

STATE OF VERMONT

SUPERIOR COURT  
Windsor Unit

CIVIL DIVISION  
Docket No. 43-1-09 Wrcv

Olympic Precision and  
Robert Coleman  
Plaintiff

v.

Daniel Thompson & Susan Thompson  
Defendants

Decision on Pending Motions

Motion to Amend Complaint:

Plaintiff has filed a motion for leave to file a second amended complaint along with a proposed Second Amended Complaint. Those documents have been filed under seal, as will be discussed more fully below. The proposed second amended complaint seeks to add nine parties as defendants, not including seeking affirmative relief against two parties previously designated as interested parties. The proposed amended complaint is over 70 pages in length and consists of 375 number paragraphs, including RICO allegations.

Defendants vigorously oppose this proposed amendment, asserting that it is untimely, the allegations against some or all of the proposed defendants are vague, the delay in seeking leave to amend was done in bad faith, and the allowance of the amendment will work to prejudice the current defendants in light of the discovery which has already taken place and the delays and costs occasioned by the addition of multiple new defendants. The Defendants seek an award of attorney's fees in the event the amendment is allowed. The Defendants also oppose any amendment to the discovery schedule in the case.

Vermont has historically been liberal in allowing amendments to pleadings. *Lillicrap v. Martin*, 156 Vt. 165 (1991); V.R.C.P. 15(a). Where 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 proposed amendment. *Hunters, Anglers & Trappers Association of Vermont, Inc. v. Winooski Valley Park District*, 181 Vt. 12 (2006).

Here there are multiple allegations of improper conduct by all parties. Such being the case the Court lacks a basis to determine that the proposed amended complaint is frivolous. At the very least it is not obviously frivolous. Nor can the Court find, based upon the vigorous contests which have existed concerning the conduct of discovery to date, that the there has been

**FILED**

CONFORMED COPY

CONFIRMED COPY

bad faith or dilatory behavior on Plaintiffs' part in the request to amend the complaint at this time. Accordingly, under the liberal standards which pertain to motions of this nature, the Court will allow the amendment to the complaint. Because the Court has not found any bad faith or undue delay in the filing of the amendment, the Court will not award any attorney's fees to Defendants. The motion to amend the complaint is **GRANTED**.

In addition, the Court notes that denial of this motion would likely result in separate litigation with different defendants arising out of essentially the same factual basis. It does not promote judicial economy to have two law suits arising out of the same core facts where the matters can be litigated in one action.

Motion to File Second Amended Complaint Under Seal:

Plaintiffs have requested, and the Defendants do not oppose, the filing of the Second Amended Complaint under seal. The parties apparently believe the Second Amended Complaint contains proprietary or confidential information, which if disclosed publicly, would be harmful to the business interests of one or more party. However, the stipulation of the parties to seal certain pleadings alone is not enough. There is a public interest in access to court documents. *In re Sealed Documents*, 172 Vt. 152 (2001); *State v. Tallman*, 148 Vt. 465 (1987).

In the instant case, it is not apparent to the Court why the entire Second Amended Complaint need remain under seal. Secrecy should extend no further than necessary. *In re Sealed Documents*, 172 Vt. 152 (2001). Given the strong public interest in access to Court documents and records, only those portions of the Second Amended Complaint actually containing proprietary or confidential information should be sealed. This can be accomplished by the filing of a Second Amended Complaint which is not sealed but which has been redacted by blackening out only the confidential information.

The parties will likewise need to file a proposed order under seal which contains the factual findings and conclusions required by *In re Sealed Documents*, 172 Vt. 152 (2001) and a proposed general order, not under seal, setting forth in general terms the reasons why certain aspects of the Second Amended Complaint are placed under seal by redaction. See 172 Vt. at 164. These proposed orders, findings, and conclusions, shall be submitted to the Court on or before September 15, 2010. Once the general and sealing orders have been issued, the current proposed Second Amended Complaint shall be filed under seal and the redacted Second Amended Complaint filed not under seal. In that way the Court will have access to the redacted portions of the Second Amended Complaint and the public shall have access to all portions of the Second Amended Complaint which have not been sealed. There is no reason why the other pleadings currently filed under seal, which pertain to whether the Second Amended Complaint should be allowed, need remain under seal. Once the sealing orders are issued, those pleadings will be filed in the case without seal.

The Court will leave the documents currently filed "under seal" sealed under a temporary sealing order until the terms of this order have been met. All future filings shall not be under seal unless further ordered by the Court. The Motion to File Under Seal is **DENIED** with the

**FILED**

SEP - 2 2010

exception of those limited portions of the complaint to be redacted as set forth in the proposed orders to be filed on or before September 15, 2010.

Motion to Designate a Complex Action:

The parties dispute whether this matter should be designated as a complex action pursuant to V.R.C.P. 16.1. The parties further dispute whether the granting of the Second Amended Complaint and the addition of multiple defendants will necessarily enhance the complexity of this action. It is true that this case involves issues which are potentially more complex than others. The effect of the addition of parties on the complexity of this action remains to be seen. The appointment of the Special Master will aid in the discovery process and will assist the Court with pretrial discovery issues.

With the granting of the motion to amend the complaint, the Court concludes that a designation of complex action at this time is not warranted. It may be that this matter will require a complex action designation at some future time. The shaping of this action through the discovery process and motion practice in the months ahead will assist the court in making that determination. At this point, neither the involvement of the undersigned nor the complexity of the case to date is sufficient to warrant a complex action designation. Accordingly, the Motion for Designation as a Complex Action is **DENIED** at this time. Once all parties have appeared, and discovery has progressed, a further request for complex action designation may be filed.

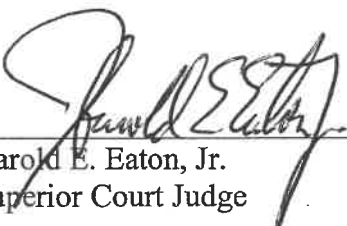
Motion for Clarification of May 3, 2010 Order:

By agreement of the parties this motion is **DENIED** as moot.

Motion to Amend Scheduling Order:

Consistent with the granting of the Motion to Amend the Complaint, the Motion to Amend the Scheduling Order is **GRANTED**. The parties shall prepare a scheduling order as directed by the Special Master.

Dated at Woodstock this 2nd day of September 2010.

  
\_\_\_\_\_  
Harold E. Eaton, Jr.  
Superior Court Judge

**FILED**

SEP - 2 2010

VERMONT SUPERIOR COURT  
WINDSOR UNIT