

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

SYNCOR INTERNATIONAL CORPORATION : CIVIL ACTION
 :
 v. :
 :
 CHETAN MODY and PINESTAR TECHNOLOGY, :
 INC. : NO. 98-6284

MEMORANDUM AND ORDER

HUTTON, J.

April 29, 1999

Presently before the Court are Defendants Chetan Mody and Pinestar Technology, Inc.'s Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 2), Plaintiff Syncor International Corporation's reply (Docket No. 5), and Defendants' sur reply thereto (Docket No. 8). Also before the Court is Plaintiff's unopposed Motion Pursuant to Federal Rule 56(f) to Deny or Stay Defendants' Motion for Summary Judgment (Docket No. 6). For the reasons stated below, the Plaintiff's motion is **GRANTED** and Defendants' motion is **DENIED IN PART AND DENIED IN PART WITH LEAVE TO RENEW**.

I. BACKGROUND

The Plaintiff, Syncor international Corporation ("Syncor"), alleges the following facts in its complaint. Plaintiff entered into a contract with DuPont Merck ("DuPont") to be the exclusive distributor of Cardiolite. Cardiolite is a

pharmaceutical product which assists in pinpointing cardiac damage and evaluating cardiac blood flow and heart pumping efficiency. Plaintiff also entered into a contract with Nuclear Imaging Systems, Inc. ("NIS"). This contract obligated NIS to purchase Syncor's radiopharmaceutical products, including Cardiolite.

Plaintiff alleges that Defendant Chetan Mody and Defendant Pinestar Technology, Inc. ("Pinestar") embarked on a scheme to purchase Cardiolite from a source other than DuPont-- knowing that the Cardiolite was stolen, unlawfully converted, or obtained by fraud-- and to resell that Cardiolite to NIS. On December 2, 1998, Plaintiff filed a complaint against the Defendants. The complaint contains two counts: (1) a Racketeer Influenced and Corrupt Organizations Act ("RICO") claim pursuant to 18 U.S.C. §§ 1961-1968 (1994) and (2) a tortious interference with contract claim.

On February 12, 1999, the Defendants filed a motion to dismiss, or in the alternative, for summary judgment. On March 1, 1999, the Plaintiff filed a motion to deny or stay Defendants' motion for summary judgment. The Court considers both motions.

II. DISCUSSION

A. Standards

1. Motion to Dismiss Standard

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the

claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),¹ this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990). The Court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

2. Motion for Summary Judgment Standard

The purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay

¹ Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. 12(b)(6).

and expense. See Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmoving party. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing

summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

B. Defendants' Motion to Dismiss

The Defendants move to dismiss the complaint because it is "simply without merit" and "consists of nothing more than a series of speculations and specious claims which are not supported by any evidentiary fact." Defs.' Mem. of Law in Support of Mot. to Dismiss at 7. Beside this conclusory statement, the Defendants fail to address how dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6). Rather, Defendants offer this unsupported argument: "In sum, plaintiff's contentions are, at their bare essence, designed to do nothing more than cloud the issues in a last ditch attempt io [sic] find anyone responsible for its failed contract with a third party, NIS." Id.

This Court concludes that Plaintiff's complaint more than adequately alleges facts to support a RICO claim and tortious interference with contract claim. The Defendants fail to grasp that the motion to dismiss standard. Plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley, 355 U.S. at 47. Therefore, because the complaint alleges sufficient fact to "put the defendants on notice of the essential elements of the plaintiffs' cause of action," the Court denies the

Defendants' motion to dismiss. Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

**C. Defendants' Motion for Summary Judgment and
Plaintiff's Motion to Stay Motion for Summary Judgment**

The Defendants' remaining arguments require this Court to consider matters outside the pleadings. Therefore, the Court must treat these arguments as a motion for summary judgment. In response, Plaintiff argues that summary judgment is premature because they have not yet completed discovery.

The Court may deny summary judgment if the motion is premature. See Anderson, 477 U.S. at 250 n.5. Because a plaintiff should not be "'railroaded' by a premature motion for summary judgment," the United States Supreme Court has held that a district court must apply Federal Rule of Civil Procedure Rule 56(f) if the opposing party has not made full discovery. Celotex, 477 U.S. at 326. Rule 56(f) provides:

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f) (emphasis added).

Thus, the district court is empowered with discretion to decide whether the movant's motion is ripe and thus determine whether to delay action on a motion for summary judgment. See St.

Surin v. Virgin Islands Daily News, Inc., 21 F.3d 1309, 1313 (3d Cir. 1994); Sames v. Gable, 732 F.2d 49, 51 (3d Cir. 1984). In order to preserve the issue for appeal, Rule 56(f) requires the opposing party to a motion for summary judgment to file an affidavit outlining the reasons for the party's opposition. See St. Surin, 21 F.3d at 1313; Galgay v. Gil-Pre Corp., 864 F.2d 1018, 1020 n.3 (3d Cir. 1988); Dowling v. City of Phila., 855 F.2d 136, 139-40 (3d Cir. 1988). The United States Court of Appeals for the Third Circuit has consistently emphasized the desirability of full technical compliance with the affidavit requirement of Rule 56(f). See St. Surin, 21 F.3d at 1314; Radich v. Goode, 886 F.2d 1391, 1393-95 (3d Cir. 1989); Lunderstadt v. Colafella, 885 F.2d 66, 70 (3d Cir. 1989); Dowling, 855 F.2d at 139-40. But see Sames, 732 F.2d at 52 n.3 (finding opposing party's failure to strictly comply with Rule 56(f) not "sufficiently egregious" to warrant granting summary judgment).\²

The Plaintiff attached an affidavit which states that it may not be able to contradict several assertion made by the Defendants without discovery. Moreover, Plaintiff states that discovery may show that: (1) Defendants knew that the Cardiolite it purchased was stolen, unlawfully converted, or obtained by fraud

^{2/} Some federal circuit courts of appeals have liberally applied the affidavit requirement of Rule 56(f). See, e.g., International Shortstop, Inc. v. Rally's Inc., 939 F.2d 1257, 1267 (5th Cir. 1991) (requiring only statement of party's need for additional discovery), cert. denied, 502 U.S. 1059 (1992).

and (2) of the existence of the contract between NIS and Plaintiff. This evidence, Plaintiff asserts, would preclude summary judgment.

This Court agrees with the Plaintiff that a motion for summary judgment is premature at this stage. In their motion, Defendants point to a failure to "produce any evidence" and that "plaintiff has failed to show or support its wild allegations." Defs.' Mem. of Law. in Support of Mot. to Dismiss at 16. This is of course true at this stage because, as Plaintiff notes, there has been no discovery. Indeed, Defendants have not yet filed an answer to the complaint in this case. Therefore, this Court grants the Plaintiff's motion to stay the Defendants' motion for summary judgment.

An appropriate Order follows.

