UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	No. 16 C 8637 Judge Thomas M. Durkin

ORDER

Certain Direct-Action Plaintiffs seek to amend their complaints to add certain defendants and claims. R. 3896; R. 3897. Two of the proposed defendants are already named as defendants in other complaints in this case: defendant Case[i] since January 2019; and defendant Keystone[ii] since July 2020. Case and Keystone were originally named as third-party co-conspirators in January 2018. Rabobank,[iii] the third proposed defendant, is not yet a named defendant in any complaint, but has been participating in discovery since February 2018, including depositions of Rabobank employees. Additionally, some Plaintiffs seek to add to their complaints RICO claims based on a conspiracy to manipulate the Georgia Dock price index.[iv] Similar claims have been part of other complaints in the case since April 2019.[1]

[1] Defendants do not oppose the motion by plaintiff Quirch Foods to amend its complaint "to clarify that it is asserting claims in this action that also arise out of direct chicken purchases made by a newly acquired affiliate, pursuant to an assignment of claims executed between Quirch and its affiliate within the last month." R. 3896 at 1; *see* R. 4008 at 20 n.19.

Originally, some Plaintiffs sought to amend their complaints to add Amick, which is also already a defendant in a number of complaints. Those Plaintiffs withdrew that portion of their motion. *See* R. 4084.

Defendants[v] argue that the motion to amend is made without good cause in violation of Federal Rule of Civil Procedure 16(b). "In making a Rule 16(b) good-cause determination, the primary consideration for district courts is the diligence of the party seeking amendment." *Alioto v. Town of Lisbon*, 651 F.3d 715, 720 (7th Cir. 2011); *Peters v. Wal-Mart Stores E., LP*, 512 Fed. App'x 622, 627-28 (7th Cir. 2013) ("[T]he good-cause standard focuses on the diligence of the party seeking amendment, not the prejudice to the nonmoving party."). A party's diligence is assessed relative to the circumstances of the case. *See Alioto*, 651 F.3d at 720 ("relative diligence").

The April 15, 2019 deadline for amending the pleadings has passed. The Court never set a new deadline, but the scheduling order has been significantly extended in the meantime. When the April 15 amendment deadline was set, the cut-off date for fact discovery was to have been five months later on October 14, 2019. The discovery cut-off is now June 11, 2021, *see* R. 3788, which is more than six months away. Thus, Plaintiffs have been diligent in bringing this motion relative to the current scheduling order.[2]

Defendants argue that Plaintiffs' delay in seeking the amendments is inexcusable because the proposed defendants and claims have been part of the case

[2] The Court found a lack of diligence in addressing an earlier motion to amend in this case made by the End-User Plaintiffs Class to add new class representatives. But that motion was filed after the original class discovery cut-off date and only two months before a revised class discovery cut-off date (which had been extended only because discovery was impossible for a period of time at the beginning of the COVID-19 pandemic, such that the extension did not actually provide additional time for discovery). Moreover, the Court granted that motion to the extent that a named plaintiff who was already the class representative for the District of Columbia, and had already been deposed, could also serve as the named plaintiff for New York.

for years, so Plaintiffs should have sought these amendments sooner. But the diligence relevant to a Rule 16 analysis is diligence relative to the scheduling order. Delay in and of itself is not a lack of diligence.

A primary reason for requiring diligent action is "to keep the case moving toward trial." *Alioto*, 651 F.3d 715, 720 (7th Cir. 2011). And in this case, which is already four years old, the Court is certainly concerned that the parties continue to abide by the most recent scheduling order, which the Court noted has no room to spare. *See* R. 3835 at 6. But Defendants do not explain how the proposed amendments will delay meeting the deadlines in the scheduling order. Defendants sole argument in this regard is that fifteen of the moving plaintiffs have already been deposed, and Defendants "likely would have included different or additional questions during these depositions had these parties been previously named as Defendants in the case (e.g., on their purchases from or interactions with [three of the proposed defendants])." R. 4008 at 5. Perhaps this is true; but the Court finds it difficult to believe that any dealings that are materially relevant to the case went unexamined during the depositions. And it is not as though Defendants argue that any of the depositions will have to be retaken. They simply contend that "additional discovery" will be necessary to obtain answers to questions that went unasked. Such questions if they truly are so important that they need to be asked, can be answered through supplemental interrogatories, which will not extend the scheduling order.

Defendants also baldly contend that the proposed amendments unfairly change Plaintiffs' "theory of the case" and "broaden[] the scope of the case" too late in

the game. *See* R. 4008 at 1. Defendants, however, do not explain how the proposed amendments change the case's theory or scope. And this argument is belied by Defendants' own candid observation that the proposed amendments have been part of the case for years.

Rabobank is the only proposed defendant that is not already a defendant in another complaint in this case. But Rabobank is not a stranger to this case, as it has been a significant participant in discovery. Defendants argue that Rabobank would have participated in discovery differently if it knew it was a defendant. Again, perhaps this is true. But that argument implicates Rabobank's interests, not those of any of the current Defendants making the argument on Rabobank's behalf. Once added, Rabobank can make arguments on its own behalf as to whether it can adequately defend this case on the current timetable, if it has a legitimate basis to do so.

Currently, this case is primarily about a supply-reduction conspiracy and a conspiracy to rig the Georgia Dock price index. The addition of the proposed defendants and claims to certain complaints does not add new theories to the case nor broaden its scope. As such, there should be no impact on the scheduling order. Without an impact on the scheduling order, Plaintiffs' delay in bringing this motion cannot be characterized as lacking diligence or prejudicing Defendants.

Lastly, Defendants argue that Plaintiffs' claims against Case, Keystone, and Rabobank are untimely based on the Court's earlier finding that the statute of limitations began to run "[a]t some point between February 18, 2014 and January 18,

2016." R. 4008 at 14 (quoting R. 541 at 62). That finding was made three years ago in deciding motions to dismiss the class complaints, prior to the filing of the Direct-Action complaints at issue in this motion, and prior to extensive discovery that still requires another six months before completion. The Court will wait to make any ruling on the timeliness of these claims until summary judgment, when a complete factual record will be available, and the Court can consider the views of all parties on the issue. This is the prudent course because issues of accrual and the running of the statutes of limitation are relevant to all claims in the case, not just the sub-set at issue on this motion.

Therefore, Plaintiffs' motion to amend [3896] [3897] is granted.

Unrelated to this motion, the Court notes the parties' briefs provide a glimpse into disputes regarding the adequacy of the Direct-Action Plaintiffs' consolidated complaint. The Court reminds the parties that the purpose of the consolidated complaint is not to force any individual plaintiff to concede or make any allegation or claim. Rather, the consolidated complaint is intended to streamline the pleadings so that there is only one complaint and one answer on the docket for the Court and parties to reference, rather than over 100 separate direct-action complaints. (Indeed, the references to the consolidated complaint in recent motions for reassignment by new direct-action plaintiffs (*see*, *e.g.*, R. 4088) have been helpful to the Court.) The Court views this as a ministerial task (albeit a very large one), such that, as the Court previously indicated, the process of preparing the consolidated pleadings should not

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