Pearson's Inc d/b/a Pearson Livestock Equipment Co v. Robert Dean Ackerman, et al

2018 | Cited 0 times | N.D. Texas | November 9, 2018

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

WICHITA FALLS DIVISION S INC. d/b/a PEARSON § LIVESTOCK EQUIPMENT CO., § § Plaintiff, §

§ v. § Civil Action No. 7:18-cv-00013-BP § ROBERT DEAN ACKERMAN, et al., § § Defendants. §

MEMORANDUM AND OPINION Before the Court is February 16, 2018. Because the plea was contained in the answer, the Court construed it as a

motion and ordered Defendants to file a brief in accordance with Local Civil Rule 7.1(d). (ECF No. 28). Defendants filed their Brief in Support (ECF No. 30) on April 30, 2018. In it, they urge the Court to alternative, to join additional parties under Rule 20(a)(2)(B). (Id.) Plaintiff filed its Response (ECF No. 33) with Brief in Support (ECF No. 34) on May 18, 2018. Defendants did not file a reply. After considering the pleadings, briefing, and applicable law, the Court DENIES Defendants Plea (ECF No. 12).

BACKGROUND Pears (Pearson), brought this suit claiming trademark and trade dress infringement under the Lanham Act, trade dress dilution under Section 16.103 of the Texas Business and Commerce Code, and Texas common law trade dress infringement. (ECF No. 1). As explained in the pleadings, Pearson designs, manufactures, and sells products for use in the cattle industry. One of its products is manual cattle chute that Pearson has sold since 1970. The chute consists of a narrow, cubical framed structure with rollers and handles that is wide enough to accommodate a single animal. Initially, Pearson protected the Pearson functional elements through a series of utility patents issued in 1977 and 1982 by the United States Patent and Trademark Office (PTO). On September 17, 2014, several years after the patents expired, Pearson applied for trademark registration with the PTO for certain unique design elements inherent in the Pearson Chute. It received trademark registration (Registration No. 5184202) on April 18, 2017. Pearson claims that the Pearson Chute is so unique in shape and design that it is easily recognizable by cattle industry professionals. Thus, before it received federal trademark registration.

From 1982 to March 2014, Robert Dean Ackerman was an authorized dealer and distributor for the Pearson Chute in the Colorado Region, which comprises areas within the Northern District of Texas. However, after the founding members of Pearson sold the company to its current owners in January 2013, the Pearson-Ackerman relationship soured. Following the sale, Ackerman alleges that Pearson

attempted to squeeze his distributors on price and distribution area and that Pearson had . In an apparent attempt to protect and grow his business, Ackerman and WW Livestock Equipment (WW Livestock), developed a competing cattle chute. Pearson alleges that Ackerman and WW Livestock reverse-engineered the Pearson Chute and that the replica chute infringes on In March 2014, Pearson terminated Ackerman as a dealer and distributor and contracted with to distribute the Pearson Chute.

Pearson claims that Ackerman continues to sell cattl Titan West, Inc. (Titan

West) manufactures and sells the Equalizer cattle chute, and originally was a defendant in this case. The Court dismissed Pearso . (ECF No. 64). Pearson has not sued the manufacturer of the Renegade Chute, which Ackerman alleges is Pro Farm Manufacturing, Inc. (Pro Farm), a Canadian company, with manufacturing capabilities in China.

Defendants allege that there are at least thirteen other cattle chutes with substantially similar features to the Pearson Chute. Defendants contend that eight companies either manufacture or distribute the thirteen cattle chutes that comprise a significant portion of the cattle chute market. According to Defendants, non-joinder of these parties (would potentially prejudice the interests, result in inconsistent obligations, and prevent the Court from providing complete relief to the joined parties. Thus, Defendants contend that joinder of the nonparties is required under Rule 19(a). Moreover, if joinder of the nonparties is infeasible, Defendants argue that the Court must dismiss the case under Rule 12(b)(7). Alternatively, Defendants contend that if the Court finds that joinder is permissible, but not necessary and feasible, then the nonparties should be joined under Rule 20(a).

LEGAL STANDARD Federal Rule of Civil Procedure 12(b)(7) permits a Court b)(7) motion

requires a two-step process to ensure fair and complete resolution of the dispute at issue. See Pulitzer-Polster v. Pulitzer, 784 F.2d 1305, 1308 09 (5th Cir. 1986). First, the Court must consider whether the party should be joined under Rule 19(a). Id. at 1309. A party that is subject to service of process and whose joinder would not destroy subject matter jurisdiction is a

party because of the interest. Fed. R. Civ. P. 19(a)(1)(A) (B).

Second, if joinder of a party is required but not feasible, then a Court whether, in equity and good conscience, the action should proceed among the existing parties or

should be dismissed. Fed. R. Civ. P. 19(b). Rule 19(b) outlines four factors for the Court to consider. They are judgment, would have an adequate remedy if the action were dismissed for nonjoinder. Id.

& Arthur R. Miller, Federal Practice & Procedure § 1359 (3d ed. 2004). In deciding a Rule 12(b)(7) motion, a Court the complaint as true and draw inferences in favor of the non- Id.; see also Dozier v.

Sygma Network, Inc., No. 3:15-CV-2783- B, 2016 WL 949745, at *2 (N.D. Tex. Mar. 14, 2016). The moving party of demonstrating that a Hood ex rel. Miss. v. City of Memphis, 570

F.3d 625, 628 (5th Cir. 2009). fter an initial appraisal of the facts indicates that a possibly necessary party is absent, the burden of disputing this initial appraisal falls on the party who Id. (internal quotations omitted).

ANALYSIS Defendants used in the industry, the nonparties have an interest in the outcome of the case. They reason that if

Pearson prevails at trial, a precedent would be established that would directly impact the industry within the industry. They argue further that Pea the existence of the same functional elements in its expired patents comprise an aggregate of

operative facts common to all nonparties in defending a similar suit for trade dress infringement. Defendant interest asserted by Defendants is not the type of interest contemplated by Rule 19(a)(2). None of the nonparties are alleged to be the real owners of the mark. See Escamilla v. M2 Tech., Inc. Defendants and the nonpar in

. See Optimum Content Prot., LLC v. Microsoft Corp., No. 6:13-CV-741 KNM, 2014 WL 12452439, at *3 (E.D. Tex. Aug. 25, 2014), adopted by, No. 6:13CV741-MHS-KNM, 2014 WL 12324277 (E.D. Tex. Oct. 7, 2014).

Automation Support, Inc. v. Wallace, No. 3:14-CV-04455,

2015 WL 13106329, at *5 (N.D. Tex. July 23, 2015) (citing Conceal City, L.L.C. v. Looper Law legally protectable. United Keetoowah Band of Cherokee Indians of Okla. v. United States, 480

F.3d 1318, 1324 (Fed. Cir. 2007) (citing cases); see also -op. Members, Inc. v. Farmland Indus., Inc., 684 F.2d 1134, 1143 (5th Cir. 1982) (concluding that an owner and licensor of a trademark had an interest in the outcome of a case between the licensee and plaintiff where the validity of the trademark was at issue).

On the facts at issue in this case, Defendants have failed to allege a protectible interest common to the nonparties such that joinder is required under Rule 19(a)(2). argument that failing to join the nonparties would result in inconsistent obligations fails for this same reason since there is no protectible interest at issue. Because Defendants have not alleged that the nonparties have a protectable interest that is the subject of the case, joinder of the nonparties is not required under Rule 19(a)(2). See HS Res., Inc. v. Wingate, 327 F.3d 432, 439 (5th Cir. 2003) (citing Hilton v. Atlantic Refining Company, 327 F.2d 217, 219 (5th Cir. 1964)) (concluding that

Assuming, arguendo, that the Court still would deny their plea. Defendants cite In re EMC Corp. to support their argument

that the nonparties must be joined. 677 F.3d 1351 (Fed. Cir. 2012). The reasoning of the court of appeals in that case does not support Defendants argument here. That case involved patent infringement claims against multiple defendants who sought orders to sever and transfer their claims to more appropriate venues. Id. at 1353. Because the trial court there was considering a motion to sever under Rule 21, it looked to Rule 20 for guidance. Id. at 1356. In discussing Rule -or-occurrence test, the court of appeals held that allegedly infringing acts, which give rise to the individual claims of infringement, must share an aggregate of operative facts. Id. at 1358 (emphasis in original). The court further clarified that the alleged Id. developed products using differently sourced parts are not part of the same transaction, even if

they are otherwise coincidentally identical. Id. Here, there is no allegation that there is any concerted effort among the Defendants and the nonparties to infringe Pearson s trade dress. Pearson Chute, this allegation alone is not enough to satisfy Rule 20. See LFP Internet Grp. LLC v. Does 1-3,120, No. 10-CV-2095-F, 2011 WL 13253894, at *2 (N.D. Tex. Feb. 10, 2011) alleged use of the same software system to commit copyright infringement without allegations they acted in concert is insufficient for permissive joinder under Rule 20).

Next, Defendants argue under Rule 19(a)(1)(A) that because Pearson sued Titan West to obtain complete relief for manufacturing the allegedly infringing Equalizer cattle chute, then Pro Farm, the manufacturer of the Renegade chute, must be added as a defendant. This argument fails because to be named as Conceal City, 917 F. Supp. at 622 (quoting Temple v. Synthes Corp., 498 U.S. 5, 7 (1990) (per curiam)). Indeed, Pro Farm is likely a permissive party under Rule 20 considering that the alleged trade dress infringement of the nonparties arises out of the same series of occurrences and involves questions of law and fact common to defendants currently in the case. See Fed. R. Civ. P. 20(a)(2).

argument that the nonparties should be permissively joined is procedurally unavailing under Rule 20(a)(2). Rule 20(a)(2) provides that a defendant may be joined to relief is asserted against [it] jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or However, Rule 20(a)(2) does not provide a mechanism for a defendant to demand joinder of

parties. Conceal City, 917 F. Supp. at 623 n.13 A defendant has no right to demand permissive joinder of a ; see also Crews & Assocs., Inc. v. City of Port Gibson, No. 5:14CV37-DCB-MTP, 2014 WL 12641994, at *2 (S.D. Miss. Oct. 14, 2014) (citing Nixon v. Guzzetta, 272 F.R.D. 260, 262 (D.C.C. 2011)). Thus, Defendants cannot rely upon Rule 20(a)(2) to require joinder of the nonparties as additional defendants.

CONCLUSION Defendants have failed to allege facts sufficient to show that the nonparties are

required to be joined under Rule 19(a), and Defendants may not demand joinder under Rule 20(a)(2). Consequently, the Court denies .

It is so ORDERED on November 9, 2018.

_____ Hal R. Ray, Jr. UNITED STATES MAGISTRATE JUDGE