Oakwood Products Inc v. SWK Technologies Inc

2023 | Cited 0 times | D. South Carolina | April 26, 2023

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

BEAUFORT DIVISION OAKWOOD PRODUCTS, INC.,) Plaintiff,) vs.) No. 9:20-cv-04107-DCN SWK TECHNOLOGIES, INC.,) Defendant.) _____) OAKWOOD PRODUCTS, INC.,) Plaintiff,) No. 9:22-cv-01538-DCN vs.) ORDER ACUMATICA, INC.,) Defendant.) _____)

The following matter is before the court on plaintiff Oakwood Products, Inc. motion to compel, ECF No. 99. For the reasons set forth below, the court denies the motion in part and hold the motion in abeyance in part, as set forth below.

I. BACKGROUND This action arises out of a breach of contract dispute between Oakwood and defendant SWK . SWK is an information technology consulting company that provides enterprise resource planning and accounting software products and related services. It assists with the implementation of third-party software products, including Sage 500 and Acumatica ERP, which are business management software programs that assist companies with their accounting, supply chain, and other needs. Defendant Acumatica is the developer of Acumatica ERP. Acumatica has no sales force of its own, so it partners with companies like SWK and expressly licenses and permits them to market, license, sell, and implement its software products, including Acumatica ERP. Oakwood Prods. v. Acumatica, Inc., 9:22-cv- 01538-DCN (May 13, 2022) (ECF No. 1 ¶¶ 18 19).

Oakwood is a South Carolina corporation that operates a fine organics manufacturing facility in North Estill, South Carolina. On or around January 21, 2019, which SWK agreed to ERP. The SOW was accompanied by was signed by both parties on or around January 28, 2019.

According to Oakwood, during the engagement, SWK failed to identify and address several issues with the Acumatica ERP implementation in a suitable manner. These alleged deficiencies included issues with the program speed and with its shipping and pricing features, which

the transition from Sage 500 to Acumatica. Fourteen months after the project start date, SWK had yet to complete the transition. As a result, Oakwood hired a third-party vendor, , to analyze the incomplete configuration of Acumatica ERP to upgrade its Sage 500 software using TechRiver rather than complete the implementation of Acumatica ERP with SWK.

On October 27, 2020, Oakwood filed a complaint in the Hampton County Court of Common Pleas

against SWK. ECF No. 1-1, Compl. On November 25, 2020, SWK removed the action to this court. ECF No. 1. On September 22, 2021, Oakwood filed an amended complaint against SWK. ECF No. 35, Amend. Compl. On July 6, Oakwood, with leave of the court, filed its second amended complaint. ECF No. 69, 2d Amend. Compl. current outstanding causes of action against SWK are for: (1) rescission of contract, (2) breach of contract, (3) fraudulent nondisclosure, (4) breach of warranty, and (5) violation of the South Carolina Unfair Trade Practices Act , S.C. Code Ann. § 39-5-10, et seq. Id. On May 13, 2022, Oakwood filed a complaint against Acumatica, asserting that Acumatica failed to exercise appropriate control and failed to prevent SWK from marketing, licensing, selling, and implementing product in situations where it was unfeasible for use. Oakwood Prods., Inc. v. Acumatica, Inc., No. 22-cv-01538-DCN (D.S.C. May 13, 2022) (ECF No. 1 ¶ 3). On July 21, 2022, the parties agreed to consolidate the two cases against SWK and Acumatica into one case for purposes of discovery and trial. ECF No. 72.

On March 3, 2023, Oakwood filed a motion to compel. ECF No. 99. SWK responded in opposition on March 17, 2023, ECF No. 104, and Oakwood replied on March 24, 2023, ECF No. 105. 1

The court held a hearing on the motion on April 12, 2023. ECF No. 109. As such, the motion has been fully briefed and is now ripe for review.

1 SWK filed a motion for leave to file a sur-reply, ECF No. 107, to which Oakwood responded, ECF No. 108, but the parties agreed to withdraw the filings at the hearing.

II. STANDARD Federal Rule of Civil Procedure 26 provides that, unless otherwise limited by court order,

[p]arties may obtain discovery regarding any non-privileged matter that is aim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the ery in resolving the issues, and whether the burden of expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable Id. Rather, information is relevant and

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co., 56 F.3d 556, 568 n.16 (4th Cir. 1995) (citing Erdmann v. Preferred Rsch., Inc. of Ga., 852 F.2d 788, 792 (4th Cir. 1988)); see also U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that district

If a party declines to comply with a d treated as a failure to disclose, ans

Ardrey v. United Parcel Serv., 798 F.2d 679, 683 (4th Cir. 1986); In re MI Windows & Doors, Inc. Prod. Liab. Litig., 2013 WL 268206, at *1 (D.S.C. Jan. 24, 2013).

III. DISCUSSION Oakwood claims that this is the third time that the court must weigh in on the same discovery dispute between the parties. ECF No. 99 at 1; ECF No. 105 at 1. Oakwood is correct that this is at least the third time the court is weighing in on a discovery dispute in this case, but the court disagrees for the exact same information because of .

By way of background, Oakwood filed a motion to compel on March 11, 2022, seeking to compel responses to its first requests for production. ECF No. 44. On June 10, 2022, the court entered an order holding that despite the expiration of the written discovery period under the Third Amended Consent Scheduling Order, Oakwood had shown good cause to amend the complaint to add a SCUTPA claim and propound additional limited discovery, both based on information that it learned for the first time during a deposition. ECF No. 67 at 6 12. As a practical matter, the court held the motion to compel in abeyance so that Oakwood could file an amended complaint alleging its SCUTPA claim and refine its discovery requests. But discovery request in principle to allow discovery into misconduct to support the SCUTPA claim

representation that su that Oakwood would be allowed to propound discovery requests pertaining to services

SWK provided for two of its customers, Arch-I- -I- , ECF No. 67 at 8.

at bay, at least for a few months. Eventually though, the levee broke, and on July 29, 2022, Oakwood filed another motion to compel, this time requesting that the court compel , fourth, and fifth requests for production. ECF No. 74. SWK countered by filing a motion for protective order. ECF No. 77. In essence, Oakwood claimed that written production about Arch-I-Tech and Tom Fouts was no longer en production related to its project for Tom Fouts, SWK produced a Quarterly Business Review) spreadsheet that contained information about a substantial number of customers. Oakwood asserted that the spreadsheet revealed the existence of additional customers who had encountered implementation problems with SWK, as indicated by the fact that SWK had Accordingly, Oakwood sought to compel written discovery about those customers and to subpoena them. SWK responded that the spreadsheet was confidential, was never supposed to be produced, and should be clawed back. On October 12, 2022, the court granted in part and denied in part both motions . ECF No. 86. On the one hand, Oakwood would not be allowed to subpoena any of the customers. Id. at 17 19, 20 n.20. On the other hand, the court found that Oakwood had met the relatively low bar for establishing good cause, and it ordered written discovery into the ten new customers Oakwood had identified. Id. at 13 14. The court denied the motion to compel in all other respects.

On November 9, 2022, SWK filed a motion for reconsideration, which, as relevant here, sought clarification on whether SWK should produce the QBR spreadsheet without redactions. ECF No. 87. On February 2, 2023, the court entered an order clarifying that SWK must produce the spreadsheet without redactions because the confidentiality agreement in this case poenas to adequately protected the confidentiality of the customers.

All of that brings us to the latest discovery dispute. SWK asserts that it complied October Order by producing over 125,000 pages of documents for the ten newly-identified customers. ECF No. 104 at 6. Altogether, SWK states it has incurred over $400,000 in production-related expenses. Id. In the instant motion to compel tion Oakwood seeks to compel responses to Requests for

Production Nos. 1, 2, 4, 8, 9, 10, 11, 12, 13 and 14 in its sixth requests for production. Those requests largely seek discovery related to another slew of SWK customers. Oakwood claims to have discovered that SWK labeled another seven companies as on the same QBR spreadsheet. Those customers, who all allegedly requested different resellers or implementation partners, are: (1) CCS Presentation Systems, Inc. ; (2) Champlain Valley Dispensary, Inc.; (3) Full Throttle Speed, Inc.; (4) General Cannabis Corporation; (5) PWR Storage Solutions, LLC; (6) Pine View

. ECF No. 99 at 2; ECF No. 105 at 4 n.7.

Citing the October Order, Oakwood claims that the court should permit these

The cour October Order permitted SWK to seek discovery related to the ten specific customers it identified in the third and fourth requests for production. ECF No. 86 at 12 15. As the court stated and later reiterated n search of additional customers. Id. at 17; ECF No. 98 at 15. Yet that is exactly what Oakwood has now done, requesting discovery as to another seven SWK customers. Absent an additional showing of good cause, the court is inclined to disallow the requests, and the

As a preliminary matter, the court denies Requests Nos. 1, 2 and 4 in the Sixth Requests for Production as overbroad and divergent from 2

specifying a company .

Next, the court considers the requests for the additional seven customers identified by Oakwood. Oakwood claims it only discovered that these customers had -unredacted QBR spreadsheet. ECF No. 105 at customers were identified in the QBR spreadsheet produced in July 2022 that contained

matter that could easily be resolved by comparing the redacted and unredacted spreadsheets, but neither side attached the spreadsheets for comparison or requested to file them under seal.

In the absence of documentary proof, the court must assume that the seven new companies were revealed based on recent redaction removals. Nevertheless, the court

2 Request No. 1 seeks documents and communications related to any customer of documents for five specifically-identified customers. ECF No. 99-1 at 3 (emphasis in [a]ll communications received by SWK from Acumatica, Inc. . . . related to any and all customers changing or switching from SWK to a different Id. at 4 5. Request No. 4 seeks documents and communications Id. at 5. does not

automatically find that good cause exists to issue discovery on these seven customers. see if its original missive for the parties to conduct discovery on potentially deceptive trade practices remains appropriate. If the court allows Oakwood to send yet another series of requests about the seven new customers, one could imagine that Oakwood would be incentivized records or communications about customers facing software implementation issues. As the court stated at the hearing, this would be the antithesis of Difficult as it may be to recall now, this dispute started as a motion to reopen discovery for Oakwood to supplement its SCUTPA claim, and only limited written discovery That ship has clearly sailed and is foundering on the shoals of unlimited discovery.

Importantly, it is not clear to the court that Oakwood continues to have a ground on which to plant the flag with these requests. SWK responded from the outset that the information Oakwood was seeking about its customers was not relevant to the SCUTPA claim. See ECF No. 77-1 at 5 (noting that unique challenges and difficulties are to be wide array of customers). Even now, SWK continues to note that the so- potential customers is misleading. According to SWK , the company assigns a color classification for each customer to

describe the status of the project at a particular point in time. ECF No. 104-1, Kyser Decl. ¶¶ 5 7. A

other vendors. Id. ¶ 10. Indeed over the course of a project, some point during its lifespan. Id. ¶¶ 12 13.

arguments were well-taken, even when initially raised. See ECF No. 86 providing poor services is not enough . . . . But the court permitted the discovery Now, four discovery requests and at least ten customers laterseem more salient. Singleton v. Stokes Motors, Inc., 595 S.E.2d 461, 466 (S.C. 2004) (citing S.C. Code Ann. § 39-5-20(a)). deceptive practice is one which has a tendency to deBondt v. Carlton

Motorcars, Inc., 536 S.E.2d 399, 407 (S.C. Ct. App. 2000). It is unclear why code-red classifications necessarily imply deception, but the court was previously willing to grant d lead to other matters that bear on this litigation. At this point though, Oakwood appears to be singularly interested in hunting down suggestions of customer struggles, either as indicated by the QBR spreadsheets or from emails. SWK has more than rebutted the good cause showing as to the spreadsheet

14; see also id. ¶ implementation can classify the project a s

highlighted by Oakwood merely evince some customer difficulties, and such evidence does not violate SCUTPA. See Culler v. S.C. Elec. & Gas Co., 2004 WL 7332849, at *4 SCUTPA was not intended to make those that inadequately perform a service liable

This is not to say that Oakwood has been silent on the issue. Oakwood attaches several emails identified from discovery up to this point and claims that the emails reveal -the- -down

supposed struggles with CCS and Transtate/Avante. Id. at 4. But about the email encounters the same problem as its arguments about the QBR spreadsheet. The email reflects Id. At most, this is evidence of poor customer service, but it does not rise to the level of fraud or deception.

do no better. Oakwood attempts to frame an email sent by Keyser to two other SWK executives as an email in which Keyser rues mistakes made in projects with Pine View and Tom Fouts. Id. at 6 (citing ECF No. 105-1). The email appears to provide the genesis of a color- campaigns a -coding scheme. Oakwood claims the id., but the email does not reflect what went wrong with the Pine View and Tom Fouts sales. If anything, the email shows that SWK sought to improve and meet several benchmarks in its performance, including ECF No. 105-1 at 3.

Oakwood cites two final exhibits for the proposition that SWK intentionally sold Acumatica to customers for whom the product and implementation were not feasible. ECF No. 105 at 6 (citing ECF Nos. 105-2 and 105-3). In the first of the two emails, an SWK employee wrote to another employee, [the customer] should have never been sold Acumatica, it needs big customizations to - business always revolves around customized software systems, and it is natural for the company to prefer minimal customizations where possible. At the hearing, Oakwood focused primarily on its final exhibit, and that final email similarly drew attention upon review ote in the There are times when we sell clients -3 (emphasis added). Buddecke then went on to list and explain the benign reasons why (in his view) the customer at issue, Eagle Carports, had switched resellers.

The court certain outward admission that it sells/sold unworkable solutions to customers. But the attached email is about Eagle Carports; it does not describe those other occurrences and does not explain whether the purported sales were done intentionally or not. Certainly, the court could view the email as providing information that could lead to other matters that could bear on . . . any issue that is or may be in the case Tarashuk v. Orangeburg Cnty., 2022 WL 473231, at *2 (D.S.C. Feb. 15, 2022) (quoting Amick v. Ohio Power Co., 2014 WL 468891, at *1 (S.D. W. Va. Feb. 5, 2014)) (cleaned up). But this is the game that Oakwood has already been playing. The court previously permitted discovery based on information extracted from the QBR spreadsheet, and it intended for such discovery to be a gateway to more direct and substantial evidence. Oakwood can plausibly claim to still be in the evidence-gathering stage. But at this point, after 125,000 produced documents, one would expect more evidence of repetitive, deceptive practices if Oakwood is to credibly present a SCUTPA claim at trial. The court would be more convinced that the costs justify discovery if, for example, Oakwood discovered evidence of the sale of [s] in the Eagle Carports email, instead of mere allusions to the practice.

must limit the frequency or extent of discovery the party seeking discovery has had ample opportunity to obtain the information by discovery in the action Fed. R. Civ. P. 26(b)(2)(C)(ii) (emphasis added). To that end, the court holds yance as to Requests for Production Nos. 8, 9, 10, 11, 12, 13, and 14. The court will provide Oakwood with three weeks to provide a supplemental brief to the court explaining what bases from existing files Oakwood has for showing that these discovery

requests are reasonably connected to its SCUTPA claim. If the discovery to date from the ten companies (and more, if including Arch-I-Tech and Tom Fouts) does not support the elements of the claim, the court will deny the remaining requests and bar future requests about customers on the grounds that they are not reasonably calculated to lead to the discovery of relevant information. 3

IV. CONCLUSION For the reasons set forth above, the court partially DENIES and partially HOLDS IN ABEYANCE the motion to compel in accordance with this order.

3 Both sides request sanctions against the other for the costs and expenses incurred in seeking their desired relief. ECF No. 99 at 4; ECF No. 104 at 15. The court declines to award either side fees at this time but notes the possibility of sanctions in the future. AND IT IS SO ORDERED.

DAVID C. NORTON UNITED STATES DISTRICT JUDGE April 26, 2023 Charleston, South Carolina