

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

C. E. NIEHOFF & CO.,

Plaintiff,

v.

QUANTUM DEVICES, INC.,
QUANTUM MECHANIX, INC.,
JOSEPH IGNATIUS and UNKNOWN
SHAREHOLDERS OF QUANTUM
MECHANIX, INC.,

Defendants.

OPINION and ORDER

06-C-480-C

Plaintiff C.E. Niehoff sells alternators used on military vehicles. In 2005, a number of these alternators caught fire. After spending more than \$1 million replacing the faulty alternators, plaintiff brought this civil action, alleging that defendants Quantum Devices, Inc., Quantum Mechanix, Inc., Joseph Ignatius and unidentified shareholders of defendant Quantum Mechanix breached their production contracts and warranties with plaintiff by jointly manufacturing an allegedly defective part used in the alternators.

In an order dated April 3, 2007, after noting that plaintiff had failed to allege the citizenship of each relevant party, I questioned whether this court had subject matter

jurisdiction over the action under 28 U.S.C. § 1332, and directed plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction. In response, plaintiff asserts that it has learned in discovery that defendant Ignatius is the sole shareholder of Quantum Mechanix, Inc. and consequently, that there are no “unknown shareholders” to sue.

Plaintiff is an Illinois corporation with its principal place of business in Evanston, Illinois. Defendants Quantum Device, Inc. and Quantum Mechanix, Inc. are Wisconsin corporations with their principal places of business in Barneveld, Wisconsin. Defendant Joseph Ignatius is a citizen of Wisconsin. Therefore, because the parties are diverse, subject matter exists under 28 U.S.C. § 1332.

Although plaintiff has overcome the jurisdictional hurdle, its victory is rather ephemeral. On April 6, 2007, plaintiff moved to dismiss the case without prejudice on the ground that (1) defendant Quantum Devices, Inc. had returned the items for which plaintiff sought replevin and (2) defendants were unlikely to be able to satisfy any judgment this court might render in plaintiff’s favor. I gave defendants until April 19, 2007 in which to oppose the motion; they did not do so. Consequently, plaintiff’s motion to dismiss without prejudice will be granted.

Normally, that would be the end of things. However, on April 19, 2007, defendant Quantum Devices, Inc. filed a motion of its own, requesting that the court impose sanctions

on plaintiff's counsel under Fed. R. Civ. P. 11 for failing to adequately investigate before bringing suit. In the scuffle that ensued, plaintiff and defendant Quantum Devices filed a flurry of papers, including a motion by plaintiff for leave to file a surreply. In that motion, plaintiff alleges that defendant Quantum Devices raised new facts and allegations in its reply brief, to which plaintiff wishes to respond in its proposed surreply. Because I have not considered new issues raised for the first time in defendant's reply brief, there is no reason to consider a surreply and plaintiff's motion for leave to file the surreply will be denied.

I turn then to the substance of defendant Quantum Devices' motion for sanctions. Defendant contends that plaintiff's counsel should be sanctioned because the amended complaint signed by the lawyers was not warranted under existing law and the factual allegations made in the complaint have no evidentiary support. Fed. R. Civ. P. 11(b)(2)-(3). Defendant Quantum Devices concedes that it manufactured plastic molding that encased the brass inserts manufactured by defendant Quantum Mechanix. However, defendant Quantum Devices takes the position that it was the brass inserts, and not the molding, that were defective. According to defendant, if plaintiff's counsel would have studied the purchase orders between the parties and the products defendant produced, the lawyers would have discovered that defendant Quantum Devices did not manufacture the allegedly defective brass insert and that the plastic molding it did manufacture was not faulty. Because defendant Quantum Devices takes the position that its parts were not defective, it

contends also that plaintiff had no legal ground for bringing a claim of breach of contract and fraud against it.

Defendant's objections demonstrate the true nature of its grievance: that the allegations in the complaint are false. Take, for example, defendant Quantum Devices' assertion that it did not manufacture any defective parts. To determine whether that is true, the court would first be required to make a finding with respect to whether any part molded by defendant was faulty. That is not a resolution that can be made on this record, nor is it one that ought be made in the context of a Rule 11 motion. Because this lawsuit is being dismissed before summary judgment, the court has not had time to weigh competing evidence and determine whether plaintiff's allegations are true. Regardless, to survive a motion for Rule 11 sanctions, plaintiff is not required to show that its case was airtight, only that it was not frivolous.

In its reply brief, defendant complains that plaintiff has failed to respond to its argument that the complaint lacked a legal foundation. However, merely stating that the pleadings contain legal contentions not warranted by existing law was insufficient to require a response from plaintiff. Defendant's circular argument appears to be that there was no basis for a breach of contract claim because it did not breach its contract with respect to the plastic pieces it molded. The argument is without merit. It is enough that plaintiff knew that defendant Quantum Devices manufactured the molding that encased the brass piece

manufactured by defendant Quantum Mechanix and that the piece as a whole had malfunctioned, causing fires. Plaintiff was not required to be correct about the origin of the alternator problem; it only had to have a reasonable basis for concluding that defendant had produced a faulty product. The fires in the parts of the alternator produced by defendant were sufficient ground for their complaint.

Moreover, plaintiff had reason to believe that the distinction between defendant Quantum Mechanix and defendant Quantum Devices was in name only. Both defendants shared the same Barneveld, Wisconsin mailing address, the presidents of each entity were father and son and plaintiff had contact with defendant Quantum Devices regarding the brass inserts manufactured by defendant Quantum Mechanix as well as the plastic molding manufactured by Quantum Devices.

The drafters of Rule 11 emphasized that it was not their intention that sanctions motions would generate extensive satellite litigation. Fed. R. Civ. P. 11 advisory committee's note. Neither could it have been their intention that such a motion be used as a vehicle for a court to review all of the unresolved allegations of a lawsuit to determine their validity. Defendant Quantum Devices's motion for Rule 11 sanctions will be denied.

One final matter remaining pending: defendant Quantum Devices' motion to dismiss count IV of the complaint. In light of plaintiff's motion to dismiss the whole lawsuit, defendant's motion will be dismissed as moot.

ORDER

IT IS ORDERED that

1. Plaintiff C. E. Niehoff, Inc.'s motion to dismiss without prejudice is GRANTED.
2. Plaintiff's motion to file a surreply is DENIED as unnecessary.
3. Defendant Quantum Devices, Inc.'s motion for Rule 11 sanctions is DENIED.
4. Defendant Quantum Devices' motion to dismiss count IV of the complaint is DENIED as moot.
5. The clerk of court is directed to close this case.

Entered this 30th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge