

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

XENOS, INC., a Nebraska corporation; and
OTTILIA CHAPMAN, an individual;

Plaintiffs,

vs.

TILLY'S, INC., a Delaware corporation;

Defendant.

8:13CV202

MEMORANDUM AND ORDER

The plaintiff has again moved to amend its complaint to add World of Jeans and Tops, Inc. (WOJT) as a named defendant. (Filing No. [26](#)). The plaintiff's previous motion to add WOJT as a defendant was denied. (Filing No. [25](#)). In its order denying the motion, the court explained that the sole allegation against WOJT was that it operated the Tilly's clothing business as a "joint enterprise" with defendant Tilly's, Inc., and this "mere conclusory allegation" was "insufficient under the pleading standards of *Iqbal* and *Twombly*." (Filing No. [25](#), at CM/ECF p. 4).

The proposed amended complaint now before the court alleges Tilly's, Inc. and WJOT operate the "Tilly's" retail store at the Westroads Mall in Omaha, Nebraska as a joint effort for a mutual profit, and for the common purpose of a national effort to establish the brand name "Tilly's" throughout the United States, and that Tilly's Inc. and WOJT share the direction, supervision and control of the Tilly's retail store. (Filing No. [26](#), at CM/ECF p. 6, ¶¶ 13-14).

The defendants oppose plaintiff's current motion to amend, and have submitted evidence stating there is no factual support for the allegations in the proposed amended complaint. The question of whether the plaintiff's claims are supported by the evidence should be decided by a motion for summary judgment or at trial, and not on a motion to file an amended complaint.¹

¹As stated in Rule 11 of the Federal Rules of Civil Procedure, "[b]y presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances. . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. . . ." *Fed. R. Civ. P. 11(b)*. If the attorney violates Rule 11(b), sanctions can be awarded against counsel under Rule 11(c).

Assuming the truth of plaintiff's factual allegations in the proposed amended complaint, the complaint sufficiently alleges a claim for recovery against not only Tilly's, Inc., but also World of Jeans and Tops, Inc.

Accordingly,

IT IS ORDERED:

- 1) The plaintiff's motion to amend, (Filing No. [26](#)), is granted.
- 2) On or before November 15, 2013, the plaintiff shall file its amended complaint, a copy of which is attached to its motion. The plaintiff shall thereafter promptly effectuate service upon World of Jeans and Tops, Inc.
- 3) All deadlines within the court's initial progression order, (Filing No. [16](#)), remain in effect.

November 12, 2013

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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