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Tara Scott et al., Order on Certain Pending Motions

Elizabeth E. Long
Fulton County Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

TARA SCOTT and WILSON CARTER,)	
INDIVIDUALLY and AS TRUSTEES OF)	
THE BAILEY MIDDLETON CARTER)	Civil Action
2009 TRUST, THE MARY WILSON)	File No. 2017CV297083
CARTER 2009 TRUST, and THE)	
WILSON M. CARTER 1988 TRUST,)	
)	
Plaintiffs,)	Bus. Case Div. 2
)	
v.)	
)	
JOHN J. CARR and)	
JOHN MATTHEW DWYER, III,)	
)	
Defendants.)	
)	

ORDER ON CERTAIN PENDING MOTIONS

The above styled matter came before this Court on June 28, 2018 for a hearing on all pending motions. Having considered the relevant portions of the record as it pertains to each of the pending motions, the Court finds as follows:

(1) Plaintiffs' Motion to Substitute

Pursuant to O.C.G.A. §§ 9-11-17, 9-11-20, and 9-11-21, Plaintiffs move to substitute Bailey M. Carter and Mary Wilson Carter, a minor acting through her next friend Wilson Carter, as party-Plaintiffs to replace the Bailey Middleton Carter 2009 Trust and the Mary Wilson Carter 2009 Trust.

O.C.G.A. §9-11-17(a) provides in part:

Every action shall be prosecuted in the name of the real party in interest...No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time

has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Further, under the Civil Practice Act, “[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.” O.C.G.A. §9-11-20(a).

Importantly, “[m]isjoinder of parties is not ground for dismissal of an action.” O.C.G.A. §9-11-21. Rather, “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” *Id.* See also Smith v. Vencare, Inc., 238 Ga. App. 621, 628–29, 519 S.E.2d 735, 743 (1999) (“O.C.G.A. § 9-11-15(a) must be read in pari materia with O.C.G.A. §9-11-21 when a new party is added, dropped, or substituted for an existing party, and leave of the trial court must be obtained to add a new party”) (citations omitted). In considering requests for leave to add a party, “[f]actors to be considered include ‘whether the new party will be prejudiced thereby and whether the movant has some excuse or justification for having failed to name and serve the new party previously.’” Dean v. Hunt, 273 Ga. App. 552, 552–53, 615 S.E.2d 620, 622 (2005) (quoting Aircraft Radio Systems v. Von Schlegell, 168 Ga. App. 109, 111(2), 308 S.E.2d 211 (1983)).

In the case at bar, Plaintiffs allege Defendants John J. Carr and John Matthew Dwyer violated state and federal securities laws and committed other torts when they solicited and sold Plaintiffs shares in Vantage Corporation (“Vantage”). Plaintiffs assert, *inter alia*, that at the time they were sold the Vantage shares: the stock was not a federal covered security, was not subject to an effective registration statement and was not exempt from registration; Defendants received direct or indirect compensation for their role in soliciting investments in Vantage but were not

registered as securities salespeople or as investment advisors; and Defendants made misleading statements of material fact or omissions when soliciting and selling shares to Plaintiffs causing Plaintiffs to suffer damages.

Plaintiffs initiated this action on October 25, 2017. The original complaint names as Plaintiffs Wilson Carter as Trustee of the Bailey Middleton Carter 2009 Trust and the Mary Wilson Carter 2009 Trust (collectively the “Trusts”), among others, based on a Schedule K-1 provided by Vantage naming the foregoing Trusts as shareholders. On March 15, 2018, Defendant Carr moved to dismiss the claims asserted by Carter as Trustee of the Bailey Middleton Carter 2009 Trust and the Mary Wilson Carter 2009 Trust for lack of standing, asserting the Trusts have never purchased Vantage stock; rather, according to the relevant Stock Subscription Agreements and corresponding Stock Certificates, Bailey M. Carter and Mary Wilson Carter each purchased Vantage shares in their individual capacities. On March 26, 2018, Plaintiffs filed the instant motion seeking to substitute Bailey M. Carter and Mary Wilson Carter in the place of the Trusts and contemporaneously therewith Plaintiffs submitted an Amended Complaint.

Insofar as Bailey M. Carter and Mary Wilson Carter, individually, are the real parties at interest with respect to claims arising from their purchase of Vantage stock and whereas Plaintiffs relied on Vantage’s K-1 when initially naming the Trusts as Plaintiffs and acted promptly to substitute the proper parties within 11 days of Defendant Carr raising an objection, the Court finds substitute is proper. Further, given the preliminary posture of the case and that the requested substitution does not materially alter the nature of the claims against Defendants or the relief sought, the Court discerns no prejudice which will result from the substitution. Accordingly, Plaintiffs’ Motion to Substitute is hereby GRANTED.

(2) Defendants' Motions to Dismiss and Motion for Judgment on the Pleadings

In Defendant Carr's Motions to Dismiss and Defendant Dwyer's Motion for Judgment on the Pleadings, Defendants assert, *inter alia*, that Plaintiffs have failed to articulate sufficient facts in their pleadings to state actionable claims and have failed to provide them fair notice of the claims asserted against them.

A complaint fails to state a claim upon which relief can be granted and warrants dismissal or judgment on the pleadings "only if...its allegations 'disclose with certainty' that no set of facts consistent with the allegations could be proved that would entitle the plaintiff to the relief he seeks."

Bush v. Bank of New York Mellon, 313 Ga. App. 84, 89, 720 S.E.2d 370, 374 (2011) (quoting Benedict v. State Farm Bank, FSB, 309 Ga. App. 133, 134(1), 709 S.E.2d 314 (2011)).

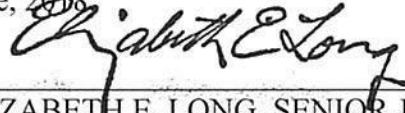
Importantly, under Georgia's Civil Practice Act a complaint must contain "[a] short and plain statement of the claims showing that the pleader is entitled to relief" (O.C.G.A. §9-11-8(a)(2)(A)) and that statement "must include enough detail to afford the defendant fair notice of the nature of the claim and a fair opportunity to frame a responsive pleading." Benedict, 309 Ga. App. at 134. Further, "although most elements of most claims can be pled in general terms, so long as they give fair notice of the nature of the claims to the defendant, all allegations of fraud "shall be stated with particularity." Bush, 313 Ga. App. at 90 (quoting O.C.G.A. §9-11-9(b)). However, "when a plaintiff fails to conform to these [pleading] requirements, the proper remedy is a more definite statement, not a dismissal of the complaint or judgment on the pleadings, at least so long as the plaintiff is able and willing to amend his pleadings to conform to the statutory requirements." Bush, 313 Ga. at 90 (citing Hall v. Churchwell's, Inc., 243 Ga. 852, 853, 257 S.E.2d 272 (1979)).

Here, the Court finds Plaintiffs' Complaint and First Amended Complaint fail to meet the foregoing pleading requirements. Accordingly, Plaintiffs are ordered to amend their pleadings to

provide more definite statements as to the factual allegations giving rise to their claims. At a minimum, Plaintiffs must articulate facts regarding when and how they were improperly solicited and induced to purchase Vantage shares by each Defendant, and Plaintiffs must state their allegations of fraud with particularity including the alleged fraudulent statements/conduct of each Defendant, respectively.

Plaintiffs shall file their amended pleading no later than July 13, 2018. Defendants are ordered to file amended answers within thirty (30) days after service of the amended pleading. See O.C.G.A. §9-11-15(a).

SO ORDERED this 29 day of June, 2018.



ELIZABETH E. LONG, SENIOR JUDGE
 Metro Atlanta Business Case Division
 Fulton County Superior Court
 Atlanta Judicial Circuit

Served upon registered service contact through eFileGA:

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