

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

SEAN MORRISON ENTERTAINMENT, LLC,

Plaintiff,

v.

ANGELA HAYES and KAITLAN YOUNG,

Defendants.

ORDER

13-cv-753-bbc

This case was filed in October 2013, but it is still in its earliest stages. Plaintiff Sean Morrison Entertainment, LLC alleges that it was the principal financier of a “reality” television series called “Ultimate Women’s Challenge,” which featured mixed martial arts competitions between women. Plaintiff wants to sue some of the competitors from the series as well as their lawyers (defendants Nicholas Thompson and the law firm O’Flaherty Heim Egan & Birnbaum, Ltd) for allegedly revealing the results of the competition before it aired on television. In particular, plaintiff says that defendants included the results in a complaint filed in March 2011 in the Circuit Court for La Crosse County, Wisconsin. (Plaintiff does not discuss any details about the scope of the state court lawsuit.) Plaintiff asserts legal theories under Wisconsin’s trade secrets law, Wis. Stat. § 134.90, and the tort of interference with a contract. In addition, plaintiff seeks a declaration that it is entitled to “commercially exploit” the competitor defendants’ “names, voices, likenesses, statements and

appearances.”

In an order dated March 6, 2014, I granted a motion to dismiss filed by defendant Thompson and the law firm on the ground that plaintiff failed to state a claim upon which relief may be granted. Dkt. #36. Plaintiff then filed a motion for leave to amend its complaint, which I denied as well in an order dated June 24, 2014. Dkt. #54. First, I noted that plaintiff failed to explain how it cured the deficiencies in the previous complaint, so I concluded that plaintiff forfeited any right it had to amend. In addition, I stated that, even if I considered the arguments plaintiff raised for the first time in its reply brief, I would deny plaintiff’s motion because plaintiff still had not identified any viable claims against Thompson and the law firm. With respect to plaintiff’s trade secrets claim, I concluded that plaintiff had not included allegations that defendants had disclosed information that was not known to “other persons who can obtain economic value from its disclosure or use,” which is one of the elements of a trade secrets claim under Wis. Stat. § 134.90. With respect to tortious interference, I concluded that plaintiff had failed to include allegations about two elements of that claim. In particular, plaintiff did not allege any facts that defendants knew about a contract that plaintiff had with a third party at the relevant time or, if they did know, that they had engaged in conduct that disrupted the contractual relationship. Burbank Grease Services, LLC v. Sokolowski, 2006 WI 103, ¶ 44, 294 Wis. 2d 274, 717 N.W.2d 781; Anderson v. Regents of the University of California, 203 Wis. 2d 469, 490, 554 N.W.2d 509 (Ct. App. 1996). Further, because plaintiff had had multiple chances to support these claims, I declined to give plaintiff leave to try again. United States ex rel.

Fowler v. Caremark RX, L.L.C., 496 F.3d 730, 740 (7th Cir. 2007).

Plaintiff has disregarded the June 24 order by filing another motion for leave to amend its complaint. Dkt. #54. Because I declined to give plaintiff leave to amend and plaintiff does not even attempt to explain why it filed the motion in defiance of the court order, I am denying this motion as well. If plaintiff believes that the court erred in denying any of his motions, it is free to file an appeal at the conclusion of this case.

Angela Hayes and Kaitlan Young are the only defendants left in this case. Because plaintiff's trade secrets and tortious interference claims against those defendants likely fail for the same reasons as the claims against defendant Thompson and the law firm, I am directing plaintiff to show cause why those claims should not be dismissed as well. Cf. Acequia, Inc. v. Prudential Insurance Co. of America, 226 F.3d 798, 807 (7th Cir. 2000) (sua sponte grant of summary judgment appropriate "where one defendant succeeds in winning summary judgment on a ground common to several defendants, if the plaintiff had an adequate opportunity to argue in opposition").

I am also skeptical of plaintiff's declaratory judgment claim against Hayes and Kaitlan. In its complaint, plaintiff says that it needs a declaration that it is entitled to use their "name[s], voice[s], likeness[es], statements and appearances in film, videotape or photographs" because of the possibility that plaintiff may "commercially exploit the Series" in the future. Cpt. ¶¶ 82-87, dkt. #1. However, that claim is in tension with plaintiff's allegation that a "reality television 'contest' derives its economic value from the uncertainty of the outcome, [so] the premature disclosure of the outcome will make it *impossible* for

Plaintiff to negotiate the sale or distribution of the Series with a television network.” Id. at ¶ 78 (emphasis added). This raises the question whether there “is an actual controversy between the two parties.” NewPage Wisconsin Systems Inc. v. United Steel, Paper & Forestry, Rubber, Manufacturing, Energy Allied Industries & Service Workers International Union, AFL-CIO/CLC, 651 F.3d 775, 776 (7th Cir. 2011). If not, then plaintiff’s claim for a declaratory judgment must be dismissed as well for lack of subject matter jurisdiction. Accordingly, in its response to this order, plaintiff should address the question whether “there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007) (internal quotations omitted).

ORDER

IT IS ORDERED that

1. Plaintiff Sean Morrison Entertainment, LLC’s motion for leave to file an amended complaint, dkt. #57, is DENIED.

2. Plaintiff may have until August 11, 2014 to show cause why this case should not be dismissed for the reasons discussed in this order. If plaintiff does not respond by that date, plaintiff’s trade secrets and tortious interference claims against defendants Angela Hayes and Kaitlan Young will be dismissed for failure to state a claim upon which relief may be granted and plaintiff’s declaratory judgment claim will be dismissed for lack of subject

matter jurisdiction.

Entered this 25th day of July, 2014.

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