NOBLE ROMAN'S, INC. v. HATTENHAUER DISTRIBUTING COMPANY

2016 | Cited 0 times | S.D. Indiana | April 19, 2016

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION ,) Plaintiff,) vs.) CAUSE NO. 1:14-cv-1734-WTL-DML HATTENHAUER DISTRIBUTING) COMPANY,) Defendant.)

ENTRY ON COUNTERCLAIM

Motion is fully

briefed, and the Court, being duly advised, now GRANTS IN PART AND DENIES IN PART Motion for the reasons set forth below.

I. BACKGROUND This case has a long and complicated history. The Court limits its background discussion to procedural history Motion, with additional factual and procedural background addressed in the discussion section. The original Case Management Plan in this matter was approved on February 10, 2015, and established a March 23, 2015, deadline to amend pleadings. See Dkt. No. 40 at 3. Hattenhauer filed its Counterclaim on March 19, 2015 (Dkt. No. 49). on April 9, 2015 (Dkt. No. 53). (Dkt. No. 66). Although neither party sought to

extend the deadline for amending pleadings generally, on July 27, 2015, the Court granted Noble See Dkt. No. 76 at 5. On several occasions since, various CMP deadlines have been extended in this matter. See Dkt. Nos. 84, 99, 118, 136. The instant motion, s Motion for Leave to File Amended Counterclaim, was filed on November 9, 2015 (Dkt. No. 107).

II. STANDARD Federal Rule of Civil Procedure 15 provides, in relevant part, d its pleading only with . . . requires. Fed. R. Civ. P. 15(a)(2). As noted, however, Hattenhauer seeks to amend its counterclaim after the passing of the deadline set forth in the CMP. Under such circumstances, as Hattenhauer notes, it must See Fed. R. Civ. P. 16(b)(4); see also Adams v. City of Indianapolis, 742 F.3d 720, 734 (7th Cir. -cause standard of Rule (internal quotation omitted). -cause determination, the primary Alioto v. Town of Lisbon, 651 F.3d 715, 720 (7th Cir. 2011). Furthermore broad discretion to deny leave to amend where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the [opposing party], or where the amendment would be futile. Hukic v. Aurora Loan Servs., 588 F.3d 420, 432 (7th Cir. 2009) (quoting Arreola v. Godinez, 546 F.3d 788, 796 (7th Cir. 2008)).

III. DISCUSSION With its M breach of contract Id. s Motion

only to add claims that are futile, cause undue prejudice or are duplicative Dkt. No. 112 at 13.

A. Claim Under Indiana Crime Victims Relief Act argues that this claim is both futile and causes it undue prejudice. It asserts that an amendment is futile if it cannot does not support the alleged mens rea that is necessary to sustain its proposed criminal

allegat - does not develop its futility argument further. summary judgment phase of litigation, a different standard applies when a case has not yet

reached the summary judgment stage. See, e.g., Lake v. Hezebicks, No. 2:14-cv-00344, 2015 WL 224786, at *2 n.1 (S.D. Ind. Jan. 15, 2015); Bank of America, NA v. Summit, Inc., No. 2:11- cv-323, 2012 WL 3779153, at *2 (N.D. Ind. Aug. 30, 2012). Prior to summary judgment, an amendment is futile when it would not survive a motion to dismiss. Lake, 2012 WL 224786, at *2; cf. Bower v. Jones, 978 F.2d 1004, 1008 (7th Cir. 1992) (applying motion to dismiss standard even after summary judgment stage); see also Gandhi v. Sitara Capital Mgmt., LLC, 721 F.3d 865, 869 (7th Cir. 2013) (same). he motion to dismiss standard is proper here because the case is not yet at the summary judgment stage. dismiss is to test the sufficiency of the [counterclaim], not to decide the merits. Gibson v. City of Chi., 910 F.2d 1510, 1520 (7th Cir. 1990) (quoting Triad Assocs., Inc. v. Chicago Housing Authority, 892 F.2d 583, 586 (7th Cir. 1989) (abrogated on other grounds by Board of Cty. Com ., Kan. v. Umbehr, 518 U.S. 668, 684-85 (1996))). This standard requires the Court to accept as true all well pled facts alleged by the counterclaimant and draw all permissible inferences in its favor. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); , 683 F.3d 328, 334 (7th Cir. 2012). The counterclaim must provide pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). Moreover, it must afford the counter- fair notice of what the . . . claim is and the grounds upon which it rests. Brooks v. Ross, 578 F.3d 574, 581 (7th Cir. 2009) (quoting Erickson v. Pardus, 551 U.S. 89, 93 (2007)) (omission in original). In addition, the counterclaim accepted as true, to state a claim to re Agnew, 638 F.3d at 334

(citations omitted). A counterclaim Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Under this liberal standard, a claim for relief under the CVRA that is plausible on its face and, therefore, is not futile.

allowing Hattenhauer to bring its CVRA claim only

Hattenhauer responds that the discovery that was the subject of its Motion to Compel (Dkt. No. 102), which Noble R briefing, . Dkt. No. 113 at 5. It points out that it Id. As suffer undue prejudice by such discovery, as it is, to date, nearly completed. 1 e because delay dispositive motion briefing. It does not explain how the claim might delay the briefing, nor can the Court see any reason that addressing an additional claim would cause prejudicial delay. 2

also argues that it will suffer undue prejudice simply because it may have to address additional allegations in its dispositive motion briefing. See Dkt. No. 112 at 11. This argument also does not resonate with the Court. [P] [claim] Global Tech. & Trading, Inc. v. Tech Mahindra Ltd., 789 F.3d 730, 732 (7th Cir. 2015). It is not undue prejudice for the parties to have to litigate claims at issue in a case, even those added by amendment. Finally, argues that Hattenhauer brings its CVRA claim in an attempt to Here, Hattenhauer sought amendment approximately eight months after the original deadline in the CMP. It explained that it did not previously raise the claims because it did not receive information supporting the requested amendments until August 2014, well after it filed, within the established deadline, its original Counterclaim. See Dkt. No. 107 at 6. The Court finds In any case, undue delay

1 The Motion to Compel was granted in part, and the discovery deadline in this case is April 30, 2016. See Dkt. Nos. 128 and 136, respectively. The Court does not intend to reopen discovery deadlines.

2 The dispositive motions deadline is set for June 10, 2016, which has not yet passed. alone is insufficient to support denial of leave to amend. Dubicz v. Commonwealth Edison Co., 377 F.3d 787, 793 (7th Cir. 2004). To support the denial of leave to amend, it may be combined with another factor, such as undue prejudice, id., . Indeed, despite new information that could support a CVRA claim, the vast majority of the facts underlying this claim are not new, and as already noted, Hattenhauer should not need additional discovery to pursue this claim. For all of these reasons, the Court does not find that Noble d by allowing Hattenhauer to amend its counterclaim to add a claim under the CVRA.

B. Breach of Good Faith and Fair Dealing Allegation Hattenhauer also seeks to amend its existing breach of contract claim to add an allegation Indiana law implies such a duty when a contract is ambiguous. See Dkt. No. 107 at 9 (citing Old Nat Bank of Ind. v. Kelly, 31 N.E.3d 522, 531-32 (Ind. Ct. App. 2015)). The Court, however, understands Old National Bank of Indiana faith and fair dealing on every contract; the recognition of an implied covenant is generally Allison v. Union Hosp., Inc., 883 N.E.2d 113, 123 (Ind. Ct. App. 2008)). The duty, however, has been extended outside of the employment contract and insurance contract contexts, but only where there existed a fiduciary relationship or where one party enjoyed superior bargaining power over the other. See, e.g., Old Nat Bank of Ind., 31 N.E.2d at 531 (imposing duty where court from a superior vantage point offer customers contracts of adhesion, often with terms not readily discernable to a layperson Wells v. Stone City Bank, 691 N.E.2d 1246, 1251 (Ind. Ct. App. 1998) (discussing imposing duty in either of these instances in constructive fraud context). Thus, this Court does not understand Indiana to have created a duty of good faith and fair dealing in every instance where a contract is ambiguous, and Hattenhauer has not demonstrated that any facts exist in this particular instance that would make it available here. Accordingly, Hattenhauer of a breach of duty of good faith and fair dealing adds nothing to its existing breach of contract claim and thus, making this particular amendment to the Counterclaim futile. Bower, 978 F.2d at 1008

(quotation omitted).

IV. CONCLUSION For the reasons set forth above, the Court finds that good cause exists and justice requires amendment in this instance. Accordingly, the Court GRANTS IN PART AND DENIES IN PART end Counterclaim. The Court orders Hattenhauer to refile its Amended Counterclaim . The Court also requests that Hattenhauer fix the graphic in paragraph 9 so as to reflect the in the franchise agreements. 3

SO ORDERED: 3

Hattenhauer presented in the Amended Counterclaim (Dkt. No. 107-1) a graphic suggests correcting the problem by either typing the text of the graphic into the Amended Counterclaim or reinserting a larger version of the graphic so that the full definition of Gross Sales appears.

_____ Hon. William T. Lawrence, Judge United States District Court Southern District of Indiana