

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUBEN PEREZ, MICHAEL MOORE
and BRIGETTE MOORE,

No. 2:09-cv-02850-MCE-KJM

Plaintiffs,

v.

ORDER

VEZER INDUSTRIAL
PROFESSIONALS, INC., a
California Corporation and
DOES 1-50 inclusive,

Defendants.

VEZER INDUSTRIAL
PROFESSIONALS, INC.,

Third-Party
Plaintiff,

v.

PINPOINT HOLDING. INC., a
corporation; B2 GOLD, a
Canadian corporation,

Third-Party
Defendants.

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1 Presently before the Court is a Motion for Leave to File a
2 First Amended Third-Party Complaint brought by Defendant Vezer
3 Industrial Professionals, Inc. ("Vezer"). Plaintiffs'
4 Complaint, originally filed on July 17, 2009 in the Superior
5 Court of California in and for the County of Solano, was
6 subsequently removed to this Court, on grounds of diversity of
7 citizenship pursuant to 28 U.S.C. §§ 1441(a) and 1446, on or
8 about October 13, 2009. According to the Complaint, Plaintiffs
9 sustained personal injuries while doing work for Vezer at a gold
10 mine in La Libertad, Nicaragua owned by Central Sun Mining and
11 its successor-in-interest, B2 Gold.

12 By previous Order filed February 1, 2010, the Court
13 permitted Vezer to file an initial Third-Party Complaint against
14 Pinpoint Holdings upon Vezer's allegation that it contracted with
15 Pinpoint Holdings for Plaintiffs' work at the Nicaraguan mine.
16 According to Vezer, their contract with Pinpoint contained an
17 indemnity clause whereby Pinpoint agreed to indemnify and hold
18 harmless Vezer for any personal claims resulting from the
19 negligence, in whole or in part, of Pinpoint or its
20 representatives. Vezer also maintained that a similar indemnity
21 provision existed between Vezer and Central Sun Mining Inc.,
22 which, in turn, extended to Central Sun's successor, B2 Gold.
23 Vezer's original Third-Party complaint, filed on February 5, 2010
24 after the Court's previous February 1, 2010 authorized it to do
25 so, asserted Vezer's alleged indemnity rights against both
26 Pinpoint and B2 Gold.

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1 Now, Vezer seeks to amend its Third-Party Complaint on
2 grounds that it has discovered that Central Sun Mining, Inc., who
3 executed the initial indemnity agreement in Vezer's favor, is in
4 fact still a viable legal entity from which indemnification can
5 properly be sought. No opposition has been filed to the instant
6 Motion for Leave to File a First Amended Third-Party Complaint.

7 Federal Rule of Civil Procedure 14 a party to bring a
8 lawsuit against, or "implead," a third party who is not already a
9 party to the lawsuit in order to transfer liability being
10 asserted against it in the underlying lawsuit. Rule 14(a)(1)
11 provides in pertinent part as follows:

12 "A defending party may, as third-party plaintiff, serve
13 a summons and complaint on a nonparty who is or may be
14 liable to it for all or part of the claim against it.
15 But the third-party plaintiff must, by motion, obtain
16 the court's leave if it files the third-party complaint
17 more than 10 days after serving its original answer."

18 The District Court has broad discretion in determining the
19 propriety of a third-party claim under Rule 14. Southwest
20 Admin., Inc. v. Rozay's Transfer, 791 F.2d 769, 777 (9th Cir.
21 1986). Rule 14 is to be construed liberally in favor of allowing
22 impleader. Lehman v. Revolution Portfolio L.L.C., 166 F.3d 389,
23 393 (1st Cir. 1999).

24 Given Vezer's contention that indemnity agreements were in
25 place that extended not only to Pinpoint Holdings and B2 Gold,
26 but also to Central Sun Mining, Defendant Vezer would presumably
27 have grounds upon which to file a separate lawsuit for
28 contribution and indemnity against Central Sun Mining, as well as
Pinpoint Holdings and B2 Gold.

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1 Accordingly, it is proper to amend Vezer's Third-party Complaint
2 to include Central Sun Mining, Inc. Vezer's Motion (Docket
3 No. 23) is therefore GRANTED.¹ Vezer shall file and serve its
4 proposed First Amended Third-Party Complaint forthwith.

5 IT IS SO ORDERED.

6 Dated: June 10, 2010

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9 MORRISON C. ENGLAND, JR.
10 UNITED STATES DISTRICT JUDGE
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27 ¹Because oral argument will not be of material assistance,
28 the Court ordered this matter submitted on the briefs. E.D. Cal.
Local Rule 230(g).