

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INTERACT ACCESSORIES, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 VIDEO TRADE INTERNATIONAL, LTD. :  
 :  
 v. :  
 :  
 DANIEL KOVATCH, ELECTOR SOURCE, INC. :  
 and VLM ENTERTAINMENT GROUP INC. : NO. 98-2430

MEMORANDUM AND ORDER

HUTTON, J.

March 22, 1999

Presently before the Court are the Plaintiff Interact Accessories, Inc.'s Motion for Leave to Amend Complaint (Docket No. 18) and Defendant Video Trade International, Ltd.'s reply thereto (Docket No. 20). For the reasons stated below, the Plaintiff's motion is **GRANTED**.

I. BACKGROUND

Defendant Video Trade International, Ltd. ("VTI") purchases videotapes from excess supplies of stores with old or unwanted merchandise. For several months, Daniel Kovatch sold VTI videotapes. After a few months of such transactions, Kovatch offered to sell VTI video game memory cards and accessories. VTI allegedly purchased the video game merchandise from Kovatch. VTI then contacted VLM Entertainment Group, Inc. ("VLM") and

Electrosorce, Inc. ("Electrosorce"). VLM and Electrosorce apparently agreed to purchase the video game merchandise from VTI. These transactions continued until the police executed a search warrant of VTI's premises. VTI then learned Kovatch allegedly stole the video game merchandise from Interact.

On May 8, 1998, Interact filed a complaint against VTI. Interact alleges three counts: (1) conversion - Count I; (2) unjust enrichment - Count II; and (3) a declaratory judgment that the funds held by VLM belonged to Interact - Count III. Interact did not name VLM or Electrosorce in the complaint. VTI filed a Third Party Complaint against Kavatch, VLM, and Electrosorce. On February 25, 1999, Interact filed this motion for leave to file an amended complaint. VTI opposes this motion.

## **II. STANDARD**

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure: "A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Because the Plaintiff seeks to amend their complaint long after the Defendant served their responsive pleading, the Plaintiff "may amend [their complaint] only by leave of court." Fed. R. Civ. P. 15(a). Rule 15(a) clearly states that, "leave shall be freely given when justice so requires." Id. "Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." In re Burlington

Coat Factory Secs. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted); see also Lorenz v. CSX Corp., 1 F.3d 1406, 1413 (3d Cir. 1993). The Third Circuit has found that "prejudice to the non-moving party is the touchstone for denial of an amendment." Id. at 1414.

### **III. DISCUSSION**

In the instant matter, the Plaintiff seeks to amend the complaint for three purposes. They are: (1) update Interact's principal place of business; (2) revise the complaint to reflect information learned in discovery regarding the full extent of theft from Interact's inventory; and (3) include a demand for punitive damages. Before addressing each of these proposed amendments, the Court must address Defendant's two general objections to Plaintiff's proposed amended complaint.

First, Defendant argues that the Plaintiff's motion does not state the grounds for granting the motion as required by Federal Rule of Civil Procedure 7(b)(1). This argument lacks merit. Federal Rule of Civil Procedure 7(b)(1) states that "[a]n application to the Court for an Order shall be by motion which, unless made during a hearing or trial, . . . shall state with particularity the grounds therefore . . . ." Fed. R. Civ. P. 7(b)(1). Here, as noted above, Plaintiff clearly states the three reasons that it seeks leave to file an amended complaint.

Moreover, Plaintiff properly cites case law in support of his motion. Accordingly, this Court rejects this argument.

Second, the Defendant argues that the proposed amended complaint contains numerous changes beyond the scope of the permission sought in the motion. This Court disagrees. The Court finds that all of Plaintiff's changes relate to the three reasons for seeking leave to file an amended complaint. Therefore, the Court rejects this argument as well. The Court now turns to each of the Plaintiff's proposed amendment.

**A. Principal Place of Business**

First, the Plaintiff seeks to amend the complaint to update Interact's principal place of business. Defendant does not object to this amendment. Therefore, the Court grants the Plaintiff leave to amend the complaint to update their principal place of business.

**B. Full Extent of Theft**

Second, the Plaintiff seeks to amend the complaint to revise the complaint to reflect information learned in discovery regarding the full extent of theft from Interact's inventory. In support, Plaintiff states that discovery revealed that VTI purchased more than \$400,000 of stolen video game equipment from Kavatch. This was much more than anticipated by Interact. The Defendant asserts that it will suffer prejudice if the Court grants

this part of the Plaintiff's motion. Specifically, the Defendant states that: "Due to the deadlines set by the Court, the Defendant will not be able to conduct effective discovery with respect to the additional facts alleged by the Plaintiff, or produce experts to rebut those allegations." Def.'s Mem. of Law in Opposition to Pl.'s Mot. to Amend at 7.

In light of the procedural posture of this case at the time of judgment, the Court finds that the Defendant is not prejudiced by the Plaintiff's attempt to amend their complaint at this point in the litigation. Cases which have approved the denial of a motion to amend a complaint due to delay have generally been in more advanced stages of litigation than the present case. See Averbach v. Rival Mfg. Co., 879 F.2d 1196, 1202-03 (3d Cir. 1989) (noting that proposed amendment came four days before close of discovery). Here, the discovery period does not close until April 12, 1999. Moreover, the Court is also prepared to continue the discovery period should the Defendant need more time to prepare a defense to these proposed amendment. In sum, the Defendant failed to point to any significant prejudice they will suffer if Plaintiff is permitted to amend their complaint. See Enguschowa v. New York State Seafood, No. CIV.A.96-6252, 1997 WL 260249, at \*3 (E.D. Pa. May 12, 1997). Accordingly, this Court grants the Plaintiff leave to amend the complaint to reflect the full extent of theft from Interact's inventory.



### C. Punitive Damages

Third and finally, the Plaintiff seeks to amend the complaint to include a demand for punitive damages. Defendant argues that such an amendment would be futile as punitive damages are not allowed under these facts. This Court disagrees.

Under Pennsylvania law, "[p]unitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct." Bannar v. Miller, 701 A.2d 232, 242 (Pa. Super. Ct. 1997) (citing SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991)). Thus, while:

Punitive damages are not available in cases involving simple negligence, [they] are available when "the actor knows, or has reason to know . . . of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to, that risk." Martin [v. Johns-Manville Corp.], 494 A.2d 1088, 1097 (Pa. 1985)] (quoting Restatement (Second) of Torts, § 500 cmt. a (1979)).

Logue v. Logano Trucking Co., 921 F. Supp. 1425, 1427 (E.D. Pa. 1996).

In the present case, the Plaintiff argues that the addition of a punitive damages claim is proper because deposition testimony revealed that VTI took no steps whatsoever to determine the source of the video game equipment purchased from Kovatch. Based upon this deposition testimony, the Court finds that the

addition of a claim for punitive damages would not be futile. Defendant argues that: "Under the circumstances, the conduct of VTI cannot be deemed to be outrageous." Def.'s Mem. of Law in Opposition to Pl.'s Mot. to Amend at 11. This argument, however, goes to the merits of the punitive damages claim and is not properly considered at this point of the litigation. Therefore, the Court grants the Plaintiff's motion in its entirety.

An appropriate Order follows.

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O R D E R

AND NOW, this 22nd day of March, 1999, upon consideration of the Plaintiff's Motion for Leave to File Amended Complaint, IT IS HEREBY ORDERED that the Plaintiff's Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Plaintiff **SHALL** file the Amended Complaint within ten (10) days of the date of this Order.

BY THE COURT:

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HERBERT J. HUTTON, J.