

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:13-CV-00527-F

U.S. TOBACCO COOPERATIVE INC., U.S.)
FLUE-CURED TOBACCO GROWERS, INC.,)
and BIG SOUTH DISTRIBUTION, LLC,)

Plaintiffs,)

v.)

BIG SOUTH WHOLESALE OF)
VIRGINIA, LLC, d/b/a BIG SKY)
INTERNATIONAL, BIG SOUTH)
WHOLESALE, LLC, UNIVERSAL)
SERVICES FIRST CONSULTING, A/K/A)
UNIVERSAL SERVICES CONSULTING)
GROUP, JASON CARPENTER,)
CHRISTOPHER SMALL, EMORY STEPHEN)
DANIEL,)

Defendants.)

DEFENDANTS' MEMORANDUM IN
OPPOSITION OF PLAINTIFFS' MOTION
FOR LEAVE TO FILE A REPLY TO THE
BSW-VA. DEFENDANTS' RESPONSE
TO THE JUSTICE DEPARTMENT'S
MOTION TO INTERVENE AND STAY
DISCOVERY

NATURE OF THE CASE

Plaintiffs commenced this action on July 23, 2013, alleging Federal RICO and state law claims. [DE 1.] Plaintiffs contend that Defendants fraudulently induced them to purchase the assets of Defendants' wholesale tobacco distribution companies and breached noncompetition clauses in asset purchase, employment, and consulting agreements. Defendants deny Plaintiffs' contentions and counterclaim against Plaintiffs for breaching the asset purchase, employment, and consulting agreements and for publicly disclosing confidential information related to Defendants' participation in undercover law enforcement activities. On April 23, 2014, the United States Justice Department filed a Motion to Intervene and Stay Civil Discovery in this action. [DE Nos. 144, 145]. On May 13, 2014, BSW-Va. Defendants filed a Memorandum in

Response to the Justice Department's motion to intervene and stay discovery. This cause is before the Court on the Plaintiffs' Motion for Leave to File a Reply to the BSW-Va. Defendants' Response to the Justice Department's Motion to Intervene and Stay Discovery ("Motion for Leave").¹ [DE 171/DE 173].

ARGUMENT

Plaintiffs' Motion for Leave should be denied because: 1) Local Rules 7.1(f)(2) and 26(d)(3) prohibit replies to discovery motions; 2) the proposed reply is for a motion filed by the government, not Plaintiffs; 3) the proposed reply is untimely; and 4) the proposed reply is an improper attempt by Plaintiffs to file an additional response to Defendants' already-fully-briefed Motion to Amend the Protective Order.²

A. Local Rules 7.1(f)(2) and 26(d)(3) Prohibit Plaintiffs' Proposed Reply.

The government's Motion to Intervene and Stay Discovery, as its title indicates, is a discovery motion. Local Rules 7.1 (f)(2) and 26(d)(3) explicitly prohibit replies to be filed in connection with discovery motions. Accordingly, Plaintiffs' Motion for Leave is due to be denied.

B. Plaintiffs' Motion for Leave Should be Denied Because it Was Not Plaintiffs' Motion to Which the Defendants Filed a Response.

Defendants' memorandum, for which Plaintiffs wish to file a reply, was in response to a motion by the government. It was not a response in opposition to any motion filed by Plaintiffs.

¹ "BSW-Va. Defendants" refers to Big South Wholesale of Virginia, LLC, d/b/a Big Sky International (BSW-Va.), Big South Wholesale, LLC ("BSW"), Jason Carpenter ("Carpenter") and Christopher Small ("Small").

² As has become the custom in Plaintiffs' recent filings, the proposed Reply Brief [DE 173-1] contains unsupported commentary impugning undersigned counsel and attributing false motives to them. Undersigned counsel adamantly denies these allegations of improper motive and is troubled by the increasing level of acrimony in this case.

Therefore, it is not procedurally proper for Plaintiffs to file a reply. If the Local Rules permitted replies to discovery motions, it would be the government filing a reply here, not Plaintiffs.

C. Plaintiffs' Proposed Reply is Untimely.

Further, even if Plaintiffs could procedurally file a reply, Local Rule 7.1(f)(1) requires that any reply be filed within fourteen days of the service of the response. Defendants' response was filed on May 13, 2014. Therefore, any reply would have been due by May 27, 2014, making Plaintiffs' filing untimely.

D. Plaintiffs' Proposed Reply is an Improper Attempt to File a Further Response to the Already-Fully-Briefed Motion to Amend the Protective Order.

Plaintiffs allege that they will be prejudiced if not allowed to file a reply because “based on recent developments, the Plaintiffs have good reason to believe that the BSW Va. Defendants are seeking to amend the Protective Order to advance their own agenda...” [DE 173, ¶3; DE 174 p. 2].³ This argument does not support the need to file a reply to Defendants' Response—it simply reveals Plaintiffs' desire to file an additional response to Defendants' Motion to Amend the Protective Order.

On April 25, 2014, Plaintiffs filed their response to Defendants' Motion to Amend the Protective Order. Plaintiffs' response used the entire thirty-page allotment permitted by Local Rule 7.2(e) for responses. Now, thirty days later, Plaintiffs want to add to their argument. Indeed, Plaintiffs devote all but one page of the argument section of their proposed reply to argue

³ The alleged “recent developments” that Plaintiffs reference as support for their reply are not a valid basis for their motion. Plaintiffs contend that Defendants' decision not to consent to providing an unredacted copy of Plaintiffs' motion for equitable relief to the Justice Department signals an improper hidden agenda by Defendants and their counsel. Plaintiffs' motion for equitable relief is based upon an incomplete record and a skewed view of the facts of the case. Defendants have no interest in sharing Plaintiffs' misguided motion with the Justice Department. Plaintiffs attempt to paint Defendants' decision not to consent as some nefarious scheme to withhold information from the Justice Department while delivering the same information to ATF, *which is a law enforcement organization within the Department of Justice*. This is a fantastical theory with no basis in fact or common sense.

against the Motion to Amend the Protective Order. Granting Plaintiffs leave to file their proposed reply would prejudice Defendants by allowing Plaintiffs to circumvent the applicable page limitations and take a second bite at the apple.

CONCLUSION

For the foregoing reasons, Defendants respectfully submit that Plaintiffs' Motion for Leave is due to be denied.

This 23rd day of June, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Opposition to Motion for Leave with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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This the 23rd day of June, 2014.

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