

**STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS  
NORTHERN DISTRICT**

**SUPERIOR COURT**

ioMosaic Corporation

v.

Viren Patel, et al.

216-2021-CV-395

Order on Motion to Amend

Plaintiff moves to amend its complaint to add another plaintiff and an additional claim against Defendants. Defendants object. Given the extremely early procedural posture of this case, the Court GRANTS the motion to amend.

Facts

ioMosaic filed suit on June 24, 2021, less than two months ago. As of this writing, an answer either had not been filed or had not yet been docketed. ioMosaic's first complaint alleges generally that Viren Patel, FlowRocket, LLC ("FlowRocket"), and AON Software Solutions ("AON")<sup>1</sup> are liable for either breaching non-disclosure, non-competition and non-solicitation agreements or interfering with Patel's obligations under such agreements.

The first complaint alleges that Patel was hired by Plaintiff in 2015 as ioMosaic's chief information officer. At or about the onset of his employment, Patel executed non-disclosure, non-competition and non-solicitation agreements. The non-solicitation restrictions applied to both customers and employees of ioMosaic. Patel also agreed

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<sup>1</sup> Plaintiffs have dismissed without prejudice their claims against AON, citing difficulty in serving the company which is based in India.

that while employed by ioMosaic, he would work only for ioMosaic and would not perform any “side work” for any other entity.

ioMosaic alleges that in the early stages of his employment, Patel urged ioMosaic to hire AON to “expedite software development and maintenance at a reasonable cost.” Complaint, ¶ 26. On September 15, 2015, ioMosaic entered into a Master Service Agreement with AON. ioMosaic alleges that it failed to receive updates on AON’s work and at a later point learned that AON’s principal shareholder is a cousin of Patel’s. At Patel’s recommendation, ioMosaic terminated its Master Services Agreement with AON on April 30, 2021. ioMosaic later learned that AON had in large part failed to perform the work that it agreed to under the Master Service Agreement.

ioMosaic claims that Patel voluntarily terminated his employment with ioMosaic and that his last day of work was May 28, 2021. Thereafter, ioMosaic learned that Patel had at some point accepted employment with FlowRocket, a New Hampshire LLC that offers enterprise software solutions. ioMosaic claims that FlowRocket particularly markets its services to companies in the pharmaceutical industry. ioMosaic claims that Patel, whose wife is the president of FlowRocket, has acted as chief executive officer of FlowRocket since November 9, 2017. It claims that FlowRocket offers an application called WIP Intranet<sup>2</sup> that is “virtually identical” to an ioMosaic application entitled ioXpress and that FlowRocket misappropriated its confidential customer information in developing the WIP Intranet. IoMosaic also alleges that FlowLMS, another FlowRocket product, was developed through misappropriation by Patel of source code or other proprietary information and identifies two ioMosaic applications – Process Safety

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<sup>2</sup> In the proposed amended complaint, ioMosaic alleges that it and Patel agreed that Patel would retain the rights to inventions conceived prior to his employment and specifically noted that Patel included “WIP Work in Progress” as one such invention. Verified Amended Complaint, ¶ 21.

Learning and Process Safety TV – from which source code was misappropriated. The first complaint included claims of Breach of Contract, Breach of Fiduciary Duties, Violation of the Consumer Protection Act, Misappropriation of Trade Secrets, a Request for Injunctive Relief, and a Request for Ex Parte Relief.<sup>3</sup>

ioMosaic's additional claims in the proposed amended complaint concern an affiliated company, ioKinetic. According to ioMosaic, ioKinetic is "an accredited testing laboratory which serves as ioMosaic's testing lab and helps firms identify process safety hazards and define and control risk." Motion to Amend, ¶ 2. The proposed amended complaint alleges that Defendants have interfered with ioKinetic's contractual rights. These interference allegations concern Surendra Singh and his company Belmont Scientific. According to ioMosaic, Singh worked for ioMosaic from 2011 to 2017 as an engineering consultant with a specialization in battery safety. Proposed Amended Complaint, ¶ 62. The proposed amended complaint alleges that Singh executed confidentiality, non-competition, and non-solicitation agreements with ioMosaic. In 2017, Plaintiffs allege that Singh became an employee of ioKinetic (with the assent of ioMosaic). In connection with that job, he again executed confidentiality, non-competition, and non-solicitation agreements.

Plaintiffs allege in the proposed amended complaint that Patel and FlowRocket interfered with these agreements by helping Singh develop a website for Belmont Scientific. Plaintiffs claim that in doing this work, Patel and FlowRocket had knowledge that Singh and Belmont Scientific intended to violate the foregoing employment agreements by "using and disclosing plaintiffs' trade secrets, financial information, and confidential information to compete with plaintiffs, and inducing or influencing customers

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<sup>3</sup> This claim requested an order that Defendants preserve "all pertinent evidence." The parties thereafter agreed to a mutual order to that effect.

of Plaintiffs to transact business with Belmont Scientific.” Proposed Amended Complaint, ¶ 77. Both ioMosaic and ioKinetic claim that they have been damaged by this interference. *Id.*, ¶ 93. Both companies also claim that Patel and FlowRocket have violated the Consumer Protection Act, RSA c. 358-A.

Defendants object to Plaintiffs’ motion to amend. They suggest that Plaintiffs should have been aware of these claims related to Singh prior to the June 24, 2021 filing of the first complaint. They also argue that the allegations are conclusory and would significantly expand the scope of this litigation.

#### Analysis

Amendments to pleadings are governed by RSA 514:9 and Superior Court Rule 12(a)(3). Under the rules, “[a]mendments in matters of substance may be permitted in any action, in any stage of the proceedings, upon such terms as the court shall deem just and reasonable, when it shall appear to the court that it is necessary for the prevention of injustice . . . .” RSA 514:9; *Super. Ct. Civ. R.* 12(a)(3) (“Amendments in matters of substance may be made on such terms as justice may require.”). The rules follow the accepted notion in New Hampshire that “liberal amendment of pleadings is permitted unless the changes would surprise the opposing party, introduce an entirely new cause of action, or call for substantially different evidence.” *Coan v. N.H. Dep’t Envtl. Servs.*, 161 N.H. 1, 11 (2010). “Whether to allow a party to amend his or her pleadings rests in the sound discretion of the trial court.” *Id.*

Strongly implied in this familiar standard is a relationship between the timing of the motion to amend and potential prejudice. A motion to amend that is filed on the eve of trial and that would introduce substantially new evidence has the potential to significantly prejudice the other party. With trial in the very near future, the other party

would likely not have time to conduct discovery necessary to challenge the new allegations. On the other hand, a motion to amend that is filed relatively close to the filing of the complaint has significantly less potential for prejudice. In such a case, discovery may not yet have begun. While the new allegations might expand the scope of discovery, by itself that does not prejudice the other party who has ample time to defend the new allegations.

In this case, the motion to amend was filed on July 28, 2021, 34 days after the filing of the first complaint. This case is in its very early stages. Defendants have not filed an answer or other responsive pleading to the first complaint. The parties have not filed a proposed structuring conference order and Defendants have not claimed that discovery has begun.

Against this procedural context, an objection to a motion to amend on the grounds that the proposed amendment would “significantly expand the scope of this case. . . .” faces a very high burden. Objection, ¶ 17. Defendants would have to point to some extraordinary circumstances that would counsel against allowing the amendment. This, they have not done. The allegations concerning Singh and Belmont Scientific are similar to the original claims brought against Defendants. While they may significantly expand the scope of discovery, in the early stages of a case that is not a reason for denying a motion to amend.


Defendants also argue that the proposed amendments are too conclusory and therefore are futile but the Court finds that the foregoing allegations are sufficiently specific. As an example of conclusory allegations, they point to the allegations that Patel knew of Singh’s agreements with both ioMosaic and ioKinetic and induced him to violate his agreement by helping him develop a website. But Plaintiffs are alleging that

the website included misappropriated information. The allegation that Defendants induced Singh's breach of these agreements by assisting him in creating a website that contained misappropriated information is sufficiently detailed to state a claim. As for Patel's alleged knowledge of Singh's agreements, "[e]ven where direct allegations of knowledge are pled in a conclusory fashion, defendants' knowledge of unlawful conduct may be inferable from other allegations in the complaint." See *Manning v. Boston Med. Ctr. Corp.*, 725 F.3d 34, 44 (1<sup>st</sup> Cir. 2013). Given Patel's senior position with ioMosaic and his having executed a series of similar agreements with that company, it may be inferred that he would have been aware of the contractual status of Singh. Patel, of course, may challenge that allegation but a motion to amend is not the appropriate opportunity for doing so.

#### Conclusion

For the foregoing reasons, Plaintiff's motion to amend is GRANTED. The Verified Amended Complaint will be deemed to have been filed on July 28, 2021. Defendants have until September 17, 2021 to file a responsive pleading.

August 18, 2021  
Date

  
Judge David A. Anderson