICHAEL J. RYAN, DDS and :
BECDEN DENTAL LABORATORY, :
 :
Defendants. :

Submitted: August 13, 2004
Decided: October 18, 2004

ORDER

Upon Plaintiff's Motion for Violation of 10 *Del. C.* § 3104(f). Denied.
Upon Plaintiff's Motion to Amend Complaint to Add
Claim of Declaratory Judgment. Denied.

Gabriel G. Atamian, MD, MSEE, JD, *pro se*, Dover, Delaware.

Matthew P. Donelson, Esquire of Elzufon Austin Reardon Tarlov & Mondell, P. A.,
Wilmington, Delaware; attorneys for Defendant Michael J. Ryan, DDS.

Thomas J. Gerard, Esquire of Marshall Dennehey Warner Coleman & Coggin,
Wilmington, Delaware; attorneys for Defendant Becden Dental Laboratory.

WITHAM, J.

Introduction

Before this Court are two motions filed by Plaintiff Gabriel G. Atamian, *pro se*.

Background

This case arises from allegedly improper dental treatment Plaintiff received from Defendants Michael J. Ryan, DDS, and Becden Dental Laboratory, a Utah based dental laboratory. Plaintiff is seeking damages for personal injuries he allegedly sustained as a result of the treatment. The Complaint alleges the following causes of action: Assault and Battery, Misrepresentation and Deceit, Common Law Conspiracy, Products Liability, Negligent Infliction of Emotional Distress, and Neglecting to Prevent Conspiratorial Wrongs.¹

In his motions, Plaintiff is seeking to amend the complaint to include a claim seeking declaratory judgment relief. Both Defendants have opposed this motion. In addition, Plaintiff has filed a motion asking the Court to order that Becden has violated 10 *Del. C.* § 3104 because it has not filed an answer. Dr. Ryan opposes this motion. Based upon the written submissions of the parties and for the reasons set forth below, Plaintiff's motions are hereby denied.²

¹ The Causes of Action have been misnumbered in Plaintiff's Complaint. He has identified the claims for "Product Liability" and for "Negligent Infliction of Emotional Distress" each as Count IV.

² Under Delaware law, parties are not automatically entitled to present oral argument for every motion filed; *see* Super Ct. Civ. R. 68(c) ("There will be no oral argument unless scheduled by the Court, except as may be otherwise provided by statute or rule.").

Discussion

Plaintiff's Motion for Violation of 10 Del. C. § 3104(f)

Plaintiff's first motion alleges that Becden violated 10 *Del. C.* § 3104(f) when it failed to file an answer after being served.³ Plaintiff is seeking an order from this Court stating that Becden has violated this statute. In addition, Plaintiff requests that the Court appoint a master to determine why an answer has not been filed and make an award the Court deems just and necessary. Defendant Ryan filed opposition to the motion, but references 10 *Del. C.* § 3104(g). Based on Dr. Ryan's response to the motion, it appears that he believes Plaintiff is alleging that he did not provide sufficient contact information for Becden. However, this does not appear to be the basis for Plaintiff's motion.

It appears the Plaintiff is asking the Court to order Becden to file an answer. An attorney has entered an appearance on behalf of Becden but specifically reserved the right to raise any jurisdictional, service, or statute of limitations defects which may be available. The statute Plaintiff relies on is the Delaware Long-Arm Statute, which simply allows a plaintiff to obtain personal jurisdiction over an out of state defendant. It is unclear how the Court could enter an order stating that Becden has

³ 10 DEL. C. § 3104(f) states, "The return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the defendant or the defendant's agent; and the notation of refusal shall constitute presumptive evidence that the refusal was by the defendant or the defendant's agent."

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violated a statute which provides the process for the plaintiff to follow when serving an out of state defendant. With respect to Dr. Ryan's response to the motion, § 3104 certainly does not impose any duty on a defendant to provide contact information for a co-defendant. Accordingly, Plaintiff's motion is hereby *denied*.

Plaintiff's Second Motion to Amend the Complaint

Plaintiff has filed a second motion to amend his complaint, this time requesting to add an additional count asking this Court "for a Declaratory Judgment relief for the Counts I to VI." Both Defendants oppose the motion. Plaintiff's first motion to amend was not opposed by either Defendant. Pursuant to Superior Court Civil Rule 15, a party may amend its pleading only by leave of court, which shall be freely given when justice requires. Generally, when determining whether to grant a motion to amend, the Court must determine whether the opposing party would be seriously prejudiced by the amendment.⁴ Here, neither Defendant has alleged that prejudice would result from the amendment. Rather, their opposition centers on the idea that a declaratory judgment is inconsistent with the complaint and inappropriate in this case.

Declaratory judgment is a binding adjudication that establishes the rights and legal relations of the parties without providing for or ordering enforcement.⁵ Generally a declaratory judgment is a remedy to prevent an impending injury. In

⁴ See *Dunfee v. Blue Rock Van & Storage, Inc.*, 266 A.2d 187 (Del. Super. Ct. 1970).

⁵ BLACK'S LAW DICTIONARY 859 (8th ed. 2004).

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this case, Plaintiff is seeking an order from the Court granting declaratory judgment relief for all of the allegations in the complaint. However, the claims are for assault and battery, misrepresentation and deceit, common law conspiracy, products liability, negligent infliction of emotional distress and neglecting to prevent conspiratorial wrongs. These are not the types of claims for which declaratory judgment is appropriate. Accordingly, Plaintiff's motion to amend is hereby *denied*.

Conclusion

Based upon the aforementioned reasons, Plaintiff's motions are hereby *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution