Cost Management Performance Group, LLC v. Symfact Inc.

2016 | Cited 0 times | W.D. North Carolina | January 12, 2016

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION DOCKET NO. 3:15-cv-00462-MOC-DSC

THIS MATTER is before the court on Motion to Strike Affirmative Defenses . Through the process of amendment, all that remains redundant of its Counterclaim.

Under Rule 12(f), Federal Rules of Civil Procedure, the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Striking a pleading is a drastic remedy. Augustus v. Board of Public Instruction of Excambia County, Florida, et al., 306 F.2d 862, 868 (5th Cir.1962). A pleading should only be stricken when the pleading bears no relationship to the controversy. Brown & Williamson Tobacco Corp. v. United States, 201 F.2d 819, 822 (6th Cir.1953). A motion to strike places a sizable burden on the movant, Clark v. Milam, 152 F.R.D. 66, 70 (S.D.W.Va.1993), and would typically require a showing that denial of the motion would prejudice the movant. Id. COST MANAGEMENT PERFORMANCE GROUP, LLC,

Plaintiff,) Vs.) ORDER

SYMFACT INC.,

Defendant.) Plaintiff contends that the First Affirmative Defense and the Counterclaim are redundant in that each is grounded upon an allegation that the VENDORINSIGHT mark is merely descriptive and without secondary meaning. Plaintiff cites two district court opinions from the North District of Illinois in support of their contention that such pleadings are redundant. It appears undisputed that the Affirmative Defense would, if later claim but, if later proved, would likely cancel the mark. Plaintiff argues that because the

relief available under the Affirmative Defense is a subset and consumed by the relief available under the Counterclaim, the Affirmative Defense should be stricken.

As Rule 8 provides for pleading in the alternative, Fed.R.Civ.P. 8(d)(2), provides for pleading affirmative defenses separate from counterclaims, Fed.R.Civ.P. 8(c)(2), state as many separate claims

or defenses as it has (emphasis added), ourt can see no harm in allowing defendant to plead an affirmative defense

which is a subset of a counterclaim as such is certainly anticipated by the Federal Rules of defendant would face if it was compelled to pursue its Affirmative Defense only in the

form of a Counterclaim, in that defendant would be required to put on its own case in chief rather than . At this point which is an early point in these proceedings a defendant should not be forced to elect between pursuing a defense to a claim and pursuing that defense as part of a counterclaim which ultimately would provide broader relief.

Finally, the court finds that plaintiff has not satisfied its by showing how denial of the motion to strike would prejudice the movant. Clark, 152 F.R.D. at 70. ORDER IT IS, THEREFORE, ORDERED that Motion to Strike Affirmative Defenses From Defendant (#9) is DENIED.

Signed: January 12, 2016