

Hyperlync Tech., Inc. v Verizon Sourcing LLC

2017 NY Slip Op 31420(U)

June 30, 2017

Supreme Court, New York County

Docket Number: 650151/2015

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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HYPERLYNC TECHNOLOGIES, INC. HYPERLYNC
MULTIMEDIA ISRAEL, LTD.

INDEX NO. 650151/2015

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 005

VERIZON SOURCING LLC, SYNCHRONOSS TECHNOLOGIES,
INC.,

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131

were read on this application to/for Amend Caption/Pleadings

HON. SALIANN SCARPULLA:

Plaintiffs Hyperlync Technologies, Inc. and Hyperlync Multimedia Israel, Ltd. move, pursuant to CPLR § 3025 (c), for leave to file a second amended complaint in this action.

Background

Plaintiffs assert three causes of action, for: (1) breach of contract against defendant Verizon Sourcing LLC (“Verizon”); (2) misappropriation of trade secrets against defendants Synchronoss Technologies, Inc. (“Synchronoss”) and Verizon; and (3) misappropriation of ideas against Verizon. Plaintiffs allege that after completing discovery, it uncovered evidence from defendants and now seeks to amend the complaint,

adding a cause of action for negligent misrepresentation against Verizon, to conform to the evidence, pursuant to CPLR § 3025 (c).

Specifically, plaintiffs allege that contrary to Verizon's representation, non-Verizon employees attended the Verizon Innovation Fair in 2013 ("Event") where Verizon shared plaintiffs' confidential and proprietary information. Plaintiffs trace the harm to Sanjeev Bhalla ("Bhalla"), the founder and part owner of Strumsoft. Bhalla attended the Event.

Plaintiffs allege that Bhalla leveraged the information he learned about plaintiffs' confidential and proprietary information when selling Strumsoft to defendant Synchronoss. Plaintiffs further allege that, had Verizon accurately represented who attended the event, plaintiffs would not have shared its confidential and proprietary information with Verizon to the extent it did.

Discussion

Leave to amend a complaint is freely granted "upon such terms as may be just[.]" CPLR § 3025 (c). "In determining whether to grant a motion to amend [the complaint], the court should consider the merit of the proposed [cause of action] and whether the plaintiff will be prejudiced by the delay in raising it" *Lanpont v Savvas Cab Corp., Inc.*, 244 A.D.2d 208, 209–10 (1st Dep't 1997) (citations omitted).

Here, plaintiffs claim, in their brief in support, that their negligent misrepresentation claim should be assessed under New Jersey law, not New York law. The reason is obvious. New Jersey, unlike New York, does not require a party asserting a negligent misrepresentation claim to plead that the other party owes it a duty of care.

There is plainly no duty of care between these two parties, they were simply parties to a business deal. Thus, under New York law plaintiff could not assert a negligent misappropriation claim.

Since this action was commenced, and for the past two years, all parties have argued that New York law applies to the tort-based claims in the first amended complaint (as well as the breach of contract claim). I have decided two motions to dismiss assessing plaintiffs' tort claims under New York law, as plaintiffs have asked me to do. Now, for the first time, and after discovery is essentially complete, plaintiffs ask me to apply New Jersey law to its newly minted negligent misrepresentation claim, while at the same time stating that the "additional claim arises out of the same transactions and events as the claims previously alleged against the First Amended Complaint."

Plaintiffs argue that New Jersey law applies to the negligent misrepresentation claim based on a single new sentence in the proposed amended complaint: "Upon information and belief, that employee [making the negligent misrepresentation] was resident in Verizon's Basking Ridge, New Jersey offices when the statement was made." Notably, plaintiffs did not make a similar allegation with respect to situs of the alleged misappropriation of their trade secret or the alleged misappropriation of their ideas.¹

Plaintiffs do not explain why, even though they claim that no additional discovery is necessary, they are unable to plead with clarity where the alleged misrepresentation

¹ Plaintiffs have consistently argued for the application of New York law to their tort claims, even though they alleged in their first complaint and first amended complaint that defendant Verizon has its principle place of business in New Jersey.

was made. Instead, plaintiffs allege that New Jersey is the situs of the alleged misrepresentation "upon information and belief."

Upon the papers submitted, and particularly because plaintiffs argue that no additional discovery is necessary, plaintiffs have not made a sufficient showing that their new negligent misrepresentation claim should be assessed under New Jersey law. Because claim would not be viable under New York law, which both parties have argued is applicable to the other tort claims in this action, and because plaintiffs have not made a sufficient showing that the claim should be assessed under New Jersey law, their motion to amend is denied.

In accordance with the foregoing, it is

ORDERED that the motion of plaintiffs Hyperlync Technologies, Inc. and Hyperlync Multimedia Israel, Ltd. for leave to file a second amended complaint is denied; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 208, 60 Centre Street, on July 26, 2017, at 2:15 p.m.

This constitutes the decision and order of the Court.

6/30/17
DATE

Saliann Scarpulla
SALIANN SCARPULLA, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE