



CONTINENTAL LIFE INSURANCE COMPANY v. SHEARSON LEHMAN HUTTON INC.

Civil Action No. 88-9279

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1990 U.S. Dist. LEXIS 14783

October 31, 1990, Decided

COUNSEL: [*1] Robert J. Donaghy, Esq., Paoli, Pennsylvania, for Plaintiff.

Stephen C. Baker, Esq., STRADLEY, RONON, STEVENS & YOUNG, Philadelphia, Pennsylvania, for Defendant.

JUDGES: Herbert J. Hutton, United States District Judge.

OPINION BY: HUTTON

OPINION

MEMORANDUM AND ORDER

Now before this Court are Plaintiff's Motion for Leave to File A Supplemental Complaint, and Defendants' response thereto. For the reasons stated below, this Court will grant the plaintiff's Motion.

FACTS

The plaintiff, Continental Life Insurance Company ("Continental") bring securities law claims against the defendants Shearson Lehman Hutton ("Shearson"), Michael Cosgrave ("Cosgrave") and Robert Campbell ("Campbell"). The pending causes of action arise from

the plaintiff purchase of shares of Hutton Government Securities Fund. The Complaint alleges that Continental' purchase was induced by alleged misstatements made by defendants Cosgrave and Campbell, and that as a result Continental incurred a loss of \$ 216,508.22.

The plaintiff now claims that since the Complaint was filed, Continental has sustained additional damage caused by the conduct of the defendants. Continental alleges that its losses in the Hutton Fund caused Continental to suffer [*2] a loss of capital and surplus, thereby allegedly requiring a reduction of its insurance business volume in order for it to maintain compliance with insurance industry regulations and rules.

DISCUSSION

Plaintiff seeks to supplement its complaint pursuant to *Rule 15(d) of the Federal Rules of Civil Procedure*. This Rule provides in relevant part:

Upon motion of a party the court may , upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief of defense. It the court deems it advisable that the adverse party plead to the supplemental pleading,

it shall so order, specifying the time therefore.

Fed. Rules. Civil Pro. 15(d).

Supplemental pleadings set forth new facts that have occurred since the filing of the original complaint and that affect the controversy and the relief sought: thus bringing the action "up to date." *Weisbord v. Michigan State University*, 495 F.Supp. 1347. (W.D.Mich. 1980). [*3] Leave to file a supplemental complaint is wholly within the discretion of the court. *Reid v. International Union, United Auto., Aerospace and agricultural Implements Workers of America, Dist. Lodge 1093*, 479 F.2d 517 (10th Cir. 1973), and generally such motions are treated liberally. *Bates v. Western Electric*, 420 F.Supp. 521 (E.D. Pa. 1976).

The defendants contend that the proposed supplement to the Complaint will prejudice the defendants' case. Specifically, the defendants assert that the new claims contained in the supplemental complaint will require the defendants to incur additional time and expense to prepare a defense. A district court may deny leave to file a supplemental complaint if the court believes that such pleading would prejudice the defendants. In making this determination the court should determine whether the defendants rights would be as well protected by a trial on the supplemental complaint as they would be in a new action. *Friedman v. Typhoon Air Conditioning Co.*, 31 F.R.D. 287 (S.D. NY 1962). In this action, the defendants' assertion that additional time and expense would be required to respond to the plaintiff's supplemental complaint fails to [*4] state prejudice sufficient to overcome the interests in judicial economy and justice which favor the supplemental Complaint.

The defendants further argue that the proposed supplemental complaint fails to state a claim.

Specifically, the defendants contend that the detailing of damages in the proposed supplemental complaint is inadequate under *Rule 9(g)*, which states that "when items of special damages are claimed, they shall be specifically stated." *Fed. Rule Civ. Pro. 9(g)*. In this district the specificity requirement of *Rule 9(g)* must be read in light of Local Rule 30. This Local Rule states

No pleading asserting a claim for unliquidated damages shall contain any allegations as to the specific dollar amount claimed, but such pleadings shall contain allegations sufficient to establish the jurisdiction of the court, to reveal whether the case is or is not subject to arbitration under Local Rule 8, and to specify the nature of the damages claimed e.g., "compensatory," "punitive," or both.

Local Rules of Civ. Pro. E.D.Pa. Rule 30. Read together, these Rules suggest the liberal reading of Federal Rule 30(g). The Third Circuit has opined that "it is apparent that our court has [*5] cast its lot with those jurisdictions permitting wide latitude in pleading." *Rannels v. Nichols, Inc.*, 591 F.2d 242, 247 (3d Cir. 1979) (citing *Altoona Clay Products, Inc. v. Dun Bradstreet, Inc.*, 367 F.2d 625 (3d Cir 1966)). Accordingly, this Court will exercise its discretion liberally in permitting the supplemental complaint. An appropriate Order follows.

ORDER

AND NOW, this 31 day of October, 1990, on consideration of Plaintiff Motion for Leave to File a Supplemental Complaint, and defendants' response thereto, IT IS HEREBY ORDERED that Plaintiff's Motion is GRANTED.