

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-02044

Facey Goss & McPhee, PC v. Stuart Mills et al

ENTRY REGARDING MOTION

Title: Motion to Amend Complaint (Motion: 15)
Filer: John M Mazzuchi, Esq.
Filed Date: June 27, 2023

Plaintiff has filed a motion to amend its Complaint to add Joan Mills, the wife of Defendant Stuart Mills, as a party defendant to this action. Plaintiff seeks to assert a claim against Mrs. Mills to hold her personally liable under the doctrine of piercing the corporate veil for the underlying contractual and/or equitable liabilities of Defendants Heartland Development, LLC and HCA-RL Vermont, LLC. Defendants oppose the motion on grounds that the amendment is untimely and futile. For the reasons discussed below, the Motion to Amend is GRANTED.

It is well established that under Rule 15(a) of the Vermont Rules of Civil Procedure, leave to amend “shall be freely given when justice so requires.” V.R.C.P. 15(a). Indeed, “[w]hen there is no prejudice to the opposing party, and when the proposed amendment is not obviously frivolous nor made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny the motion [to amend].” *Hunters, Anglers & Trappers Ass’n of Vt., Inc. v. Winooski Valley Park Dist.*, 2006 VT 82, ¶ 17, 181 Vt. 129 (quotation omitted). However, a court may deny a motion to amend when the “amendment would be futile,” meaning that the “amended complaint cannot withstand a motion to dismiss.” *Vasseur v. State*, 2021 VT 53, ¶ 7, 215 Vt. 224. In considering a motion to dismiss, courts accept “all facts alleged in the complaint as true and in the light most favorable to the nonmoving party.” *Coutu v. Town of Cavendish*, 2011 VT 27, ¶ 4, 189 Vt. 336; *see also Winfield v. State*, 172 Vt. 591, 593, 779 A.2d 649, 652 (2001) (when considering a motion to dismiss under Rule 12(b)(6), the court must “assume that all well pleaded factual allegations in the complaint are true, as well as all reasonable inferences that may be derived therefrom”). “The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the law of the claim, not the facts that support it.” *Samis v. Samis*, 2011 VT 21, ¶ 9, 189 Vt. 434.

Defendants’ argument that the proposed Amended Complaint is untimely because this case has been pending for two years is unpersuasive given the parties’ litigation history. Understandably, the parties essentially put discovery in this matter on hold while Defendants’ summary judgment motion was pending. Plaintiff represents that it first learned through an affidavit filed in support of that motion that Mrs. Mills often personally invested in development-

related LLCs (e.g., Heartland Development, LLC and HCA-RL Vermont, LLC), and thereby obtained shares or equity in project developments (such as the CSJ project) upon their completion. Prior to that time, Mr. Mills had been identified as the sole member/owner of the two development LLCs at issue here and none of Defendants' financial disclosures gave any indication that Mrs. Mills had personally funded any development-related LLCs. At the April 2023 pre-trial conference following the Court's summary judgment ruling, the parties represented that they had reached a settlement in principle of the entire case. However, two months later, the parties filed a stipulated motion to amend the discovery scheduling order, stating that the case "did not settle as anticipated, and the parties need additional time to conduct discovery prior to trial." Shortly thereafter, Plaintiff sought leave to amend. This timeline does not indicate that Plaintiff's motion is untimely or a dilatory maneuver in bad faith. Rather, the motion is consistent with one of the "principal reasons underlying [Rule 15's] liberal amendment policy," that is, "to enable a party to assert matters that were . . . unknown to him at an earlier stage in the proceedings." *Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4, 184 Vt. 1 (quotation omitted).

Nor have Defendants established that the proposed Amended Complaint is futile. First, Plaintiff's amended claim for quantum meruit, now pled as against Defendants Heartland Development, LLC and HCA-RL Vermont, LLC, rather than "all Defendants," is not foreclosed by this Court's summary judgment decision. The two Defendant LLCs never moved for summary judgment on the quantum meruit claim, nor did the Court grant them summary judgment *sua sponte*. Thus, Plaintiff's amended pleading merely states claims that remain adjudicated as to two Defendants.¹ Second, Defendant Mills' contention (even assuming he has standing to raise it) that the claim against Mrs. Mills is futile is based on counsel's factual assertions that are not contained in the proposed Amended Complaint or that dispute Plaintiff's allegations of fact. As such, the Court cannot consider them in the context of a motion to amend. Of course, Mrs. Mills is free to assert that, for example, personal jurisdiction is lacking once she is served with the Amended Complaint.

Finally, Defendants' assertion that the Amended Complaint is "unjust" to Mrs. Mills under Rule 21 also appears to be an improper attack on the merits of the Amended Complaint. Further, having to incur the ordinary costs and burdens of litigation is not "unjust" as contemplated by the Rules of Civil Procedure. Nor would it be considered unduly prejudicial within the meaning of Rule 15; rather, prejudice is found if the amended pleading would not give a newly named party fair notice and an opportunity to litigate such claim. *See Nelson v. Adams*

¹ While it is true that Plaintiff does not specify in the Amended Complaint that Count II (Quantum Meruit) is asserted only as against Defendant LLCs, the factual allegations are specific to those Defendants and do not suggest that Plaintiff is seeking to hold Defendant Mills directly liable. Thus, defense counsel's reference to a potential "Rule 11 violation" is inflammatory and not well taken. Moreover, the Court notes that Defendant LLCs have never sought dismissal of the claim based on the existence of a valid and enforceable contract between them and Plaintiff. *See, e.g., Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 79 (noting that, "once court determines that valid, express contract governs subject matter of parties' dispute, there can be no recovery under unjust-enrichment claim" (quotation omitted)); Ruling on Defs.' Partial Mot. for Summ. J., dated Mar. 29, 2023, at 3 n.2.

USA, Inc., 529 U.S. 460, 466 (2000) (holding that federal Rule 15 and due process requirements are not met if a belated amendment naming a new party “did not provide [such party] an adequate opportunity to defend against the imposition of liability”). Thus, for Plaintiff to litigate the underlying claims against Defendant LLCs and try to obtain a judgment against Mrs. Mills under the veil piercing theory despite her absence from the case likely would be prejudicial and raise due process concerns. *See Life Techs. Corp. v. Govindaraj*, 931 F.3d 259, 265 (4th Cir. 2019) (holding that “a judgment entered against a corporation that is determined to be the alter ego of a non-party establishes personal liability of the non-party only if the non-party is notified that such liability may be imposed and is given fair opportunity to defend the action resulting in the judgment”).

In short, Defendants have failed to establish that leave to amend the Complaint should not be granted. To the extent Defendants seek additional relief in their opposition memo, the Court has not considered the requests, which must be made by separate motion, if at all.

Order

For the foregoing reasons, Plaintiff’s Motion to Amend the Complaint is GRANTED. Plaintiff shall file the Amended Complaint within 7 days of the date of this Order.

In addition, Defendants’ Motion to Continue Pretrial Deadlines is GRANTED (Motion 17). The parties shall submit a proposed amended discovery scheduling order within 14 days of the last date on which all Defendants have filed their Answers to the Amended Complaint. Defendants’ Motion for Status Conference is DENIED without prejudice (Motion 16).

Electronically signed on August 14, 2023 at 10:32 AM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge