

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO: 11-20298-CIV-KING

SAFARI, LTD.,

Plaintiff,

v.

ADONIX TRANSCOMM, INC., and
SAGE SOFTWARE, INC.,

Defendants.

_____ /

ORDER DENYING MOTION FOR STAY

THIS CAUSE comes before the Court upon Defendant Sage Software, Inc.'s Motion for Stay and/or Extension of Time to Respond to Complaint. (DE #4). Plaintiff filed its Response Memorandum in Opposition to Sage's Motion for Stay and/or Extension of Time to Respond to Complaint on March 1, 2011. (DE #6).

The above-styled action is related to another case between the same parties pending before this division of Court, styled *Safari, Ltd. v. Adonix Transcomm, Inc. & Sage Software, Inc.*, Case No. 1:09-cv-21289-JLK ("Safari I"). Both cases center on the sale of an allegedly defective computer software program by Defendants to Plaintiff. In *Safari I*, Plaintiff asserted claims for breach of contract, fraudulent inducement, and violation of Florida's Deceptive and Unfair Trade Practices Act. On November 18, 2010, less than four months prior to trial, Plaintiff moved to amend the Complaint based on a deposition taken on October

28, 2010. *See* Case No. 09-civ-21289 (DE #60). During the deposition, Plaintiff allegedly learned that one of its own agents was involved in a fraudulent bribe/kickback scheme with Defendants. *Id.* Subsequently, Plaintiff sought to amend the Complaint to add seven new claims: (1) fraud; (2) common law commercial bribery; (3) aiding and abetting breach of fiduciary duty; (4) civil conspiracy; (5) tortious interference; (6) rescission; and (7) unjust enrichment. *Id.* The Court denied Plaintiff's Motion for Leave to Amend. *Id.* The Court found that allowing amendment at such a late stage in the litigation would ultimately necessitate further continuances of trial. More importantly, the Court found that "the seven new causes of action Plaintiff seeks to add are not essential to this action." *Id.* at 3. Rather, "these new actions . . . emanate from separate and distinct acts not relevant to [the first] action." *Id.* Accordingly, the Court denied the Motion and stated that Plaintiff may file a separate suit alleging the new causes of action. As a result, Plaintiff filed the Complaint in the instant action January 27, 2011. (DE #1).

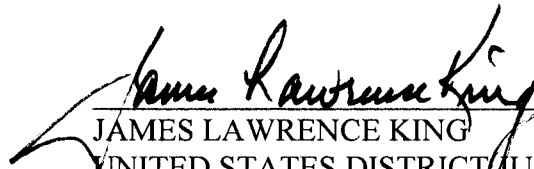
Defendant Sage Software, Inc. now seeks a stay of the above-styled action until the conclusion of litigation in *Safari I*, or alternatively, an extension of time to respond to the Complaint until twenty days following resolution of *Safari I*. Defendant argues that judicial economy will be greatly served by granting the relief requested, and that the parties will be saved from engaging in duplicative discovery. Plaintiff responds that a stay is not necessary because the instant proceedings are not dependent on the outcome of *Safari I*. However, because the Court recently granted a continuance in *Safari I* that schedules trial for August

22, 2011, Plaintiff has suggested that the cases be consolidated. Both the motion for stay and the request for consolidation must be denied. As explained in the Court's Order Denying Plaintiff's Motion for Leave to Amend entered in *Safari I*, these cases "emanate from separate and distinct acts." Case No. 09-cv-21289 (DE #60). The causes of action asserted in each case involve different issues. The combination of these issues would inject complexity into the case making it difficult to manage, and for the finder of fact to reach an ultimate conclusion resolving the case.

Accordingly, after a thorough review of the record and the Court being otherwise fully advised, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant Sage Software, Inc.'s Motion for Stay and/or Extension of Time to Respond to Complaint (DE #4) is **DENIED**, and this case shall proceed. Defendant **SHALL** respond to the Complaint within **twenty (20) days** from the date of this Order.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 2nd day of March, 2011.



JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc:

Counsel for Plaintiff

Tom John Manos

Tom J Manos PA

One Brickell Square 9th Floor

801 Brickell Avenue

Miami, FL 33131

305-341-3100

Fax: 305-341-3102

Email: Tmanos@tjmlawfirm.com

Counsel for Defendant

J. Scott Slater

Hill Ward & Henderson

101 E Kennedy Boulevard

Suite 3700 PO Box 2231

Tampa, FL 33601

813-221-3900

Fax: 221-2900

Email: sslater@hwhlaw.com