

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,)	
)	
Plaintiff,)	C.A. No. 06 CA 11370 MLW
)	
v.)	
)	
REED ELSEVIER INCORPORATED,)	
d/b/a LexisNexis, Lexis Nexis Risk & Information)	
Analytics Group, Inc.,)	
)	
Defendant.)	

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION TO JOIN THE
“MAINE BOARD OF BAR EXAMINERS” AS A DEFENDANT**

Defendant Reed Elsevier Inc. (“Reed”) hereby opposes plaintiff Christine Varad’s (“Plaintiff” or “Varad”) Fed. R. Civ. P. 21 Motion to Join the “Maine Board of Bar Examiners” as a Defendant (“Motion to Join”).

Varad waited until the eve of the close of discovery to serve her Motion to Join, seeking to add “Thomas J. Quinn, as Chairman, Maine Board of Bar Examiners” (the “Board”) as a defendant,¹ and only after her subpoena to the Board was recently quashed. Varad’s attempt to circumvent the rules pertaining to third party discovery is transparent, and her Motion to Join should be denied. As an initial dispositive matter, Varad has failed to comply with Local Rule 15.1, which requires that a motion seeking to add a new party shall be served on that party at least ten days prior to filing the motion. Varad has yet to serve her Motion to Join on the Board, and this fact alone justifies denial. Further, even if the Court considers the merits of Varad’s Motion, it should be denied because allowing the Motion to Join would prejudice Reed, as substantial discovery (including Varad’s deposition) has already taken place and discovery

¹ Varad’s Motion to Join is inconsistent, in that in her caption she seeks to join the “Maine Board of Bar Examiners,” but in her request for relief she seeks to join “Thomas J. Quinn, as Chairperson, Maine Board of Bar Examiners.” Reed opposes the joining of either party, and its definition of the “Board” refers to both Mr. Quinn and the Maine Board of Bar Examiners.

(already extended once) has closed. Nor has Plaintiff provided any legitimate basis for waiting almost a year after filing this lawsuit to seek to join an additional defendant. Finally, the “facts” set forth in Plaintiff’s Motion to Join as purported justification to add the Board are not relevant to the claims that Plaintiff makes in her Second Amended Complaint. For each of these reasons, Varad’s Motion to Join should be denied.

BACKGROUND

Plaintiff commenced this lawsuit in August 2006, claiming that Reed d/b/a “LexisNexis Corporation, Lexis Nexis Accurint” had failed to provide her access to a “file” with regard to information she alleged was provided about her to Gall & Gall Company, Inc. (“Gall & Gall”). Varad claimed that the information provided by Reed was false and resulted in lost employment opportunities. Varad also alleged that Reed provided the same information to others, including the Massachusetts and Maine Board of Bar Examiners. Varad recently amended her complaint to change the name of the defendant to “Reed d/b/a/ LexisNexis, Lexis Nexis Risk & Information Analytics Group, Inc.”

The parties have conducted substantial discovery over the last six months, including the exchange of initial disclosures and document production (in response to requests for production of documents). Further, Reed has deposed Plaintiff and Steven Gall of Gall & Gall. Reed has also subpoenaed documents from F&W Publications, Inc. (“F&W”), Plaintiff’s employer. At the beginning of July, Plaintiff served tardy Interrogatories on Reed.²

With regard to discovery of Mr. Quinn and the Maine Board of Bar Examiners, Plaintiff issued a subpoena to “Thomas Quinn, Maine Board of Bar Examiners” (“Subpoena”). This Court quashed the Subpoena because Plaintiff failed to comply with the Federal Rules of Civil

² Because the scheduling order requires that discovery be *completed* by July 13, 2007, Reed will be objecting to providing substantive responses to interrogatories served on July 1, 2007 (and due August 3rd).

Procedure. [Docket Entry dated 6/27/07]. The Board did, however, provide Plaintiff a written objection to the Subpoena, which stated, in part, that the Maine Board of Bar Examiners “did not, and has not, requested or received any information concerning plaintiff Varad from the entities enumerated in the requests... in the Complaint... from Gall & Gall... or from Accurint.” See Objection of Thomas. J. Quinn and the Maine Board of Bar Examiners To Plaintiff’s Notice of Deposition, a true and accurate copy of which is attached hereto as Exhibit 1. Further, during her deposition Plaintiff admitted that she has never passed the bar exam in Maine, Massachusetts, or any other jurisdiction.

Discovery was originally set to close on May 18, 2007, but in response to Plaintiff’s request, discovery was extended for an additional two months, and closed on July 13, 2007. Plaintiff now seeks to add the Board as a defendant, serving her Motion to Join on Reed on July 5, 2007, with Reed’s response not even due until after the close of discovery. The deadline to file motions for summary judgment is August 31, 2007.

ARGUMENT

I. PLAINTIFF’S MOTION SHOULD BE DENIED BECAUSE PLAINTIFF HAS NOT SERVED HER MOTION ON THE BOARD, AS REQUIRED BY LOCAL RULE 15.1

Local Rule 15.1(b) mandates that “[a] party moving to amend a pleading to add a new party shall serve, in the manner contemplated by Fed. R. Civ. P. 5(b), the motion to amend upon the proposed new party at least ten (10) days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed.” Failure to comply with Local Rule 15.1 warrants denial of a motion to add a new defendant. See Ali v. University of Massachusetts Medical Center, 140 F. Supp. 2d, 107, 111 (D. Mass 2001)(denying motion to add a new defendant because plaintiff served his motion on the new defendant on the same day it was filed, thus failing to comply with Local Rule 15.1); see also Hutchins v. Cardiac Science, Inc.,

456 F. Supp. 2d 173, 193 (D. Mass. 2006) (court denied motion to join defendant for failure to comply with Local Rule 15.1). In this case, Plaintiff has yet to serve her Motion to Join on the Board, and her failure to do so necessitates denial of her Motion to Join.³

II. THE ADDITION OF A NEW DEFENDANT AT THE CLOSE OF DISCOVERY WILL RESULT IN PREJUDICE TO REED

Additional reasons dictate denial of Varad's Motion. It is only on the eve of the close of discovery that Varad seeks to join the Board as a defendant, almost a year after she filed this lawsuit. Such undue delay will prejudice Reed, as it has completed discovery and is set to move to the summary judgment phase of this litigation. Fairness, as well as the absence of any legitimate justification for Plaintiff's delay, dictates that the Motion to Join be denied. See Hutchins, 456 F. Supp. 2d at 193 (D. Mass. 2006) (denying plaintiff's request to join an additional defendant, citing fairness and plaintiff's failure to account for the delay) citing Serrano Medina v. United States, 709 F. 2d 104, 106 (1st Cir. 1983)(affirming district court's refusal to permit addition of new defendants, as "eleventh hour" request would require additional research and discovery and thus would result in undue prejudice to defendants).

Plaintiff's purported reason for her late request actually supports denial of her Motion. In her Motion to Join, Varad's justification for seeking to add the Board now is that "it has *recently* become clear that the Maine Board of Bar Examiners contracted with the Defendant, LexisNexis, LexisNexis Risk and Information Analytics Group member Seisint, Inc. to access the 'Accurint' database in order to 'verify applicants for bar examination' or check for truthfulness and completeness all [sic] data submitted by applicants seeking admission to the Bar in the State of Maine." Plaintiff's Motion to Join, pp. 1-2 (emphasis added). Varad's justification, however, is

³ Plaintiff has likewise failed to comply with Local Rule 7.1(a)(2), which requires that the parties confer prior to the filing of any motion. Plaintiff made no attempt to contact counsel for Reed concerning the substance of her Motion to Join.

baseless and inconsistent with her own pleadings because from the beginning of this case – as confirmed in paragraph 2 of the original Complaint – Varad alleged that “Plaintiff had requested... a complete copy of her file [with incorrect address information] as held by Lexis Nexis Accurint, and as, upon information and belief, disseminated to... the Maine Board of Bar Examiners, P.O. Box 140, Augusta, Maine...” – the identical excuse she offers now as justification for adding the Board as a new defendant. See original Complaint p. 2, ¶ 2. Thus, nothing new has come to light that would justify reopening discovery to add the Board as a defendant.

III. THE FACTS SET FORTH IN PLAINTIFF’S MOTION ARE NOT RELEVANT TO THE CLAIMS IN THE SECOND AMENDED COMPLAINT AND THE SECOND AMENDED COMPLAINT DOES NOT STATE A CLAIM AGAINST THE BOARD

It is apparent from reading Plaintiff’s Motion to Join that her real issue with the Board is that it allegedly deleted portions of answers she gave during the February 2007 bar exam, causing her to receive a failing score. See Plaintiff’s Motion to Join, p. 2. This claim, even if true, has nothing to do with the allegations against Reed, and Varad’s far-fetched contention that the Board deleted her answers because of information allegedly provided to the Board by Reed is simply that: far-fetched. In fact, Varad simply ignores the fact that the Board has already told her that it did not receive *any* information from Reed, Accurint, or LexisNexis Risk concerning her. See Exhibit 1. Nor do the searches produced by Reed in discovery indicate any search run by the Board on Varad. Under such circumstances, Varad’s claim that the Board intentionally deleted her answers because of information provided by Reed is disingenuous, and certainly does not warrant the adding of a new defendant after the close of discovery.

Moreover, Plaintiff’s Motion to Join does not seek to amend the Second Amended Complaint to add additional allegations or any counts against the Maine Board of Bar

Examiners, but rather simply to “join” the Board as a defendant. Even if this Court were to permit Plaintiff to do so, the Second Amended Complaint does not state any allegations or cognizable claims against the Board. As such, allowing the Motion to Join would be pointless.

CONCLUSION

Plaintiff has failed to comply with Local Rule 15.1, which failure alone dictates denial of her Motion. In any event, allowance of Plaintiff’s belated Motion would result in prejudice to Reed because discovery has already closed and the deadline for summary judgment is less than six weeks away. Finally, Plaintiff’s Motion to Join does not provide any legitimate basis to add the Maine Board of Bar Examiners as a defendant in this case, and simply adding the Board in and of itself will not state a claim against it. For all of the reasons stated herein, Plaintiff’s Motion to Join should be denied.

Respectfully submitted,

REED ELSEVIER INC.
By its attorneys,

/s/ Kristin M. Cataldo
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Dated: July 18, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2007, I caused a copy of the foregoing to be served on Christine M. Varad, P.O. Box 583, Milton, MA 02186 via first class mail.

/s/ Kristin M. Cataldo
Kristin M. Cataldo