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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMBLAZE LTD.,
Plaintiff,
v.
MICROSOFT CORPORATION,
Defendant.

Case No. [12-cv-05422-JST](#)

**ORDER DENYING REQUEST TO
LIMIT PARTICIPATION OF
EMBLAZE’S EXPERT**

Re: ECF No. 89

On June 16, 2014, the parties filed a letter brief outlining their dispute regarding Microsoft’s refusal to permit Emblaze’s expert, Dr. Vijay Madiseti, to access materials that Microsoft has designated as highly confidential under the district’s model protective order for patent cases. ECF No. 89.

In the brief, Microsoft attempts to justify its position by arguing that the Cozen O’Connor law firm (“Cozen”), which represents Emblaze in Emblaze v. Apple, Case. No. 11-cv-01079 (N.D. Cal.) (“the Apple case”), “has worked extensively with Dr. Madiseti” in connection with that case. This is problematic, in Microsoft’s view, because Cozen represents Microsoft in an unrelated tax matter in Pennsylvania. Microsoft contends that permitting Dr. Madiseti to access the materials in this case without any limitations “would create an effective collaboration” between Cozen and Cohen & Gresser (“C&G”), counsel for Emblaze in this case, which Microsoft argues would be improper in light of the “law governing knowing collaboration with disloyal attorneys.” Id. at 6-7 (citing Fund of Funds v. Arthur Andersen & Co., 567 F.2d 225, 232 (2d Cir. 1977)).

Microsoft has offered to permit Dr. Madiseti to work with C&G in this case only if:
(1) Dr. Madiseti agrees in writing not to discuss his work with Cozen; (2) C&G does not use any of the work or testimony of Dr. Madiseti from the Apple case; (3) no information is given by

1 Emblaze or Dr. Masetti to C&G about “discussions with Cozen”; and (4) no Microsoft
2 confidential information is shared with anyone who interacts with Cozen, other than Dr. Madisetti.
3 Id. at 6. Microsoft contends that these restrictions are appropriate because counsel for Emblaze
4 voluntarily agreed not to have any discussions with Cozen, and C&G has not shown that this self-
5 imposed wall should not also apply to Dr. Madisetti. Microsoft contends that it is not seeking to
6 disqualify Dr. Madisetti, but only to limit C&G’s use in this case of Cozen’s work in the Apple
7 case.

8 Emblaze responds that Microsoft’s original reason for seeking to limit Dr. Madisetti’s
9 access to confidential documents was the motion to disqualify C&G from representing Emblaze in
10 this case, which the court recently denied. Now that the motion is no longer at issue, Emblaze
11 contends that there is no reason for Microsoft to doubt the good faith of C&G or Dr. Madisetti.
12 Emblaze also notes that Microsoft has never moved to disqualify Dr. Madisetti as an expert by
13 virtue of Cozen’s representation of Emblaze in the Apple case. Finally, Emblaze argues that there
14 is no reason to interfere with Dr. Madisetti in this case merely because Emblaze is represented by
15 Cozen in the Apple case, which involves a different defendant and different products.

16 The court concludes that there is no basis to impose the limitations on Dr. Madisetti’s
17 participation that Microsoft requests. First, the motion to disqualify C&G was denied, so neither
18 the making of that motion nor the arguments made in support of it provide any basis for limiting
19 Dr. Madisetti’s participation. Second, the only authority upon which Microsoft relies to support
20 its position is Fund of Funds, which deals exclusively with an attorney’s breach of the duty of
21 loyalty to a client. Microsoft has not cited any authority that stretches Fund of Funds so far as to
22 disqualify or limit an expert witness in an unrelated case, and the court has already determined that
23 Fund of Funds is inapposite to the facts presented in this case.

24 Third, C&G’s decision to wall itself from any communications with Cozen was completely
25 voluntary. Microsoft points to no authority showing that this self-imposed ethical wall also must
26 be applied to Dr. Madisetti.

27 Finally, the court finds that the terms of the protective order governing the documents at
28 issue are sufficient to protect Microsoft’s interests.

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Accordingly, Microsoft's request to impose limits on the participation of Dr. Madisetti in this case is DENIED.

IT IS SO ORDERED.

Dated: June 25, 2014



JON S. TIGAR
United States District Judge