Metaformers, Inc. v. InnoFin Solutions, LLC Doc. 21

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:17-CV-122-FL

METAFORMERS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
INNOFIN SOLUTIONS LLC,	)	
	)	
Defendant.	)	

This matter is before the court on defendant's motion to dismiss count two of complaint for failure to state a claim. (DE 12). The motion has been fully briefed, and the issues presented are ripe for ruling. For the reasons that follow the motion is denied.

STATEMENT OF THE CASE

Plaintiff filed amended complaint March 10, 2017, seeking damages, injunctive relief, and other ancillary relief based upon defendant's alleged violations of the Lanham Act, 15 U.S.C. § 1125(a)(1) ("count one"); breach of confidentiality agreement ("count two"); and breach of covenant not to compete ("count three") in connection with defendant's solicitation of a contract to provide software services adverse to plaintiff's competing bid for the same. Defendant filed the instant motion April 7, 2017, seeking dismissal of count two.

STATEMENT OF THE FACTS

The facts alleged in the complaint pertinent to count two may be summarized as follows. Plaintiff is a provider of enterprise software, including software designed to enable government organizations to track resource usage for budgeting and planning purposes. Defendant is engaged

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in consulting services to facilitate implementation of resource management software marketed by non-party Oracle.

Over the past ten years, plaintiff has performed several contracts involving implementation, maintenance, and improvement of enterprise resource planning software for client Lexington-Fayette Urban County Government ("Lexington Metro"), which is the municipal city-county embracing Lexington, Kentucky.

On or about September 1, 2015, plaintiff entered into a contract with Lexington Metro to design, configure, test, and deploy a cloud computing system to be used by the Lexington Metro Department of Budgeting ("Lexington Metro prime contract"). On or about October 12, 2015, plaintiff entered into a subcontract with defendant to support the Lexington Metro prime contract ("Lexington Metro subcontract"). The Lexington Metro subcontract included a confidentiality agreement, which reads, in relevant part, as follows:

> All documents, software, reports, data, records, forms and other materials developed by [defendant] for [plaintiff] or Client or obtained by [defendant] in the course of performing any Services (including, but not limited to, Client records and [plaintiff's] client list furnished to [defendant]) are the proprietary, confidential and trade secret information of [plaintiff] . . . . [defendant] shall not use or disclose . . . any proprietary, confidential or trade secret information of [plaintiff] or Client without [plaintiff's] express, prior written permission.

(DE 5-1 ¶ 14) (emphasis added).

In early 2016, the City of Raleigh, North Carolina ("Raleigh") and the State of Georgia ("Georgia") solicited contract proposals seeking services similar to those involved in the Lexington Metro prime contract. In response, defendant submitted a contract proposal to Raleigh in or around March 2016, and submitted a proposal to Georgia in May 2016. In both proposals, defendant represented that it was the prime contractor in the Lexington Metro prime contract and represented

that Lexington Metro was defendant's client. Plaintiff submitted competing proposals to both governments. Plaintiff never granted permission for defendant to disclose the identity of Lexington Metro. Defendant rejected plaintiff's demands to cease and desist disclosure of Lexington Metro's identity in connection with the Lexington Metro prime contract. This action followed.

COURT'S DISCUSSION

A. Standard of Review

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of the complaint but "does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). A complaint states a claim if it contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp v. Twombly, 550 U.S. 544, 570 (2007)). "Asking for plausible grounds . . . does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal [the] evidence" required to prove the claim. Twombly, 550 U.S. at 556.

In evaluating the complaint, "[the] court accepts all well-plead facts as true and construes these facts in the light most favorable to the plaintiff, but does not consider legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments." Nemet Chevrolet Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009). When a document is attached to a motion to dismiss, "a court may consider it in determining whether to dismiss the [claim] if it was integral to and explicitly relied on in the [pleading] and if the [claimants] do not challenge its

authenticity." Am. Chiropractic Ass'n v. Trigon Healthcare, Inc., 367 F.3d 212, 234 (4th Cir. 2004). If additional materials "outside the pleading[s] are presented to and not excluded by the court, the motion [to dismiss] shall be treated as one for summary judgment . . . and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56." Fed. R. Civ. P. 12(b); see Gay v. Wall, 761 F.2d 175, 178 (4th Cir. 1985).

B. Analysis

Where the subcontract at issue in this matter contains a choice of law provision selecting Virginia law, interpretation of the contract is governed by the law of that state. See Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 496 (1941) (holding a federal district court must apply the choice of law rules of the state in which the court sits); Tanglewood Land Co., Inc. v. Byrd, 299 N.C. 260, 262 (1980) (holding choice of law clause enforceable in action for breach of contract). The elements of breach of contract claim under Virginia law are "(1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant's violation or breach of that obligation; and (3) injury or damage to the plaintiff caused by the breach." Ramos v. Wells Fargo Bank, N.A., 289 Va. 321, 323 (2015). Words used in a contract are given their "usual, ordinary, and popular meaning." City of Chesapeake v. States Self–Insurers Risk Retention Group, Inc., 271 Va. 574, 578 (2006).

Plaintiff complains that defendant breached confidentiality agreement when it represented to Raleigh and Georgia that Lexington Metro was defendant's client under the Lexington Metro prime contract. This complaint states a claim for breach of contract where, on facts alleged in complaint, Lexington Metro was plaintiff's former client, and, therefore, the identity of Lexington Metro constitutes plaintiff's "client record[]". (See DE 5-1 ¶ 14). Additionally, under the facts alleged, it is reasonable to infer that any list of plaintiff's clients would include Lexington Metro;

therefore, disclosure of the identity of Lexington Metro constitutes partial disclosure of plaintiff's "client list." (See id.) Accordingly, because defendants allegedly disclosed the foregoing information without plaintiff's consent, the facts viewed in the light most favorable to plaintiff give rise to a plausible claim for breach of contract. See Iqbal, 556 U.S. at 678; Ramos, 289 Va. at 323.

Defendant argues that its representations pertaining to Lexington Metro do not constitute breach of contract, first, because the identity of Lexington Metro does not fit into any category of information protected by the parties' confidentiality agreement. This argument is unavailing where, as held above, the identity of Lexington Metro constitutes a "client record[]" and partial "client list" on the facts alleged. (See DE 5-1 ¶ 14).

Second, defendant asserts as defense that an earlier nondisclosure agreement signed by defendant October 7, 2015, authorizes defendant to disclose information that is otherwise within the scope of the parties' confidentiality agreement if the information in question is publicly known. (See DE 13-1). However, where this additional agreement is not referenced in complaint nor integral to it, the court need not consider the prior agreement upon motion to dismiss. See Fed. R. Civ. P. 12(d) (requiring that the court convert a Rule 12(b)(6) motion to one for summary judgment where evidence presented in connection with the motion exceeds scope of complaint unless such information is "excluded by the court") (emphasis added); Am. Chiropractic, 367 F.3d at 234 (court may consider documents attached to a motion to dismiss if "integral to and explicitly relied on in the complaint"); see also Domino Sugar Corp. V. Sugar Workers Local Union 392 of United Food and Commercial Workers Intern. Union, 10 F.3d 1064 (4th Cir. 1993) (court did not err in refusing to consider extrinsic in interpreting contract where neither party requested conversion of the motion to one for summary judgment).

Moreover, in the instant matter, a Rule 12(d) conversion to motion for summary judgment would result in partial summary judgment at most, and delay associated with potential discovery and additional briefing necessary for proper presentation of a motion of that nature is unlikely to facilitate "the just, speedy, and inexpensive determination" of this action. Fed. R. Civ. P. 1. Accordingly, defendant's submissions pertaining to agreement outside the scope of materials referenced in complaint, including nondisclosure agreement signed by defendant October 7, 2015, are excluded from consideration for purposes of the instant motion. See Fed. R. Civ. P. 12(d). Therefore, adjudication of defense arising from nondisclosure agreement not referenced in complaint is premature, and defendant's arguments grounded in said nondisclosure agreement must fail. This determination is without prejudice to defendant's opportunity to present defenses grounded in facts or documents outside the scope of complaint on motion for summary judgment.

CONCLUSION

For the foregoing reasons, defendant's motion to dismiss count two of the complaint (DE 13) is DENIED. Stay of discovery pending resolution of the instant motion ordered May 22, 2017, is LIFTED. Case management order setting forth deadlines governing the next stages of the case will follow.

SO ORDERED, this the 21st day of July, 2017.

LOUISE W. FLANAGAN
United States District Judge