First Manhattan Consulting Group, LLC v Novantas, Inc.
2016 NY Slip Op 32006(U)
October 20, 2016
Supreme Court, New York County
Docket Number: 652492/2014
Judge: Anil C. Singh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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FIRST MANHATTAN CONSULTING GROUP, LLC,

Plaintiff,

-against-

NOVANTAS, INC., ANDREW FRISBIE, PETER GILCHRIST and JONATHAN WEST,

Defendants.

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DECISION AND ORDER

Index No.: 652492/2014
Mot. Seq. 005

HON. ANIL C. SINGH:

Plaintiff, First Manhattan Consulting Group, LLC ("FMCG" or "Plaintiff"), moves to amend its complaint against defendants, Novantas, Inc., Andrew Frisbie, Peter Gilchrist and Jonathan West (collectively, "Defendants") to add its parent entity, First Manhattan Consulting Group, Inc. ("FMCG Inc.") as a plaintiff as well as claims that FMCG is a third party beneficiary of the Confidentiality Agreement between FMCG Inc. and Peter Gilchrist (Mot. Seq. 005). Defendants oppose and cross-move for sanctions pursuant to CPLR 3126. Additionally, Defendants seek sanctions pursuant to CPLR 3025. The above captioned matter is in the discovery phase of the litigation and Note of Issue has not yet been filed.

Argument

Legal Standard

Generally, "leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit ... , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court." Davis v. South Nassau Communities Hosp., 26 N.Y.3d 563, 580 (2015) (internal citations omitted). Further, "[m]otions 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. MBIA Ins. Corp. v. Greystone & Co. Inc., 74 A.D.3d 499, 499 (1st Dept 2010) (internal citations omitted).

Merit

Plaintiffs' motion to amend the original complaint is not patently devoid of merit, therefore leave to amend is granted. "[P]laintiff need not establish the merit of its proposed new allegations but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." MBIA, 74 A.D.3d at 500 (internal citations omitted).

Here, the proposed Amended Complaint either alleges the facts of the new complaints to be added or augments allegations contained in the Original Complaint. For example, the proposed amendments allege that FMCG Inc. is a party to the Confidentiality Agreement as between FMCG Inc. and Peter Gilchrist. Plaintiff additionally alleges that FMCG was the operating entity when this Confidentiality

Agreement was entered into and is therefore a third-party beneficiary to the agreement. Therefore, FMCG's motion is not patently devoid of merit and therefore the leave to amend is granted.

Prejudice

Plaintiffs' motion to amend the complaint does not prejudice the defendants, therefore leave to amend is granted.

"Prejudice is shown where the nonmoving party is 'hindered in the preparation of his case or has been prevented from taking some measure in support of his position.'" Schron v. Grunstein, 39 Misc. 3d 1213(A) (Sup. Ct. N.Y. Cnty. 2013) (internal citations omitted). Further, an amendment is considered prejudicial where there is "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." Jacobson v. Croman, 107 A.D.3d 644, 645 (1st Dept 2013) (quoting Edenwald Contracting Co., 60 N.Y.2d 957, 959 (1983)). "[M]ere lateness is not a barrier to . . . amendment. It must be lateness coupled with significant prejudice to the other side." Id. (quoting Edenwald, 60 N.Y.2d at 959). However, "[w]here 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 A.D.3d 290, 293 (1st Dept 2004).

Despite defendants' contention that FMCG failed to give a reason for the delay in making the motion to amend, an excuse is only required when there has been an "extended delay." Courts vary in their determination as to what is an extended delay. However, "[c]ourts generally define amendments brought after an 'extended delay' as those filed significantly after the note of issue and certificate of readiness for trial." Kahn v. Leo Schacter Diamonds LLC, 2016 N.Y. Misc. LEXIS 2504 at *4-5 (Sup. Ct. N.Y. Cnty. Jul. 5, 2016) (quoting IDT Corp. v. Morgan Stanley Dean Witter & Co., 26 Misc. 3d 1231(A) (Sup. Ct. N.Y. Cnty. 2010)). Here, there is no extended delay as the note of issue and certificate of readiness for trial have not been filed and therefore FMCG need not give a reason for the delay in making the motion to amend.

Defendants argue that they would be prejudiced as more discovery would be required but "[i]t is well established that '[f]urther discovery, without more, does not justify denial of a motion to amend the pleadings." Schron, 39 Misc. 3d 1213(A) (internal citations omitted). The need for further discovery is not enough to warrant denying leave to amend. Defendants have already obtained discovery regarding FMCG, Inc. based upon their numerous depositions on this topic and the fact that FMCG, Inc. was a party to the Confidentiality Agreement. Regardless to the extent that Defendants require additional discovery, they are permitted to obtain it. See Jacobson, 107 A.D.3d at 646.

Sanctions

In various portions of their papers, both parties request this Court to sanction the other party. See Opp. Memo, p. 16, 20 (requesting defendants' cross motion for sanctions under CPLR 3025 and CPLR 3126); see also Reply Memo., p. 14 (Requesting sanctions under Rule 202.12(f) of the Uniform Civil Rules for the Supreme Court).

Under 22 NYCRR § 130–1.1, the court has discretion to award sanctions for frivolous conduct. This is defined as conduct which is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; or which is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another, or which involves the assertion of materially false factual statements.

The authority to impose sanctions and costs is within the court's sound discretion. De Ruzzio v. De Ruzzio, 287 A.D.2d 896 (3d Dept 2001). The court's power to impose sanctions serves the dual purpose of vindicating judicial authority and making the prevailing party whole for expenses caused by his opponent's obstinacy. Gordon v. Marrone, 155 Misc.2d 726, 590 N.Y.S.2d 649 (Sup.Ct. Westchester Cnty 1992), *aff'd* 202 A.D.2d 104, 616 (2d Dept.1994). In assessing whether to award sanctions, the court must consider whether the attorney adhered to

the standards of a reasonable attorney. Principe v. Assay Partners, 154 Misc.2d 702, 586 N.Y.S.2d 182 [Sup.Ct., New York Cnty. (1992).

At this stage of the litigation, the Court denies both parties request for sanctions. Additionally, the Court denies Defendants request to hold the Motion to Amend in abeyance.

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service; and it is further

ORDRERED that plaintiff's motion for sanctions pursuant to Rule 202.12(f) of the Uniforms Civil Rules for the Supreme Court is denied; and it is further

ORDERED that defendants cross-motion for sanctions pursuant to CPLR 3126 is denied; and it is further

ORDERED that defendants motion for sanctions pursuant to CPLR 3025 is denied.

Date: October 20, 2016
New York, New York

Anil C. Singh