

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

SCHMIDT, LONG & ASSOC., INC. : CIVIL ACTION
: :
v. : :
: :
AETNA U.S. HEALTHCARE, INC. : NO. 00-CV-3683

MEMORANDUM

Padova, J. December , 2000

Plaintiff Schmidt, Long & Associates filed the instant suit on July 21, 2000, against Defendant Aetna U.S. Healthcare, Incorporated alleging that Defendant intentionally interfered with Plaintiff's contractual relationship. Before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint. The matter has been fully briefed and is ripe for decision. For the reasons that follow, the Court denies Defendant's Motion.

I. BACKGROUND

The Complaint alleges the following facts. Aetna U.S. Healthcare Incorporated ("Aetna") administers self-funded medical benefit plans on behalf of employers. In performing this service, Aetna pays to the healthcare provider all of the medical claims covered under the employer's benefit plan relating to the provided services. The employer then reimburses Aetna for the amounts paid to the healthcare providers and pays Aetna an additional administrative fee. Schmidt, Long and Associates ("SLA") is a corporation retained by employers to conduct independent audits of the claims administration performed by the administrators of their self-funded benefit plans. In the past, SLA has recovered overpayments made by the claims administrators for the benefit of the employer.

U.S. Healthcare (“USHC”), an entity that later would be acquired by Aetna, Incorporated to form Aetna, retained SLA as a forensic expert in two separate legal proceedings related to Brokerage Concepts, Inc. v. U.S. Healthcare (“BCI Matter”). The first consultation was in connection with the initial trial of the BCI Matter and occurred in 1995. In the course of this consultation, Aetna gave SLA access to certain claims payment data from a limited geographic area current to 1995. SLA completed its services in connection with the 1995 consultation on May 11, 1996.

In November 1998, USHC again sought to hire SLA as its forensic expert in the retrial of the BCI Matter. By this time, USHC had been acquired by Aetna and SLA was in the process of independently auditing Aetna on behalf of a client. SLA, however, determined no conflict of interest existed. Nonetheless, SLA sent a waiver letter to Aetna. Aetna never executed the waiver and did not hire SLA to act as an expert in the BCI Matter’s retrial. SLA continued to audit Aetna.

Throughout 1999, SLA was retained by several employers¹ (“Employers”) to audit Aetna’s administration of their medical benefits plans. The Employers each agreed to pay SLA a percentage of any recovered overpayments. The Employers notified Aetna of the impending audits and their retention of SLA. Aetna responded that it would not allow SLA to conduct any audits for several reasons. First, Aetna asserted that SLA had a conflict of interest based on its work for USHC in the BCI Matter, and that SLA had executed a confidentiality agreement in connection with the BCI Matter with respect to the proprietary information to which SLA had access. Second, Aetna stated that it had sued SLA for conversion of the proprietary information that USHC had given to SLA in connection with its consultation in the BCI Matter. Third, Aetna argued that SLA’s conduct was a

¹The employers included Kraft Foods, OfficeMax, Sears, Roebuck & Company, Sara Lee Corporation, and Daimler Chrysler Corporation.

central issue in another litigation involving Aetna in which SLA was not a party. Lastly, Aetna objected to the contingent fee arrangement. SLA contends that the reasons Aetna provided to the Employers for disallowing SLA to conduct an audit were false and misleading and communicated with the intent to cause the Employers to terminate their contracts with SLA.

II. DISCUSSION

Defendant raises several issues in its Motion. The Court will address each argument in turn.

A. Motion for More Definite Statement

Though lacking in numbered counts, the Complaint purportedly asserts a claim for intentional interference with contractual relations and libel². Because the Complaint fails to list the specific causes of action asserted, Defendant first moves for a more definite statement under Rule 12(e).

Under the federal rules, a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief that is sufficient to give the defendant fair notice of the claim being pressed against him. Fed. R. Civ. P. 8(a)(2); Wih Management, Inc. v. Heine, No. Civ. A. 99-CV-3002, 1999 WL 778319, at *4 (E.D. Pa. Sept. 30, 1999). A party may move for a more definite statement of a pleading if the pleading is so “vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading.” Fed. R. Civ. P. 12(e). Rule 12(e) motions are only granted when the pleading is “so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith without prejudice to itself.” Sun Co. v. Badger Design & Constructors, 939 F. Supp. 365, 368 (E.D. Pa. 1996) (“The class of pleadings that are appropriate subjects for a motion under Rule 12(e) is quite small – the pleading must be sufficiently

²Although the face of the Complaint lacks any mention of such a claim, Plaintiff asserts in its Response to Defendant’s Motion that a libel claim is stated. (Pl. Resp. at 19.)

intelligible for the court to be able to make out one or more potentially viable legal theories on which the claimant might proceed.”).

The Court determines that the Complaint is not so vague that Defendant cannot reasonably frame a responsive pleading. Based on Plaintiff’s submissions, the Court reads the Complaint to assert claims for intentional interference with contractual relations and defamation and no others. The case, therefore, may proceed only on those two claims. Accordingly, Defendant’s request for a more specific pleading is denied.

B. Failure to State a Claim³

Next Defendant challenges the sufficiency of the allegations of interference with contractual relations. For completeness, the Court will also examine the sufficiency of allegations for Plaintiff’s defamation claim.

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id. Generally, district courts ruling on motions to dismiss may not consider matters extraneous to the pleadings. In re Burlington Coat Factory Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). District courts, however, may consider documents that are “integral to or explicitly relied upon in the complaint” without converting the motion into one for summary judgment. Id.

1. Intentional Interference with Contractual Relations

³Since the parties cite primarily to Pennsylvania law and raise no choice of law issue, the Court will apply Pennsylvania law.

Pennsylvania courts recognize a cause of action for intentional interference with contractual relations. Glenn v. Point Park College, 272 A.2d 895, 897 (1971). To maintain an action for intentional interference with contractual relations, the plaintiff must allege: (1) a prospective contractual relation; (2) the purpose or intent to harm the plaintiff by preventing the relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) actual damage resulting from the defendant's conduct. Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 184 (3d Cir. 1997) (citing Thompson Coal Co. v. Pike Coal Co., 412 A.2d 466, 471 (1979)); Shiner v. Moriarty, 706 A.2d 1228, 1238 (Pa. Super. Ct. 1998). The Complaint clearly alleges several contractual relations between SLA and third parties, communications with the third parties by Defendant designed to prevent the relation from coming to fruition, and actual pecuniary loss. (Compl. ¶¶ 16-20, 22, 23, 30.) Furthermore, Plaintiff explicitly pleads absence of privilege or justification. (Compl. ¶25.) The Court, therefore, concludes that Plaintiff has successfully alleged a cause of action for intentional interference with contractual relations.

Defendant, however, argues that its communications with the Employers were privileged in that they were made in good faith to protect Defendant's legally protected interest. Interference is privileged when the actor believes in good faith that his legally protected interest may otherwise be impaired by the performance of the contract. Schulman v. J.P. Morgan Investment Mgmt., Inc., 35 F.3d 799, 810 (3d Cir. 1994); Restatement (Second) of Torts § 733 (1979). This privilege is closely related to the issue of intent and has not been precisely defined. Schulman, 829 F. Supp. 782, 787 (E.D. Pa. 1993), aff'd, 35 F.3d 799 (3d Cir. 1994). The central inquiry, rather, is "whether the interference is 'sanctioned' by the 'rules of the game.'" Id.

Defendant claims that it was acting to protect its interest under its contracts with the

Employers that allegedly permit the Employers to hire only an independent auditor to conduct an audit of Defendant's services, and its interests in its pending litigation with SLA. Whether this privilege applies is a question of fact that is inappropriate for resolution in the context of a Rule 12(b)(6) motion. Given that privilege is a question of fact, and Plaintiff has pled absence of privilege or justification, the Court rejects Defendant's argument. See T.H. Services Group, Inc. v. Independence Blue Cross, No. Civ. A. 98-CV-4835, 1999 WL 124408, at *2-4 (E.D. Pa. Mar. 4, 1999).

Defendant last argues that its communications are privileged because they are true. The Restatement (Second) of Torts provides:

One who intentionally causes a third person not to perform a contract or not to enter into a prospective contractual relation with another does not interfere improperly with the other's contractual relation, by giving the third-person (a) truthful information, or (b) honest advice within the scope of a request for advice.

Restatement (Second) of Torts § 772 (1979). Pennsylvania courts have never adopted section 772. Kachmar, 109 F.3d at 185. To the contrary, Pennsylvania courts have flatly held that truth is not a defense to intentional interference with contractual relations. Collincini v. Honeywell, Inc., 601 A.2d 292, 296 (Pa. Super. Ct. 1992), appeal denied, 608 A.2d 27 (1992). Rather than giving truth a dispositive effect, courts focus on "the propriety of a defendant's conduct considering the factual scenario as a whole," and must consider the full list of factors outlined in section 767 of the Restatement (Second) of Torts. Id.; Kelly-Springfield Tire Co. v. D'Ambro, 596 A.2d 867, 872 (Pa. Super. Ct. 1991). Since truth is not a full defense to this cause of action and the factual record is as yet undeveloped, the Court rejects Defendant's argument.

2. Libel

In an action for libel, the plaintiff must prove: (1) the defamatory character of the communication; (2) publication by the defendant; (3) its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to plaintiff; (6) special harm to the plaintiff; (7) abuse of a conditionally privileged occasion. 42 Pa. Cons. Stat. Ann. § 8343(a) (West 2000); Tucker v. Philadelphia Daily News, 757 A.2d 938, 942 (Pa. Super. Ct. 2000). A conditional privilege attaches when the statement is made on a proper occasion, in a proper manner, for a legitimate reason of the speaker and is based on reasonable cause. Elia v. Erie Ins. Exch., 634 A.2d 657, 660 (Pa. Super. Ct. 1993), appeal denied, 644 A.2d 1200 (1994). The privilege can be abused, however, if the communication is made in a reckless or negligent manner, if it exceeds the scope necessary to accomplish its purpose, or is made with actual malice. Cooke v. Equitable Life Ins. Co., 723 A.2d 723, 728 (Pa. Super. Ct. 1999); Elia, 634 A.2d at 661. The allegations in the Complaint establish all elements of a libel claim. (See Compl. ¶¶ 22 - 29.)

Affirmative defenses may be raised on a 12(b)(6) motion "where the defect appears on the face of the pleading". Continental Collieries v. Shober, 130 F.2d 631, 635-36 (3d Cir. 1942). A complete defense to all civil actions for libel exists when the publication is substantially true, is proper for public information or investigation, and was not maliciously or negligently made. 42 Pa. Cons. Stat. Ann. § 8342 (West 2000); Tucker, 757 A.2d at 942. The defendant has the burden of proving the truth of the defamatory communication or the privileged character of the occasion on which it was published. 42 Pa. Cons. Stat. Ann. § 8343(b) (West 2000); Mikitec v. Baron, 675 A.2d 324, 327 (Pa. Super. Ct. 1996). The Complaint specifically alleges that Defendant's communications

were false or misleading and lists supporting reasons. (See Compl. ¶24.) No affirmative defense of truth appears on the face of the pleading. Plaintiff, therefore, has successfully plead a claim for libel.

C. Abstention

Lastly, Defendant asks the Court to dismiss or stay this action until resolution of a related state court action. In December 1998, Defendant filed suit against Plaintiff in the Court of Common Pleas of Montgomery County for breach of contract and conversion of confidential business information (“State Action”). (See Mot. Ex. D.) Plaintiff answered that complaint on November 11, 1999. (Id. at Ex. E.) The State Action focuses on events surrounding Defendant’s hiring of SLA to act as a trial expert. Aetna claims that it contracted with SLA to provide expert services in the BCI Matter. According to Aetna, SLA wrongfully demanded execution of an agreement releasing SLA from all obligations as a result of the provision of expert services on the eve of trial. Aetna believes this demand constituted a material breach of their contract and that SLA is misusing its proprietary information obtained during the course of the contract. Defendant claims that the disposition of the State Action controls the outcome of this case because it involves allegations of SLA’s misconduct that form the basis of Defendant’s statements to the Employers and purportedly of SLA’s claims in this case.⁴

Generally, federal courts have a “virtually unflagging obligation . . . to exercise the jurisdiction given them” by Congress. Ryan v. Johnson, 115 F.3d 193, 195 (3d Cir. 1997) (quoting Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)). Accordingly, the pendency of an action in the state court does not bar proceedings concerning the same matter in

⁴The Complaint lists several reasons why Defendant’s statements to the Employers were false and misleading, including that “SLA did not convert any of the information to which it was given access in the BCI Matter.” (Compl. ¶24(c).)

a federal court with jurisdiction. Colorado River, 424 U.S. at 817. Abstention from the exercise of federal jurisdiction is an extraordinary and narrow exception to the general rule. Id. at 814. Defendant seeks dismissal, or in the alternative a stay, under the abstention doctrine outlined in Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976), or a stay pursuant to Younger v. Harris, 401 U.S. 37 (1971).

1. Colorado River Doctrine

The doctrine announced in Colorado River applies in exceptional circumstances where there is a parallel proceeding pending in state court and considerations of the conservation of judicial resources and the comprehensive disposition of litigation predominate. Ryan, 115 F.3d at 195-96. The threshold issue under Colorado River is whether the state and federal actions are parallel. Id. at 196. If not, then the district court lacks power to abstain. Id. If the actions are parallel, then the district court must consider several factors including (1) whether the state court assumed in rem jurisdiction over property; (2) the inconvenience of the federal forum; (3) the desirability of avoiding piecemeal litigation; (4) the order in which jurisdiction was obtained by the concurrent forums; (5) whether federal or state law applies; and (6) whether the state court proceeding would adequately protect the federal plaintiff's rights. Trent v. Dial Medic. of Fla., Inc., 33 F.3d 217, 225 (3d Cir. 1994)(citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 15-16 (1983); Colorado River, 535 U.S. at 818-19). No single factor is necessarily determinative. Id. While only the clearest of justifications will warrant dismissal, the justifications for abstention are slightly less onerous. Id. Under this standard, the Court concludes that neither abstention nor dismissal under Colorado River is appropriate.

At the threshold, the cases are not parallel. Cases are parallel when they involve the same

parties and claims. Ryan, 115 F.3d at 196. Where the claims are distinct or are not completely identical, the cases are not parallel and abstention is inappropriate. Trent, 33 F.3d at 224. While the parties are identical between the federal and State Action, the claims are not. The State Action involves the issues of whether SLA misused Aetna's proprietary information and whether by refusing to perform the expert services if Aetna did not sign a release, SLA breached its contract. The instant case involves Aetna's actions against SLA after the breakdown of the relationship at issue in the State Action. While certain common issues may be decided and subject to issue preclusion, including whether SLA actually misused Defendant's information, the fundamental claims and causes of action are clearly distinct. Accordingly, Colorado River abstention or dismissal is inappropriate.

Even if the federal litigation and the State Action were parallel, the Moses factors do not support abstention. The first issue, whether the state court first assumed jurisdiction over relevant property, is not relevant since no in rem jurisdiction or property rights are disputed. The second factor, the convenience of the federal forum, is a moot factor since the Eastern District of Pennsylvania encompasses Montgomery County. Both fora are equally convenient to the parties. Similarly, while the state forum is clearly adequate to protect SLA's interests, that factor nonetheless carries negligible weight. The mere fact that the state forum is adequate does not counsel in favor of abstention given the heavy presumption in favor of exercising federal jurisdiction. Ryan, 115 F.3d at 200. That factor is only of consequence when the state forum is inadequate. Id. "When the state court is adequate, however, the factor carries little weight." Id.

The third factor, the desirability of avoiding piecemeal litigation, does not support abstention. Colorado River abstention must be grounded on more than just the interest in avoiding duplicative

or piecemeal litigation. Spring City Corp. v. Am. Bldg. Co., 193 F.3d 165, 171-72 (3d Cir. 1999). Rather, there must be a “strongly articulated congressional policy against piecemeal litigation in the specific context of the case under review.” Ryan, 115 F.3d at 198; see also Spring City, 193 F.3d at 172 (“[E]ven though it is important to prevent “piecemeal litigation,” a stay is appropriate only when there is a strong federal policy against [such] litigation.”). The Third Circuit Court of Appeals has expressed strong disapproval of lightly granting abstention under Colorado River to avoid piecemeal litigation:

If this [the mere possibility of concurrent state-federal litigation satisfied Colorado River’s piecemeal adjudication test] were the law, it is difficult to conceive of any parallel state litigation that would not satisfy the “piecemeal adjudication” factor and militate in favor of Colorado River abstention. If that is true, then the “virtually unflagging obligation of the federal courts to exercise the jurisdiction given them” . . . would effectively be eviscerated, a result we cannot presume either the Supreme Court or this court to have intended.

Ryan, 115 F.3d at 198. While the two cases certainly would most appropriately have been brought as a single suit, the context of the instant federal action does not implicate a “strongly articulated congressional policy against piecemeal litigation” as Ryan requires. See Ryan, 115 F.3d at 198.

Only the fourth and fifth factors support abstention. The State Action was instituted over a year before the instant action. Accordingly, the state court obtained jurisdiction well before this Court. This factor, therefore, weighs in favor of abstention. Similarly state law applies to this action, weighing in favor of abstention. Abstention, however, cannot be justified merely because a case arises entirely under state law. Ryan, 115 F.3d at 199.

Weighing all of the factors, the Court concludes that this case presents no exceptional circumstances sufficient to warrant Colorado River abstention. Despite sharing limited factual

issues, the actions are not parallel. Furthermore, the balance of factors do not sufficiently clearly justify abstention or dismissal.

2. Younger Doctrine

Abstention pursuant to Younger v. Harris, 401 U.S. 37 (1971), is appropriate where, absent bad faith, harassment, or a patently invalid state statute, federal jurisdiction has been invoked to restrain state criminal proceedings. Id. at 53. The United States Supreme Court has since extended the Younger doctrine to apply to state civil proceedings. Huffman v. Pursue, 420 U.S. 592, 594 (1975).

Younger abstention is completely inappropriate in this case. Although Younger abstention is founded on notions of comity, "the [mere] pendency of an action in state court is no bar to proceedings concerning the same subject matter in the Federal court having jurisdiction." Marks v. Stinson, 19 F.3d 873, 882 (3d Cir. 1994) (quoting Colorado River, 424 U.S. at 817). This is true even in cases where there exists a potential for conflict in the results of adjudications. Id. Federal courts may only abstain under Younger if the federal plaintiff requests equitable relief that would enjoin state judicial proceedings. Frank Russell Co. v. Wellington Mgmt. Co., LLP, 154 F.3d 97, 106 (3d Cir. 1998); Trent, 33 F.3d at 223 n.5 ("Younger abstention . . . is proper when federal jurisdiction has been invoked for the purpose of restraining certain state proceedings."); Marks v. Stinson, 19 F.3d 873, 882 (3d Cir.1994) (citing Middlesex County Ethics Comm'n v. Garden State Bar Assoc., 457 U.S. 423, 431 (1982); Huffman v. Pursue, Ltd., 420 U.S. 592, 599-600 (1975)). While SLA requests injunctive relief in this suit, entry of an injunction would not interfere or restrain

the State Action.⁵ The Younger doctrine, therefore, does not apply to this case.

III. CONCLUSION

For the foregoing reasons, the Court denies Defendant's Motion. The case shall proceed on two causes of action: intentional interference with contractual relations and libel. An appropriate Order follows.

⁵ SLA simply seeks to enjoin Defendant from "communicating false and disparaging remarks about SLA." (Compl. ¶31.)