

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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WORLD WRESTLING : No. 3:13CV125 (RNC)
ENTERTAINMENT, INC., :
:
Plaintiff, :
:
vs :
:
SOLAR ENTERTAINMENT, :
:
Defendant. : HARTFORD, CONNECTICUT
:
February 7, 2014
:
- - - - - x

TELEPHONE CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 DAY PITNEY LLP-STMFD
4 One Canterbury Green
5 Stamford, Connecticut 06901
6 BY: JONATHAN B. TROPP, ESQ.

7 K & L GATES, LLP
8 K & L Gates Center
9 210 Sixth Avenue
10 Pittsburg, Pennsylvania 15222-2312
11 BY: CURTIS B. KRASIK, ESQ.

12 FOR SOLAR ENTERTAINMENT:

13 CHRISTINE A. DIXON, ATTORNEY AT LAW
14 11024 Mill Center Drive
15 Owings Mills, Maryland 21117
16 BY: CHRISTINE A. DIXON, ESQ.

17 LAW OFFICES OF KEVIN R. JOINER, LLC
18 1 Congress Street, Suite 206
19 Hartford, Connecticut 06114
20 BY: KEVIN R. JOINER, ESQ.

21 FOR FOX INTERNATIONAL CHANNELS PHILIPPINES:

22 SHIPMAN & GOODWIN
23 300 Atlantic St., Suite 300
24 Stamford, CT 06901-3522
25 BY: ALISON P. BAKER, ESQ.

2:00 P.M.

THE COURT: Hello.

MR. TROPP: Good afternoon, Judge Chatigny.

THE COURT: Good afternoon. Would you please identify yourselves for the record?

MR. TROPP: Your Honor, Jonathan Tropp of Day Pitney for the plaintiff, World Wrestling Entertainment, Inc., and with me on the line from K & L Gates is Curt Krasik.

MS. BAKER: Good afternoon, Your Honor, Alison Baker, Shipman & Goodwin, representing third party defendants FIC Philippines.

THE COURT: Good afternoon.

MR. JOINER: Good afternoon, it's Kevin Joiner and Christine Dixon representing the defendant Solar Entertainment, Inc.

THE COURT: Very good, thank you.

This is a telephone status conference in a case that appears to be a source of quite a bit of work for all concerned since it was filed. We have a number of pending motions.

We have a motion to dismiss Solar's counterclaims, which I think is now fully briefed as a result of the filing of a reply brief last week; we've got

1 a motion to dismiss filed by Fox a couple of weeks ago;
2 and we have a motion for leave to amend filed by Solar
3 earlier this week; and this all follows prior motion
4 practice. So it's been an actively litigated case since
5 it was filed about a year ago.

6 Is there any chance that you folks would be able
7 to resolve this litigation?

8 MR. TROPP: Your Honor, Jonathan Tropp.

9 I think that there is always such a chance, but
10 as Your Honor may recall from the last time we spoke and
11 obviously from the fact that we have pending the motion to
12 dismiss and strike, there is a fairly strong disagreement
13 between WWE and Solar with respect to the vitality of
14 Solar's position in this case.

15 We commenced this case as a simple claim for
16 monies owed under a contract, and the allegations brought
17 by WWE are not particularly in dispute, but there have
18 been an entire array of defenses interposed including, for
19 example, the claim that the contract under which we sued
20 was unconscionable. And although Your Honor I think
21 addressed that in denying -- I'm sorry, in denying Solar's
22 motion to dismiss for lack of personal jurisdiction,
23 concluding that the contract was between two sophisticated
24 entities for a lot of money, still interposed is this
25 defense and counterclaim that the contract is

1 unconscionable. That's just to give one example.

2 So as Your Honor remarked, our motion is fully
3 briefed except for oral argument on April 4. And although
4 I don't mean to suggest that the case can't be resolved
5 without having had that motion addressed, I do think it
6 would be helpful if Your Honor were able to hear that
7 motion sooner.

8 THE COURT: Well, Mr. Tropp, I appreciate your
9 comments. I wish I could hear it sooner, too. That would
10 mean that my schedule isn't as it actually is. But does
11 anybody else want to comment?

12 No? All right.

13 What I will do, Mr. Tropp, is I will look at
14 your paperwork and see if maybe I can rule on the papers.

15 MR. TROPP: Your Honor, thank you.

16 I should perhaps add to what I said. Although
17 I'm delighted Your Honor's offering and I do hope that you
18 would be able to resolve our motion on the papers, but the
19 issue has become a little bit more clouded in the last
20 week because notwithstanding the prefiling conference that
21 Your Honor held in which the defendant Solar selected not
22 to seek to replead its allegations before we moved, after
23 we moved Solar has now filed a motion for leave to amend.
24 And we think that that motion is both too little and too
25 late.

1 We think that it's too late because the
2 opportunity to amend was presented in connection with the
3 prefiling conference and was not taken. And too little
4 because the proposed amended pleading would not in fact
5 cure the deficiencies. It would remain -- all of the
6 claims that we challenge would remain inadequate. And so
7 we think that the proposed amendment is futile.

8 And I don't know whether Your Honor wants to
9 have full briefing on the motion for leave to amend or how
10 you'd like to approach it, but I did want to call to the
11 Court's attention that Solar has now taken the position,
12 having failed to amend when invited, that our motion to
13 dismiss is moot or mooted by their motion for leave to
14 amend. And frankly I'm surprised that they then argue in
15 their motion for leave to amend that there's no prejudice
16 to us given the position they're taking, that the time and
17 energy we invested in our motion is wasted.

18 THE COURT: Does Solar's counsel care to
19 comment?

20 MS. DIXON: Judge Chatigny, this is Christine
21 Dixon.

22 I would object to your ruling on the motion to
23 strike without oral argument.

24 I would also like to comment that under the
25 Federal Rules of Civil Procedure, we can move for leave to

1 amend at any point before trial. I don't believe that in
2 our last prehearing that we gave that right up. Our last
3 prehearing concerned only the motion for leave by --
4 presented by the WWE to make its response, and its only
5 response to Solar's counterclaims and affirmative defense
6 was a motion to strike and a motion to dismiss. And at
7 that point that was what I believe Your Honor decided was
8 to grant them the right to make this response as their
9 only response.

10 So I don't think at this point it would be
11 appropriate to make a ruling on paper and also to make a
12 ruling that Solar can never move for leave to amend its
13 pleadings in regards to responding or amending its
14 counterclaims. I think that would be improper under the
15 Federal Rules.

16 So I'm not really even -- I hear what Mr. Tropp
17 is saying, but I'm really not understanding how he would
18 argue that we somehow waived this right and this right has
19 been taken from us. But I think that's why I was kind of
20 quiet for awhile, because I'm trying to follow this
21 argument.

22 But that would be my only comment here, that,
23 you know, absent -- you know, that would be gross inequity
24 to actually deny us the right to oral argument and also
25 deny us the right to amend our complaint.

1 THE COURT: Well, my recollection is at the
2 prefiling conference, I asked whether it was agreeable to
3 proceed as we usually do with regard to a motion to
4 dismiss in this district; that is to say, we agree that if
5 the plaintiff wants an opportunity to amend in the face of
6 the motion to dismiss, it's agreed that if the complaint
7 is amended and a new motion to dismiss is filed, the
8 plaintiff will not ask for leave to amend yet again. That
9 is my recollection of what we talked about, and my
10 recollection is that Solar's counsel declined that
11 invitation wanting to reserve an opportunity to seek leave
12 to amend as often as might be reasonable in the eyes of
13 Solar's counsel. That's my recollection of what happened.

14 Is that your recollection, Mr. Tropp?

15 MR. TROPP: Your Honor, I think just
16 substituting plaintiff and counterclaim for plaintiff,
17 then yes, my recollection is that there was a discussion
18 that resulted in Solar purporting to reserve its rights.
19 But I understood that that would be to bring an amended
20 pleading after the Court ruled on our motion if and to the
21 extent that it became appropriate to do so.

22 It's quite a different thing to wait to see our
23 papers and then without waiting for the Court to rule
24 simply trying to moot them in advance.

25 MS. DIXON: Mr. Tropp, just so I can interject

1 one thing here, if I recall -- and we can review the
2 transcript -- this discussion began to be centered around
3 the fact that we had not yet accomplished any discovery.
4 And one of the points that I made and articulated I
5 believe very well to the Judge's satisfaction was that we
6 had not yet done any discovery, even as so much as me even
7 doing discovery with my client.

8 And so me going ahead and amending a complaint
9 at that point would have not really served my client well
10 at all. It was not simply done to see your papers first.
11 It was done because I wanted to see what my client had in
12 its entirety with regards to the case. And we had not
13 gotten to that point yet where we had even done any
14 discovery.

15 And the point we were trying to make was that we
16 did not see the need for the motion filing prior to
17 discovery. And this is how the whole discussion then
18 turned as to the questions that I asked of the WWE in or
19 discovery request, and that's how we got centered into
20 that discussion.

21 So I beg for you to relook at how you're
22 phrasing the statement. We did not do that so we could
23 see your pleadings first. We did that so that we could
24 amend and amend properly if need be.

25 MR. TROPP: Your Honor --

1 MS. DIXON: -- with the proper information to
2 plead specifically the things we needed to plead
3 specifically.

4 MR. TROPP: Your Honor, it was not my intention
5 in raising this issue to have a long debate about the
6 exact resolution or lack of resolution on the -- at the
7 prefiling conference. My more fundamental point is that
8 what we now have is a status in which before the Court can
9 turn to our motion to dismiss or strike, it must first
10 consider the effect of the pending motion for leave to
11 amend.

12 And if Your Honor is inclined to permit the
13 motion for leave to amend to be considered, then what
14 might make sense is for WWE to file an opposition to that
15 motion which, if sustained, would allow the motion to
16 dismiss or strike to be resolved on the current briefing
17 and, if otherwise, perhaps our opposition brief can be
18 considered as well as an additional brief in support of
19 our motion to dismiss or strike in light of the new
20 allegations.

21 In other words, we'll address what we perceive
22 to be the futility of the proposed amendment so that Your
23 Honor can grant the motion to dismiss or strike as to the
24 entirety of Solar's pleading without having to first moot
25 our motion, then deal with the motion for leave to amend

1 and then cause us to file yet another motion to dismiss or
2 strike.

3 In other words, I'm hoping to simply expedite
4 the process by having our brief in response to the motion
5 for leave do double duty.

6 THE COURT: That's all right with me. If that's
7 what you'd like to do, that's okay with me.

8 How about Fox? Fox has moved to dismiss on the
9 ground that the case that Solar would like to pursue
10 against Fox doesn't belong in Connecticut and also on the
11 ground that the third party complaint against Fox doesn't
12 state a valid cause of action.

13 MS. BAKER: That's right, Your Honor.

14 THE COURT: Solar's response to that is due in a
15 week or so.

16 MS. DIXON: It's due, I believe, on next
17 Thursday.

18 THE COURT: Okay, and Fox will want to file a
19 reply?

20 MS. BAKER: We anticipate that we will want to
21 file a reply, yes, Your Honor.

22 THE COURT: Well, does counsel for Solar or Fox
23 want to comment on Mr. Tropp's suggestion with regard to
24 how we ought to proceed?

25 MS. BAKER: Your Honor, from our perspective,

1 the proposed amendments to Solar's pleadings I think do
2 not -- will not impact Fox's motion to dismiss, although
3 there are certain -- or there were previously, at the time
4 we filed our motions -- a number of allegations that were
5 alleged as to WWE and as to Fox, identical allegations.
6 At this point the allegations against Fox have not been
7 amended or even proposed to be amended.

8 So I don't -- I think from our perspective,
9 however Your Honor elects to handle the proposed amendment
10 and WWE's motion to dismiss, we don't believe will impact
11 the adjudication of our motion to dismiss.

12 THE COURT: Okay, thank you.

13 Any other comments?

14 MS. DIXON: Judge, I just wanted to say, we have
15 not elected as of yet to amend the complaint against Fox
16 for the same reason as we did when we did timely amend the
17 one against WWE. I am awaiting a decision made as to
18 whether or not they're going to go forward with amending.
19 So I do not want to foreclose that, but I just wanted to
20 let you know this is why you have not seen it.

21 I'm not -- contrary to what perhaps WWE
22 believes -- we're not about filing claims willy-nilly. So
23 we are trying to have a discussion with the client to find
24 out whether that will happen and we'll, you know,
25 certainly address that in due course.

1 As to the way this proceeds, my concern, Your
2 Honor, is the effect on the scheduling order. As it turns
3 out, I think somehow the -- not having a ruling made on
4 this motion to dismiss that's pending with the WWE has
5 somewhat affected our discovery. I'm not sure. The
6 gentleman may disagree with me here, but it seems as
7 though the feeling is that until a decision is made, there
8 is nothing that Solar can request that is relevant. And
9 so I just wondered if you cleared up as to whether or not
10 we proceed according to the scheduling agreement --
11 scheduling order. As to the case, meanwhile we're waiting
12 until oral argument.

13 And I think that's the concern that we're having
14 is that we're kind of -- as to Fox, we have not yet had a
15 Rule 26(f) meeting. I'm not sure if we're supposed to
16 have one. According to the rules, we should have or
17 should have already had one. But that's the concern that
18 we have, is to kind of address where we go on the
19 scheduling order pending all of these different rulings on
20 motions.

21 THE COURT: Well, with regard to the 26(f)
22 conference with Fox, I don't know what the timing is at
23 this point. I don't know if the date for that conference
24 has passed.

25 MS. DIXON: Yes, Your Honor, it has technically

1 passed.

2 THE COURT: Okay. Well, I think that the focus
3 with regard to the third party complaint against Fox
4 properly belongs on the question whether the case can be
5 conducted here.

6 If you look at the motion to dismiss, I think it
7 makes a strong argument. I haven't reached any final
8 decision, of course, because I haven't heard your side of
9 it, but on the face of it, it certainly appears to be
10 quite a strong argument, and I wouldn't want Solar or Fox
11 to be incurring additional expense in this case if the
12 case doesn't belong here.

13 So while Solar may wish to amend the complaint
14 against Fox and while Solar may have an opportunity to do
15 that, I think the focus really ought to be on the forum
16 non conveniens argument, and I would urge you to please
17 focus on that so we can properly analyze that and make a
18 decision and proceed from there.

19 MS. DIXON: Okay.

20 THE COURT: With regard to --

21 MS. DIXON: And we have been on our briefing.
22 We're actually almost complete with it, so you will have
23 it on the 13th or before.

24 THE COURT: All right, thank you. With regard
25 to discovery, I don't recall staying discovery in this

1 case. Perhaps I'm mistaken, but I don't remember doing
2 so; and in the absence of a stay, discovery is available.
3 So I don't know what else to tell you with regard to
4 discovery.

5 MS. DIXON: I think just having you say that,
6 Your Honor, is sufficient, because that has been my
7 understanding, and Solar has complied with discovery as so
8 far as we can without, you know, breaking privilege and so
9 forth.

10 But there was I think some misunderstanding as
11 to where the November 21 hearing left things. So I just
12 wanted to get clarification on that.

13 MR. TROPP: Your Honor, Jonathan Tropp. I think
14 it might be helpful for me to speak briefly on this, and
15 Mr. Krasik may want to speak as well.

16 First of all, it's important to be clear that
17 WWE, who against these allegations are being slung, has
18 certainly not taken the position that nothing is relevant.
19 We received discovery responses and we provided responses
20 to those discovery responses. In many instances we
21 provided full and complete answers. In some instances, in
22 light of objections that we made, we did not provide
23 responses. Those objections, in many instances, are based
24 upon our position that the discovery being sought by Solar
25 is irrelevant to any issue in the case, any claim or

1 defense, and so improper under Rule 26(b), irrespective of
2 Your Honor's ruling, whenever it may come on our motion to
3 dismiss and strike.

4 There are a few places, a very small number,
5 where we also objected that discovery being sought was
6 with respect to claims that we don't believe belong in
7 this case and principally on that basis did not provide
8 some certain responses. And we met and conferred with
9 Ms. Dixon with respect to that and have agreed to talk
10 with our client about whether there's an opportunity to
11 supplement in certain ways and have agreed to get back to
12 her. We've not yet had an opportunity to do that. There
13 is no motion to compel pending, nor would one be ripe.

14 But I didn't want Your Honor to believe that the
15 WWE has simply stonewalled the discovery. Quite to the
16 contrary. We have provided responses and are continuing
17 to try to meet our discovery obligations.

18 THE COURT: All right, very good, thank you.

19 Anything further for today?

20 MR. TROPP: Your Honor, there is one more
21 matter, if I may?

22 Also pending, docket number 32 is the motion for
23 the admission of Mr. Krasik pro hac vice, and I don't
24 believe that's been acted upon. There's been no objection
25 to it. And although Mr. Krasik has been silent on this

1 call, I think that it would be helpful if that motion
2 could be allowed.

3 THE COURT: Looking at the docket sheet, it
4 appears to me that the motion was granted, but if it
5 wasn't granted, it certainly will be. It doesn't show up
6 as a --

7 MR. TROPP: Thank you, Your Honor.

8 THE COURT: It doesn't show up as a pending
9 motion. So I think that it must have been granted at some
10 point and you just didn't get notice. But we'll
11 doublecheck. In any event, please deem it granted.

12 MR. TROPP: Thank you, Your Honor.

13 MS. DIXON: It's on docket 36 as being an order
14 granted on the 22nd of November.

15 MR. TROPP: I apologize, Your Honor. It is
16 there. I looked for it today and couldn't find it, but
17 it's there. I apologize.

18 THE COURT: All right. Anything else?

19 MR. KRASIK: Your Honor, this is Curt Krasik.

20 With that invitation, let me just say that, as I
21 think you appreciate and John made clear earlier in the
22 call, the difficulty that we're facing here is that
23 Solar's counterclaims has so radically purported to expand
24 the scope of this case and in ways that we believe are
25 legally deficient and have laid out so in our motion to

1 dismiss.

2 So while we understand the local rule that the
3 filing of a motion does not stay discovery, I think that
4 further militates in favor of the procedure John laid out
5 to expeditiously address the issues in our motion to
6 dismiss/opposition to their motion for leave as quickly as
7 possible, you know, to try to identify the proper scope of
8 this litigation.

9 THE COURT: Okay. Well, I appreciate your
10 comments, and certainly in the best of all possible worlds
11 this system would not impose the burdens of unnecessary
12 discovery on anybody. In the world we live in, the
13 pendency of a motion to dismiss doesn't stay discovery
14 unless the motion to dismiss on its face appears to be
15 likely to succeed and if granted would moot the need for
16 the discovery because there would be no further litigation
17 here or anyplace else. If that standard is met, then a
18 stay is warranted. If not, then generally speaking a stay
19 is not warranted.

20 But I appreciate the work that has been done so
21 far. I understand from Mr. Tropp's comments that WWE is
22 cooperating in discovery, and I appreciate that.

23 But yes, I will endeavor to give you a prompt
24 ruling on the motion to dismiss, and I guess that's all I
25 can say today.

1 MS. DIXON: So, Judge, are we taking from that
2 that you are not granting oral argument as you had before?

3 THE COURT: I'll look at the papers and if it
4 seems to me that I'm not going to benefit from oral
5 argument and I can rule promptly, then that's what I will
6 do. Oral argument is nice and I would be happy to meet
7 you and have you come and make an oral argument, but I
8 don't want to mislead you, I'm not going to wait until
9 April to have you come here if it looks to me like I can
10 rule in advance. So I'll take a look at the papers and
11 we'll let you know if we're going to be dispensing with
12 oral argument.

13 Unless you hear from us, you can assume that
14 we'll be seeing you in April. But there is some chance, I
15 can't tell you what the odds are, but there is some chance
16 that after looking at the papers, I'll decide that I don't
17 need oral argument.

18 Okay?

19 MS. DIXON:

20 MS. BAKER: Your Honor, Attorney Baker, just one
21 clarification with respect to the scheduling order.

22 Should we assume as the third party defendant
23 that we are also to abide by the scheduling order as set
24 forth in document 20 on the docket?

25 We came into this action of course a little bit

1 later than all parties, but we certainly don't want to
2 delay the adjudication of the action as a whole. We just
3 want to make sure we're preserving the rights that need to
4 be and taking the appropriate actions to protect our
5 client.

6 THE COURT: Well, I think that if you were to
7 comply with the existing scheduling order, you would risk
8 no prejudice to your client at all. On the other hand, it
9 may not be fair to expect you to do that.

10 From my point of view, as I said before, the
11 first order of business with regard to the third party
12 complaint is your argument that the case doesn't belong
13 here, and I think your client's interest is adequately
14 protected if we just focus on that right now. If that
15 proves to be a winner, then you're all set. If it proves
16 not to be a winner, then at that point, I think you're
17 going to need to have what amounts to a 26(f) conference
18 and propose a schedule to me.

19 MS. BAKER: Very good. Thank you, Your Honor.

20 THE COURT: Okay?

21 Anything else?

22 Hearing nothing, I'll wish you all a good
23 weekend.

24 (Proceedings adjourned at 2:31 p.m.)
25

C E R T I F I C A T E

In Re: WWE vs. SOLAR

I, Darlene A. Warner, RDR-CRR, Official Court
Reporter for the United States District Court for the
District of Connecticut, do hereby certify that the
foregoing pages are a true and accurate transcription of
my shorthand notes taken in the aforementioned matter to
the best of my skill and ability.

/s/_____

DARLENE A. WARNER, RDR-CRR
Official Court Reporter
450 Main Street, Room #223
Hartford, Connecticut 06103
(860) 547-0580