

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

NEUROSCIENCE, INC.
and PHARMASAN LABS, INC.,

Plaintiffs,

v.

RICHARD T. FORREST and
CERULEAN INVESTMENTS, INCORPORATED,

Defendants.

OPINION AND ORDER

12-cv-813-bbc

Plaintiffs Neuroscience, Inc. and Pharmasan Labs, Inc. are suing defendants Richard Forrest and Cerulean Investments, Incorporated, for submitting false insurance claims in plaintiffs' name, among other things. Plaintiffs assert claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-88, and various state laws. Defendant Forrest, who is proceeding without a lawyer, has filed a document that includes an answer to the complaint, a motion to dismiss and a motion for an extension of time. Dkt. #8. (The document is on the letterhead of defendant Cerulean Investments and defendant Forrest signed the document as president of that company, but "[c]orporations unlike human beings are not permitted to litigate pro se," In re IFC Credit Corp., 663 F.3d 315, 318-19 (7th Cir. 2011), which means that Forrest cannot represent Cerulean and that Cerulean has not yet filed an answer.) I am denying both of Forrest's motions.

Plaintiffs have filed a brief in opposition to defendant Forrest's motion to dismiss but, oddly, their brief does not actually respond to defendants' motion. Instead, defendants seem to be responding to allegations Forrest made in his answer. That was unnecessary. Fed. R. Civ. P. 7(a)(7) (party need not file reply to answer unless court orders one). See also Fed. R. Civ. P. 8(b)(6) ("If a responsive pleading is not required, an allegation is considered denied or avoided.").

The arguments in defendant Forrest's motion to dismiss do not relate to the merits of plaintiffs' claims, so I do not consider those now. Instead, Forrest argues that the case should be dismissed because plaintiffs sued on the false assumption that he was planning to file a lawsuit against them, one of plaintiffs' owners is not credible, that same owner is not a citizen of the United States and the law firm representing plaintiffs has a conflict of interest because Forrest relied on their legal advice when he submitted the insurance claims that plaintiffs now claim were fraudulent.

A complaint may be dismissed for one of the reasons listed in Federal Rule of Civil Procedure 12(b), such as lack of jurisdiction or failure to state a claim upon which relief may be granted. The reasons defendant Forrest offers are outside the scope of Rule 12(b). First, plaintiffs' beliefs about actions defendants may have taken when plaintiffs filed the lawsuit have nothing to do with the merits of plaintiffs' claims. Although Forrest is free to attempt to persuade plaintiffs in settlement negotiations that their lawsuit is unnecessary, I cannot dismiss the case simply because there may have been miscommunication between the parties.

Second, in the context of a motion to dismiss I am required to accept all factual

allegations as true, Neitzke v. Williams, 490 U.S. 319, 327 (1989), so defendant Forrest's argument about credibility is premature. If Forrest believes that any of plaintiffs' allegations are false, he will have to show in the context of a motion for summary judgment that plaintiffs do not have admissible evidence to support their claims or show through cross examination at trial that the jury should not believe plaintiffs' witnesses.

Third, a plaintiff does not have to be a United States citizen to file a federal lawsuit. In cases in which the plaintiffs are asserting state law claims only, they must show that they are not "citizens" of the same states in which defendants are citizens. 28 U.S.C. § 1332. However, in this context, "citizenship" simply means domicile, or "the state in which a person intends to live over the long run." Heinen v. Northrop Grumman Corp., 671 F.3d 669, 670 (7th Cir. 2012). In this case plaintiffs allege that all parties are Wisconsin citizens, so they could not rely on § 1332 as a basis for jurisdiction and they have not tried to do so. Instead, plaintiffs say that jurisdiction is present because they are asserting a claim that arises under RICO, which is a federal law. 28 U.S.C. § 1331. In that type of case, the citizenship of the parties is irrelevant. Although plaintiff is asserting claims under state law as well, a federal court may exercise jurisdiction over those claims if they arise out of the same facts as the federal claim, 28 U.S.C. § 1367, which seems to be the situation in this case.

Finally, a law firm's potential conflict of interest is not a ground for dismissing a case, but it could be a ground for disqualifying counsel if the opposing party shows that counsel's representation is violating an ethical rule. Silicon Graphics, Inc. v. ATI Technologies, Inc., 741 F. Supp. 2d 970 (W.D. Wis. 2010). At this point, defendant Forrest has provided

nothing but conclusory allegations to show that a conflict exists. If he believes that plaintiffs' counsel should be disqualified, he will have to file a motion and submit evidence showing that counsel are violating a particular ethical rule and that he is unfairly prejudiced by the representation. Plaintiffs may wish to investigate on their own the question Forrest raises to avoid any problems down the road.

At the end of his document, defendant Forrest asks for "at least a six-month stay/extension . . . to sell enough assets so that I may afford to offer a defense," dkt. #8 at 14, but it is not clear whether he is still seeking this relief. Since Forrest filed his motion, the magistrate judge held a preliminary pretrial conference in which Forrest had an opportunity to raise any concerns about scheduling, but the magistrate judge did not indicate in his scheduling order that Forrest had objected to the schedule. Accordingly, I am denying this motion as moot. If Forrest has a concern about meeting a particular deadline in the future, he will need to file a new motion with the court accompanied by a supporting affidavit in which he provides specific reasons for seeking more time, explains what steps he is taking to attempt to solve any problems he has and identifies the amount of extra time that he needs.

ORDER

IT IS ORDERED that defendant Richard T. Forrest's motion to dismiss and motion

for an extension of time, dkt. #8, are DENIED.

Entered this 8th day of March, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge