

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
v.	§	Civil Action No. 4:15-CV-00338
	§	Judge Mazzant
SETHI PETROLEUM, LLC, SAMEER P.	§	
SETHI	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is the Security and Exchange Commission’s Motion to Enter Judgment (Dkt. #252) and Sameer P. Sethi’s Motion to Amend Findings (Dkt. #258). After reviewing the relevant pleadings and motions, the Court finds the motion for judgment should be granted and the motion to amend findings should be denied.

BACKGROUND

As early as January 2014, Defendant Sameer Sethi (“Sameer”) and his company, Sethi Petroleum, LLC (“Sethi Petroleum”), began offering to investors positions in the Sethi-North Dakota Drilling Fund-LVII Joint Venture (“NDDF”). The offering proposed income from two sources: oil-and-gas revenues, and tax benefits for oil-and-gas exploration and production activities.

On May 14, 2015, the Securities and Exchange Commission (“SEC”) brought a civil enforcement action under Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder. The SEC alleged that Defendants carried on a fraudulent scheme and made materially false and misleading statements to potential investors to offer and sell securities in the NDDF. On May 26, 2015, the Court entered the Agreed Preliminary Injunction, Asset Freeze, and Other Relief (“Preliminary Injunction”) (Dkt. #23).

Shortly thereafter, Sameer began selling securities with a different company, Cambrian Resources LLC (“Cambrian”). On August 1, 2016, the Court held a show cause hearing regarding the alleged contempt by Sameer and others. On August 9, 2016, the Court entered an order finding Sameer, his father Praveen Sethi (“Praveen”), and John Weber (“Weber”) in contempt for violating the terms of the Preliminary Injunction by directly or indirectly engaging in the offer, issuance, or sale of securities through Cambrian (Dkt. #169).

On September 14, 2016, the SEC moved for summary judgment, claiming that Defendants made material misrepresentations about Defendants’ history and experience; false claims of partnerships with major oil companies; false claims about NDDF’s interest in wells; false and unfounded representations about NDDF returns; and Sameer’s personal instructions to “boiler room” sales staff to mislead potential investors. Sameer argued that his statements were not fraudulent because they were forward-looking and because not enough time had passed for his plans to materialize. Sameer also argued that NDDF’s relationship with Slawson Exploration Co. was a relationship with a major oil and gas company. The Court denied summary judgment on four theories asserted by the SEC, but granted summary judgment based on Sameer’s representations that Sethi Petroleum had partnerships with major oil companies (Dkt. #238 at p. 20).

On March 1, 2017, the SEC filed a motion for judgment (Dkt. #252). On March 23, 2017, Sameer filed a response (Dkt. #256; Dkt. #257).¹ On March 30, 2017, the SEC filed a reply (Dkt. #259). On April 10, 2017, Sameer filed a surreply (Dkt. #262).

¹ Sameer filed a Combined Motion to Amend Findings and Response to Plaintiff’s Motion to Enter Judgment (Dkt. #256), which was not designated as a pending motion due to the local rule prohibiting multiple motions in a single filing. E.D. Tex. Civ. R. CV-7(a). On March 27, 2017, Sameer filed a Motion to Amend Findings (Dkt. #258), which contained identical arguments to the first part of his previous filing and was designated as a pending motion.

On March 27, 2017, Sameer filed a Motion to Amend Findings (Dkt. #258). On April 10, 2017, the SEC filed a response (Dkt. #263). On April 21, 2017, Sameer filed a reply (Dkt. #264).

ANALYSIS

I. Motion to Amend Findings (Dkt. #258)

Sameer urges the Court to amend its findings according to Federal Rule of Civil Procedure 52. Rule 52 permits a court to amend, or make additional findings, upon a party's motion. Fed. R. Civ. P. 52(b). "The purpose of Rule 52 is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence." *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986) (citation omitted). However, a motion to amend should not be employed to introduce evidence that was available at trial but was not proffered, to relitigate old issues, to advance new theories, or to secure a rehearing on the merits. *Id.* The court is only required to amend its findings of fact based on evidence contained in the record. *Id.* To do otherwise would defeat the compelling interest in the finality of litigation. *Id.*

Sameer argues that the Court should amend its finding on Sameer's misrepresentation regarding partnerships with major operators. Sameer argues that the Court incorrectly characterized the size of its well operators because the operators cited by the Court in its opinion granting summary judgment are publicly traded or have market capitalization of more than \$7 billion. Because this was the only basis for which the Court granted summary judgment, Sameer argues that summary judgment was improper.

The SEC argues that Sameer waived this argument when his only response to summary judgment was that statements about direct partnerships with major oil and gas operators were future-looking statements.

The record before the Court at the summary judgment stage does not support amended findings. Sameer's response to summary judgment first claimed that his statements were not false because they were future-looking statements (Dkt. #211 at p. 12). Sameer then argued that Slawson Explorativo Co. "is a major oil and gas company that [sic] prominently in the area where the wells were located" (Dkt. #211 at p. 13). Sameer's only support was a URL leading to a Forbes.com profile of the Slawson family. Sameer did not argue that any of the other operators were major oil and gas companies. Sameer did not provide evidence of the size or influence of the other operators, and he did not request the Court take judicial notice of the sizes of oil companies.

This is the first time Sameer has attempted to provide support for the size of each operator. The facts were available to Sameer when he responded to summary judgment; yet, Sameer did not provide such support in either his response or surreply to summary judgment. Therefore, Sameer may not now assert those facts to relitigate summary judgment. Sameer's motion is denied.

Further, Sameer's representations led a reasonable investor who was not well-versed in oil and gas to believe that Sethi Petroleum's partnerships were with much larger companies. Sethi Petroleum represented on its webpage that it had current relationships with Exxon and Hess Corporation. The cold call script stated that Sethi Petroleum was "partnered directly with a couple of HUGE, PUBLICLY trades companies like Conoco Phillips, Continental, GMXR just to name a few. We are working DIRECTLY with these major companies." Sethi Petroleum implied that it had a current relationship with ConocoPhillips by using the phrase "just to name a few" and the present tense verb "are." Further, the next sentence confirms this implication by

claiming that Sethi Petroleum was working with “these” companies, not similar companies. For all of these reasons, Sameer’s motion to reconsider is denied.

II. Motion for Judgment (Dkt. #252)

In his response to the Motion to Enter Judgment, Sameer argues reliance on counsel in two regards. First, Sameer argues that the Court should amend its findings on intent necessary to find securities fraud. Sameer argues that he made statements based on advice of counsel, and therefore he lacked the intent to defraud investors. Sameer also argues his reliance on counsel in the context of defeating a factor for permanent injunction. The SEC argues that Sameer waived this argument by failing to bring it up until the surreply to the motion for summary judgment.

To the extent that Sameer asks the Court to amend its summary judgment findings as to securities fraud, the Court agrees with the SEC. Courts do not consider issues raised for the first time in a reply brief. *Morin v. Moore*, 309 F.3d 316, 328 (5th Cir. 2002) (citing *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 260 n.9 (5th Cir. 1995)). Therefore, Sameer waived his argument regarding his underlying violation of the securities laws. A motion for judgment is not the appropriate time to introduce evidence relating to liability.

A. Permanent Injunction

Section 21(d) of the Exchange Act provides for injunctive relief when the evidence establishes a “reasonable likelihood” that a Defendant will engage in future violations of the securities laws. *See* 15 U.S.C. §§ 77t(b), 78u(d)(1); *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981); *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); *SEC v. Koracorp Indus., Inc.*, 575 F.2d 692 (9th Cir. 1978). “[T]he Commission is entitled to prevail when the inferences flowing from the defendant’s prior illegal conduct, viewed in light of present circumstances,

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