MRI Software LLC v Pierron
2015 NY Slip Op 32407(U)
December 16, 2015
Supreme Court, New York County
Docket Number: 650676/2012
Judge: Robert D. Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Robert D. Kalish **PART 29**
Justice

MRI Software LLC **INDEX NO. 650676/2012**

- v - **MOTION SEQ. 004**

John W. Pierron

The following papers were read in determining the motion for an order to Amend the complaint

Plaintiff's Notice of Motion ---------- — Affirmation — Exhibits — Memorandum of Law	**No(s). 1**
Defendant's Affirmation in Opposition ---------- — Affirmation — Exhibits — Memorandum of Law	**No(s). 2**
Plaintiff's Reply Affirmation ---------- Affirmation — Exhibits — Memorandum of Law	**No(s). 3**

Motion by the Plaintiff pursuant to CPLR 3025(b) and 3025(c) to amend the complaint is hereby granted as follows:

The instant action was commenced March 6, 2012. Plaintiff alleges that the Defendant, John W. Pierron, was a former executive of the Plaintiff, and that after the Defendant's employment with the Plaintiff was terminated, he became employed by Angus Systems Group Inc. ("Angus") a competitor of the Plaintiff. Plaintiff further alleges that the Defendant exploited his insider knowledge of Plaintiff's confidential information and trade secrets to solicit Plaintiff's clients and prospective clients on behalf of Angus.

The Defendant claims that he was the Chief Operating Officer of a company called Workspeed Management, LLC, which was acquired by the Plaintiff. Following said acquisition, the Defendant became an employee of the Plaintiff for about 3 months and was thereafter terminated.

On January 23, 2013, the Parties entered into a preliminary conference order. According to the submitted papers, the Parties have served each other with a series of interrogatory requests and requests for the production of documents.

The Plaintiff's deposition was taken and completed on March 19, 2015. The Defendant's deposition was commenced on May 19, 2015 and continued on June 16, 2015. Said deposition has still not been completed as of the date of the instant decision, and a third or fourth date will be scheduled for the completion of the Defendant's deposition. The Plaintiff claims that the Defendant's deposition was not completed because Plaintiff had not received all of the requested documents in a timely fashion prior to deposing the Defendant, and further due to various objections made by Defendant's counsel during the deposition, which has prolonged the deposition.

At oral argument, the parties indicated to the Court that no other depositions are outstanding except the Defendant's deposition.

Plaintiff now seeks, almost three years after the commencement of the underlying action, to amend the complaint to assert additional causes of actions as to the Defendant, conform the pleadings to newly learned facts, and add Angus as an additional defendant in the underlying action.

The original complaint alleges 3 causes of actions as to the Defendant John W. Pierron:

1. Breach of Contract,
2. Misappropriation of Trade Secrets, and
3. Unfair Competition

The proposed amended complaint alleges 8 causes of action as to Pierron and the proposed new defendant Angus including both new allegation against both Pierron and Angus and amendments to the prior allegations against Pierron to include the Angus:

1. Breach of Contract (as to Pierron),
2. Misappropriation of Trade Secrets (as to Pierron and Angus),
3. Unfair Competition (as to Pierron and Angus),
4. Breach of Fiduciary Duty (as to Pierron),
5. Aiding and Abetting Breach of Fiduciary Duty (as to Angus,)
6. Tortuous Interference with Prospective Economic Relations (as to Pierron and Angus),
7. Unjust Enrichment (as to Pierron and Angus), and
8. Inducement of Breach of Contract (as to Angus)

Discovery Background and Parties' Contentions

It would appear that the Parties have, for various reasons, agreed to extend the time to respond to discovery demands, resulting in the Plaintiff not deposing the Defendant until 2015. Plaintiff argues that only after the deposition of the Defendant (which is in progress and not yet completed) did it become apparent to the Plaintiff that it should move to amend the complaint to include Angus as as defendant as well as include additional allegations against Pierron. Plaintiff further argues that neither Pierron nor Angus would be prejudiced in adding Angus as a Defendant in the underlying action since Pierron's counsel also represents Angus and as such has participated in the underlying action. Plaintiff sets forth in his papers the Defendant's deposition testimony, which Plaintiff argues justifies amending the complaint to include additional allegations against Pierron and naming Angus as a second Defendant.

In opposition, Defendant argues that Angus is not a necessary party in order for Plaintiff to obtain complete relief. Defendant further argues that the Plaintiff could have commenced an action against Angus four years ago, but chose not to. Defendant's attorney further states that he is not appearing in opposition to the instant motion on behalf of Angus, although he does represent Angus. He further states that if Angus is named as a Defendant in the underlying action, Angus may retain different counsel to represent it. Defendant further argues that amending the complaint to include a new Defendant and new allegations would further delay an already prolonged case. Said delay would prejudice the Defendant who has already been involved in the underlying action for over three years.

Analysis

Pursuant to CPLR § 3025(b), "motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit". Moreover, on a motion for leave to amend, the movant is not required to establish the merit of the proposed new allegations "but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." (MBIA Ins. Corp. v. Greystone & Co., Inc., 74 AD3d 499, 499-500 (NY App 1st Dept 2010) (internal citations omitted)). A proper showing of prejudice to defeat a motion for amendment must be "traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added. There must be some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add" (Williams v Tompkins, 2015 NY App Div LEXIS 7658 (NY App Div 1st Dept 2015) (internal quotations omitted)). Further, a motion for leave to amend a pleading is committed to the sound discretion of the trial court (see Edenwald Contr. Co. v City of New York, 60 NY2d 957 [1983]).

"Where there has been an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay' "(Oil Heat Inst. v. RMTS Assocs., LLC, 4 AD3d 290, 293 (NY App Div 1st Dept 2004) (internal citations omitted)). However, "[m]ere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side" (McGrath v Town of Irondequoit, 120 AD3d 968, 969 (NY App Div 4th Dept 2014) quoting Edenwald Contracting Co. v. New York, 60 NY2d 957 (NY 1983)).

In the instant action, the Court finds that the Defendant has failed to identify any prejudice he would face by allowing the Plaintiff to amend the complaint to include Angus as a second Defendant. Although the Court recognizes that the underlying action is already three years old, that the Plaintiff is making the instant motion on the eve of the due date for filing the note of issue, and that adding Angus as an additional Defendant will undoubtedly lead to additional delay, such delay in-and-of-itself does not constitute prejudice to warrant denying the Plaintiff's motion to amend. Further, the Plaintiff's proposed amendment adding Angus as a Defendant is neither palpably insufficient nor clearly devoid of merit (See Morris v Kips Bay Unit 2195 AMC Theatre, 2015 NY Slip Op 32230(U) (NY Sup Ct NY Cnty Nov. 19, 2015)). Finally, the need for additional discovery does not constitute prejudice sufficient to warrant denying a motion to amend (See Jacobson v. McNeil Consumer & Specialty Pharms., 68 AD3d 652 (NY App Div 1st Dept 2009); see also Kocourek v Booz Allen Hamilton Inc., 85 AD3d 502 (NY App Div 1st Dept 2011)).

Similarly, the Court also finds that amending the complaint to add additional allegations and causes of action against the Defendant Pierron would not create any prejudice against the Defendant. Further, such amendment will not materially delay the underlying action.

Accordingly, it is hereby

ORDERED that the Plaintiff's motion for leave to amend the complaint is granted to the extent that the complaint shall be amended in accordance with the proposed Amended Complaint that the Plaintiff has attached with the moving papers. It is further

ORDERED that within 20 days of the instant decision, the Plaintiff shall serve a copy of this order with notice of entry upon the Defendants Pierron and Angus. It is further

ORDERED that within 20 days of the instant decision, the Plaintiff shall serve the Amended Complaint upon the Defendant Pierron, and the Summons and Amended Complaint upon the Defendant Angus. It is further

ORDERED that the Defendants Pierron and Angus shall serve Answers to the Amended Complaint or otherwise respond within 20 days from the date of service. It is further

ORDERED that the Parties shall appear in Part 29 on January 11, 2016 at 2:15 for a further conference.

The foregoing constitutes the decision and ORDER of the Court.

Dated: December 16, 2015

HON. ROBERT D. KALISH, JSC

1. Check one: ..... ☐ **CASE DISPOSED** ☒ **NON-FINAL DISPOSITION**

2. Check as appropriate: MOTION IS: ☐ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**

3. Check as appropriate: ..... ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER**
☐ **DO NOT POST** ☐ **FIDUCIARY APPOINTMENT**
☐ **REFERENCE**