UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

INDEPENDENCE INSURANCE SERVICE CORPORATION, Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	3-04-cv-1512 (JCH)
HARTFORD FINANCIAL SERVICES GROUP, INC., ET AL Defendants	:	MAY 3, 2005

RULING RE: DEFENDANTS' MOTION TO DISMISS [DKT. NO. 8]
AND PLAINTIFF'S MOTIONS TO AMEND COMPLAINT [DKT. NO. 14]
AND DELETE A DEFENDANT [DKT. NO. 13]

The plaintiff, Independent Insurance Service Corporation (referred to herein as "IISC"), filed this civil action against the named defendants (where appropriate referred to herein collectively as "Hartford"). IISC's action asserted diversity as its sole basis for subject matter jurisdiction. On November 11, 2004, Hartford filed a Motion to Dismiss in response to the IISC's Complaint, based on the fact that IISC and one of the defendants lack complete diversity. On November 12, 2004, two of the defendants, Hartford Life Insurance Company, Inc. ("Hartford Life Insurance"), and Hartford Life and Accident Insurance Company, Inc. ("Hartford Life and Accident"), filed in the United States District Court for the District of Connecticut, and served on IISC, a complaint for a declaratory judgment and monetary damages (the "Hartford Life Action")(Case No. 3:04-CV-1901 (JCH)). The Hartford Life Action relates to the same contract at issue in IISC's complaint in the action. In response to Hartford's Motion to Dismiss, on December 2, 2004, IISC concurrently filed two motions, a Motion to Delete Hartford Financial Services Group, Inc. ("Hartford Financial"), the non-diverse party in this action, as well as a Motion to Amend/Correct Complaint. For the reasons that follow,

Hartford's Motion to Dismiss is DENIED, and IISC's Motion to Amend the Complaint and Motion to Delete a Defendant are both GRANTED.

I. BACKGROUND

A. IISC's Filing of Initial Complaint and Hartford's Motion to Dismiss

IISC is a Delaware corporation with its principal place of business in New York, New York. Hartford Life Insurance is a Connecticut corporation with its principal place of business in Hartford, Connecticut. Hartford Life and Accident is also a Connecticut corporation with its principal place of business in Hartford, Connecticut. Hartford Financial is a Delaware corporation, with its principal place of business in Connecticut. IISC's Complaint concerns a contract entered into by IISC and Hartford Life Insurance and Hartford Life and Accident. All contractual obligations were by and between IISC, Hartford Life Insurance, and Hartford Life and Accident. Hartford Financial was not a party to the Contract. The amount in dispute, exclusive of interests and costs, is in excess of $75,000.00.

On November 11, 2004, Hartford moved to dismiss this case for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and 12(h)(3). In its motion, Hartford alleges that IISC's complaint is "facially invalid" and that this court lacks subject matter jurisdiction based upon diversity, the sole basis for jurisdiction alleged in the complaint, because IISC and one of the named defendants, Hartford Financial, are both Delaware corporations. Accordingly, Hartford insists this court must dismiss IISC's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(h)(3).

B. IISC's Concurrent Motions to Delete Party Defendant and Amend/Correct Complaint

On December 2, 2004, IISC concurrently filed a Motion to Amend/Correct a Complaint and a Motion to Delete A Defendant. IISC moved pursuant to Fed. R. Civ. P. 15 (a) to Amend the Pleadings. Furthermore, pursuant to Fed. R. Civ. P. 21, IISC seeks to amend its complaint by eliminating Hartford Financial, as a non-diverse party, so as to restore this court's diversity jurisdiction. In response, Hartford filed a memorandum in opposition to IISC's Motion to Amend the Complaint and to its Motion to Delete a Defendant. Hartford argues that this court should deny IISC's Motion to Amend and Motion to Delete for several reasons: IISC did not seek to amend its complaint to remove Hartford Financial as a defendant or take any other action to address the jurisdictional defect prior to the filing of Hartford's motion to dismiss. Further, Hartford argues that on November 12, 2004, Hartford Life Insurance and Hartford Life and Accident filed in the United States District Court for the District of Connecticut, and served on IISC, a complaint for a declaratory judgment and monetary damages (the "Hartford Life Action")(Case No. 3:04-CV-1901 (JCH)). The Hartford Life Action relates to the same contract at issue in IISC's complaint in the instant action. Finally, Hartford claimed that, if IISC's motions were granted, the remaining non-deleted party defendants would be prejudiced because they had been unfairly subjected to additional burden and costs of addressing any "resurrected" IISC action, and out of an alleged risk of being subordinated to IISC's nominally "first-filed" action for consolidation or other purposes of potential significance in the litigation.

II. DISCUSSION

A. Standard of Review: Motion to Dismiss

Challenges to subject matter jurisdiction through a Rule 12(b)(1) motion to dismiss come in two different forms: facial attacks and factual attacks. "Facial attacks" on the complaint "require the court merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegation in his complaint are taken as true for the purposes of the motion." Menchaca v. Chrysler Credit Corp., 613 F.2d 507, 511 (5th Cir. 1980). On a facial attack, a plaintiff is afforded safeguards similar to those provided in opposing a Rule 12(b)(6) motion: the court must consider the allegations of the complaint to be true. Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir. 1981); see Moore's Federal Practice §§ 12.30[4], 12.30[5] (Matthew Bender 3d ed. 2004); see also Valentin v. Hospital Bella Vista, 254 F.3d 358, 362-365 (1st Cir. 2001) (discussing differences between facial or sufficiency challenge and factual challenge). This court must grant a motion to dismiss under Fed. R. Civ. P. 12(b)(1) if, after accepting "all well pleaded factual allegations as true" and drawing "reasonable inferences in favor of the plaintiff", the court determines that the plaintiff did not establish that the court has subject matter jurisdiction over the case. Hartford Accident & indem. Co., v. Equitas Reinsurance Ltd., 200 F.Supp. 2d 102, 106 (D. Conn. 2002) (citations omitted). Moreover, in considering such motions, the court must read the complaint liberally, drawing all inferences in favor of the pleader. IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049,1052 (2d Cir.1993). "The district court should deny the motion [to dismiss] unless it appears to a certainty that a plaintiff can prove no

set of facts entitling him to relief." Id. (quoting Ryder Energy Distribution Corp. V. Merrill Lynch Commodities Inc., 748 F.2d 774, 779 (2d Cir. 1984)). The district court may deny a motion to dismiss under 12(b) and sustain jurisdiction when an examination of the entire complaint reveals a proper basis for assuming subject matter jurisdiction other than one that has been improperly asserted by the pleader. See New York State Waterways Ass'n, Inc. v. Diamond, 469 F.2d 419, 421 (2d Cir. 1972) (citing Wright and Miller, Federal Practice and Procedure (1969) § 1206) (holding that it is the court's duty to read the complaint liberally, to determine whether the facts set forth justify taking jurisdiction on grounds other than those specifically pleaded).

B. Asserted Grounds for Dismissal

Hartford's Motion to Dismiss argues that this court is required to dismiss the action commenced by IISC for lack of subject matter jurisdiction because it is clear on the face of the complaint that this court lacks diversity jurisdiction, because IISC and Hartford Financial are both Delaware corporations, thereby defeating complete diversity. Hartford argues that, since there is not complete diversity between IISC and all defendants joined in the complaint, this court lacks subject matter jurisdiction under 28 U.S.C. § 1332 and must dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1).

In the complaint, IISC names three parties as defendants to the suit. Hartford Financial does share the same citizenship as IISC, thereby defeating diversity for the purposes of section 1332. However, accepting all of IISC's allegations in the complaint as true, it nevertheless appears that IISC's inclusion of Hartford Financial as a party defendant in its complaint constitutes an act of misjoinder by IISC and, pursuant to Fed. R. Civ. P. Rule 21, misjoinder is not a ground for a 12(b)(1) dismissal.

Misjoinder of parties to claims occurs when a plaintiff structures the case in violation of permissive party joinder prerequisites:

> [A]ll persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transactions or occurrences, and if any questions of law or fact common to all defendants will arise in the action

Fed. R. Civ. P. 20(a). Thus, the Rule governing permissive party joinder defines those parties who may be properly joined in a single action. See Glendora v. Malone, 917 F.Supp. 224, 227 (S.D.N.Y. 1996) ("the cases make clear that misjoinder of parties occurs when they fail to satisfy the conditions for permissive joinder under Rule 20(a)"); see also Moore's Federal Practice § 21.02[1] (Matthew Bender 3d ed. 2004) ("failure to satisfy either prerequisite for permissive joinder constitutes misjoinder of parties").

Thus, pursuant to Fed. R. Civ. P. 20(a), claims against co-defendants must arise from the same transaction or occurrence and must give rise to at least one common question of law or fact. Fed. R. Civ. P. 20(a). A plaintiff may also commit misjoinder by mistake, such as filing a claim even though the plaintiff is not the real party in interest or naming parties who have no interest in the dispute. See Fed. R. Civ. P. 17(a) ("every action shall be prosecuted in the name of the real party in interest"). Furthermore, "misjoinder of parties is not ground for dismissal of the action." Fed. R. Civ. P. 21; See Moore's Federal Practice § 21.02[2] (Matthew Bender 3d ed. 2004) (instructing that original action never dismissed due to misjoinder, but non-joinder may result in dismissal); see, e.g., Lamar Advertising v. City of Lakeland, 980 F. Supp. 1455, 1459 (M.D. Fla. 1997) (motion to dismiss denied because misjoinder is not grounds for dismissal, but court instead granted motion to strike names of improperly joined

defendants).

The initial complaint pled by IISC named Hartford Financial as a co-defendant in the suit. However, both IISC and Hartford agree that Hartford Financial has neither an interest in the dispute, nor shares a common question of fact or law in the dispute with its co-defendants. Both IISC and Hartford concede that the contract at issue in this matter was entered into by IISC and defendants Hartford Life Insurance, and Hartford Life and Accident. All contractual obligations were by and between IISC and Hartford Life Insurance and Hartford Life and Accident, and not Hartford Financial. Hartford Financial was not a party to the original Contract in dispute. Hartford Financial's dispensability in this action is further corroborated by the fact that Hartford, in its intervening action filed against IISC, did not include Hartford Financial as a party plaintiff to its action. See "Hartford Life Action", Case No. 3:04-CV-1901 (JCH)). Because IISC's Complaint reveals the facts discussed above, it is clear to this court that the inclusion of Hartford Financial as a defendant in its suit constitutes misjoinder.

C. Standard of Review: Motion to Amend Complaint

Pursuant to Fed. R. Civ. P. Rule 15(a),

> [A] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calender, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires

Fed. R. Civ. P. Rule 15(a). The liberal mandate of Fed. R. Civ. P. 15(a) is that leave to amend should be freely given when justice so requires. Prescription Plan Service Corp.

v. Franco, 552 F.2d 493, 498 (2d Cir. 1997); see also Moore's Federal Practice § 15.14[3] (Matthew Bender 3d ed. 2004) ("essentially, a plaintiff may correct the complaint to show that jurisdiction does in fact exist"). Moreover, a decision to grant or deny a motion to amend is within the sound discretion of the trial court. Foman v. Davis, 371 U.S. 178, 182 (1962). The Supreme Court has emphasized that amendment should normally be permitted and has stated that refusal to grant leave without justification is "inconsistent with the spirit of the Federal Rules." Rachman Bag Co. v. Liberty Mutual Insurance, 46 F.3d 230, 235 (2nd Cir. 1995) (quoting Foman, 371 U.S. at 182). The Supreme Court has also held that, "[i]n the absence of any apparent or declared reason - such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . etc. - the leave should, as the rules require, be 'freely given'." Foman, 371 U.S. at 182. Delay alone, unaccompanied by such an "apparent reason" does not usually warrant denial of leave to amend. State Teachers Retirement Bd. v. Fluor Corp., 654 F.2d 843, 856 (2d Cir. 1981). The rule in the Second Circuit has been to allow a party to amend its pleadings in the absence of prejudice or bad faith. Id.

In determining what constitutes "prejudice," this court must consider the following factors: (1) whether the amendment would require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (2) whether the amendment would significantly delay the resolution of the dispute; or (3) whether the amendment would prevent the plaintiff from bringing a timely action in another jurisdiction. See Block v. First Blood Associates, 988 F.2d 344, 350 (2d Cir. 1993).

Furthermore, one of the most important considerations in determining whether an amendment would be prejudicial is the degree to which it would delay the final disposition of the action. H.L. Hayden Co. v. Siemens Medical Systems, 112 F.R.D. 417, 419 (S.D.N.Y. 1986). "The longer the period of unexplained delay, the less will be required of the non-moving party in terms of a showing of prejudice." Evans v. Syracuse City Sch. Dist., 704 F.2d 44, 47 (2d Cir. 1983). "[A] proposed amendment . . . [is] especially prejudicial . . . [when] discovery had already been completed and [non-movant] had already filed a motion for summary judgment." Krumme v. Westpoint Stevens Inc., 143 F.3d 71, 88 (2nd Cir. 1998) (quoting Ansam Associates v. Cola Petroleum, Ltd., 760 F.2d 442, 446 (2d Cir. 1985)).

D. Asserted Grounds for Leave

IISC filed a motion under Fed. R. Civ. P. Rule 15(a) to amend to delete Hartford Financial as a dispensable party to its action. Because its Motion to Amend was filed after the expiration of twenty (20) days from the date of the filing of its initial Complaint, IISC requires leave of this court to Amend the Pleadings.

In this case, IISC filed its Motion to Amend nearly three months after the filing of its Complaint, and three weeks after defendant's Motion to Dismiss. This total span of time does not constitute undue delay. See Rachman Bag Co. v. Liberty Mutual Insurance, 46 F.3d 230, 235 (2nd Cir. 1995) (finding district court's decision to allow amendment proper though party moved to amend its answer more than four years after the complaint was filed). Moreover, Hartford has not asserted any bad faith or dilatory motive in IISC seeking the amendment.

However, Hartford does claim it would be prejudiced in the following ways if this

court were to grant IISC's motions. Hartford has already expended the efforts and costs of initiating an action in which the proper parties of this contract dispute are joined; by effectively permitting IISC to "un-do" its admitted mistake and in turn proceed with the action against the remaining defendants despite the intervening filing of the Hartford Life Action; and Hartford Life Insurance and Hartford Life and Accident would unfairly be subjected to the additional burden and costs of addressing any "resurrected" IISC action despite the fact that the parties' claims can be adjudicated through the Hartford Life Action.

E. Standard of Review: Motion to Delete Party Defendant.

"Parties 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." Fed.R.Civ.P. 21. Rule 21 expressly permits orders adding or dropping parties "at any stage of the action". Id.

The question of whether a party is dispensable and may be dismissed from an action is essentially governed by Fed.R.Civ.P. 19(b). Curley v. Brignoli, Curley & Roberts Assocs., 915 F.2d 81, 89 (2d Cir. 1990) (citing Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826 (1989)). The leading case interpreting the criteria for determining indispensable parties pursuant to Fed. R. Civ. P. 19(b) is Provident Tradesmens Bank & Trust Co. V. Patterson, 390 U.S. 102 (1968). In Provident Tradesmens, the Supreme Court discussed four factors in Rule 19(b) that a court is required to consider. Id. at 109. First, the court must weigh the interest of the plaintiff in having a forum, with the strength of this interest dependent upon "whether a satisfactory alternative forum exists." Id. at 109. Second, the defendant's interest in avoiding multiple litigation,

inconsistent relief and sole responsibility for a liability jointly shared must be considered. Id. at 110. Third, this court must consider whether there exists any outsider whose ability to protect his interest will be impaired or impeded by a judgment in his absence. Id. Finally, this court must assess "the interest of the courts and the public in complete, consistent, and efficient settlement of controversies". Id. at 111.

When a party is deemed dispensable and is deleted pursuant to Rule 21, the deletion relates back to the original complaint and read it as though the deleted party were never included.

> [O]nce subject matter jurisdiction is "cured" by an amendment, courts regularly have treated the defect as having been eliminated from the outset of the action. In other words, where a change in parties, necessary to the existence of jurisdiction, is appropriate and is made (even on or after appeal), appellate courts have acted as if the trial court had jurisdiction from the beginning of litigation

E.R. Squibb & Sons, Inc. v. Lloyd's & Co., 241 F.3d 154, 163 (2d Cir.2001) (citing Newman-Green, Inc. V. Alfonzo–Larraine, 490 U.S. 826, 829 (1989)). "As a general matter, it is widely accepted that amendments to cure subject matter jurisdiction relate back." Squibb, 241 F.3d at 163; see Moore's Federal Practice § 15.15 [3.-2] (Matthew Bender 3d ed. 2004) ("although there might not be complete diversity when the action is brought, an amendment dropping non-indispensable parties to cure the jurisdictional defect will relate back").

F. Asserted Grounds for Deletion of Defendant

IISC argues that this court should grant its Motion to Delete Defendant because Hartford Financial is not an indispensable party to its action. Hartford does not appear to dispute the fact that Hartford Financial was neither a party to the contract at issue in

the underlying dispute nor contractually obligated to ensure performance of Hartford Life Insurance, and Hartford Life and Accident. See Defendant's Consolidated Memo. in Opp'n at 2. Therefore, the to - be - deleted defendant does not appear to share any potential liability in this action, and so no defendant need fear multiple litigation as a result of being dropped as a party. Moreover, neither party mentions an outsider whose ability to protect its interests will be impaired or impeded by deleting Hartford Financial as a party defendant to this action. Finally, no legitimate reasons are asserted by defendants why dropping Hartford Financial as a defendant will interfere with a consistent, complete, and efficient settlement of its controversy.

III. Conclusion

Because Hartford Financial was misjoined to IISC's original complaint and can be severed from the complaint in satisfaction of the factors enumerated in Provident Tradesmens, Hartford Financial can properly be deemed a dispensable party to the IISC action. Therefore, IISC's Motion to Delete Defendant is hereby GRANTED.

With regard to IISC's Motion to Leave to Amend, in consideration of the factors enumerated in Discussion Section C, this court can conceive of no good reason why this motion should not be granted to IISC. IISC's delay in requesting leave was not undue and allowing an amendment would not delay the final disposition of the judgment. Furthermore, this court can conceive of no dilatory or bad faith motives underlying plaintiff's Motion to Amend. Moreover, Hartford will suffer no prejudice as a result of the amendment, as it is early in the case. In fact, it seems the only conceivable prejudice the remaining defendants will suffer is that they will be forced to be referred to as the "defendants" throughout the action. As this is hardly prejudicial,

this court grants IISC's Motion to Amend. Accordingly, this court now reads IISC's original complaint to present a lawsuit between plaintiff, Independence Insurance Service Corporation, and defendants Hartford Life Insurance Company, Inc., and Hartford Life and Accident Insurance Company, Inc.

Finally, regarding Hartford's Motion to Dismiss, because it cannot be shown that Hartford Financial shares a common question with the other co-defendants in the complaint, or is related in any way to the transaction or occurrence asserted in IISC's claim, Hartford Financial's inclusion as a co-defendant in IISC's pleading amounts to a misjoinder of a party. Therefore, this court is under no obligation to dismiss plaintiff's claim pursuant to 12(b); rather, claims must not be dismissed on account of misjoinder. Because this court is not obligated by law to dismiss IISC's complaint on account of misjoinder, and this court can in fact ascertain a basis for assuming subject matter jurisdiction other than one that has been improperly asserted by IISC (as the non-severable, properly-joined defendant parties to the IISC action are in complete diversity from the plaintiff), Hartford's Motion to Dismiss is DENIED.

SO ORDERED.

Dated at Bridgeport, Connecticut this 3rd day of May, 2005.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge