

DOCKET NO. UWY-CV-14-6026552-S : SUPERIOR COURT
: J.D. WATERBURY
NUCAP INDUSTRIES INC., ET AL. :
: AT WATERBURY
VS. :
: SEPTEMBER 2, 2015
PREFERRED TOOL AND DIE, INC., ET AL. :

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF
THEIR PARTIAL MOTION TO DISMISS COUNTS I TO IV OF
DEFENDANT ROBERT A. BOSCO JR.'S COUNTERCLAIMS**

Pursuant to Practice Book Sections 13-7(a)(2) and 13-10(a)(2), Plaintiffs, Nucap Industries Inc. (“Nucap Industries”) and Nucap US Inc., as the successor to Anstro Manufacturing (“Nucap US”) (collectively “Plaintiffs” or “NUCAP”), respectfully file this Reply Brief in Support of their Partial Motion to Dismiss Counts I to IV of Defendant Robert A. Bosco, Jr.’s Counterclaims.

I. POINT 1 – The Court Can Consider The Documents Attached To NUCAP’s Motion and To The Accompanying Affidavit of Counsel.

Along with this Reply Brief, Plaintiffs are submitting an Affidavit from counsel certifying to the authenticity and accuracy of the documents attached to its original Motion. Pursuant to Practice Book § 10-30(c), the Court may consider these documents as they explain relevant and necessary facts that are not apparent from the face of the record. *See* Practice Book § 10-30; *Cavanaugh v. Sherberg*, 2012 Conn. Super. LEXIS 361 (Conn. Super. Ct. Feb. 2, 2012) (court may consider facts and documents attested to through attorney affidavit, including supplemental affidavits); *Ungerland v. Morgan Stanley & Co.*, 2010 Conn. Super. LEXIS 5599 (Conn. Super. Ct. 2010) (granting motion to dismiss and relying on documents attached to attorney affidavit). Thus, there is no basis to exclude those documents from consideration and the Court should reject Bosco’s invitation to ignore this relevant and highly probative evidence. *See* Bosco Objection at 7-8.

II. POINT 2 – Counts I to IV of the Counterclaims Are Identical to the Claims Previously Filed in Waterbury by Bosco and Dismissed by Judge Roraback.

Contrary to the claims in Bosco’s Objection, Counts I to IV *are the same exact claims* that Judge Roraback previously dismissed on the basis of improper venue. *Compare* Ex. B to Motion to Dismiss, Complaint at ¶¶ 12-31, *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury (Roraback, J.) (hereinafter “the Prior Connecticut Lawsuit”) *with* Ex. E to Motion to Dismiss, Bosco Counterclaims at ¶¶ 11-30 (presenting identical and unchanged factual allegations). The Counterclaims are also the exact same claims that Bosco has filed in New York, which NUCAP has answered, and which are currently being litigated in that venue. *Compare* Ex. D to Motion to Dismiss, Bosco’s Counterclaims in the New York Lawsuit at ¶¶ 12-22 *with* Ex. E to Motion to Dismiss, Counterclaims at ¶¶ 11-22.

While Bosco argues that the current Counterclaims make reference to the Separation Agreement, Bosco’s allegations in the Prior Connecticut Lawsuit contained the same references to the Separation Agreement. In fact, the references to the Separation Agreement are *identical* as well. *Compare* Ex. B at ¶¶ 18-22 *with* Ex. E at ¶¶ 17-21 (containing identical allegations). Indeed, they are the exact same arguments that Bosco previously made and that Judge Roraback previously rejected as “misleading.” *See* Ex. A, Memorandum of Decision re: Motion to Dismiss, at pg. 8, *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury (Roraback, J.). Bosco does not even address these arguments or points in his Objection, nor does he explain how an argument Judge Roraback previously dismissed as “misleading” is somehow persuasive now.¹

¹ NUCAP is not arguing that Judge Roraback’s prior Order is binding on this Court, only that Judge Roraback previously considered and rejected the exact same claims and the exact same arguments. The same reasons for dismissal exist now as they did previously—all of Bosco’s allegations are identical and

III. POINT 3 – The Clear Operation of The Forum Selection Clause Requires Counts I to IV Be Dismissed.

Whether NUCAP has placed the Non-Competition Agreement at issue, as Bosco claims, misses the point. The only relevant inquiry for the purposes of this Motion is that the forum selection clause in the Non-Competition Agreement requires that any action arising out of or relating to the Non-Competition Agreement must be brought in New York. *See* Ex. F at ¶ 6. As Bosco’s claims are plainly ones to enforce the Non-Competition Agreement, Paragraph 6 of that Agreement requires they be litigated in New York (as Bosco is currently doing – *see* Ex. D to Motion to Dismiss, Bosco’s Counterclaims in the New York Lawsuit).

Regardless, NUCAP’s Complaint is not seeking to enforce the Non-Competition Agreement, nor does it implicate or place the Non-Competition Agreement at issue. The Complaint concerns only the theft of the trade secrets, confidential information, and intellectual property of NUCAP by Preferred and Bosco. *See* Ex. G at ¶¶ 1-6. Bosco’s role in providing and filtering NUCAP’s trade secrets to Preferred is the central issue here; the mere fact of his employment or affiliation with Preferred is not determinative. The Confidentiality and Intellectual Property Agreement, which is the applicable contract at issue in this case, provides for separate and distinct legal obligations, primarily relating to the use, disclosure, or transfer of any confidential or proprietary information of NUCAP. *See* Ex. “A” to Complaint (attached to Motion to Dismiss as Ex. G). The Confidentiality and Intellectual Property Agreement does not have non-competition or non-solicitation provisions and NUCAP has never claimed that this action is one to enforce the Non-Competition Agreement.

the gist of his claims are to enforce the terms of the Non-Competition Agreement. Given the clear operation and language of the forum selection clause in the Non-Competition Agreement, this Court should do what Judge Roraback previously did and dismiss those claims as having been filed in the wrong venue.

The parties to this action are not a relevant legal factor on a motion to dismiss for improper venue. *See* Bosco Objection at 9. Bosco does not cite any legal authority in support of his claim that the parties must be the same and no legal authority exists. The language of the Non-Competition Agreement and the nature of the Counterclaims govern the issue of venue, not the parties. And so long as Bosco’s Counterclaims against Plaintiffs arise out of or relate to the Non-Competition Agreement—and by Bosco’s admission, they do—then the claims must be filed in New York. *See* Ex. A. Bosco has already filed those identical claims against NUCAP in New York and NUCAP is not disputing Bosco’s right to litigate those claims there.²

IV. POINT 4 – Sanctions Are Necessary Given Bosco’s Vexatious Conduct.

Bosco’s actions are a waste of judicial resources, as he has copied and pasted claims that (1) have already been dismissed by Judge Roraback on the basis of improper venue and, (2) are currently being litigated in New York—the proper venue for the claims. *Compare* Exh. “B”, “D” and “E”; see also Ex. A. and Ex. F at ¶ 6. Bosco does not offer any response to NUCAP’s request for sanctions, nor does he even attempt to justify his conduct. The briefing and resolution of this Motion is a waste of the Court’s time and, for that reason, the Court should impose sanctions on Bosco and his counsel by ordering them to pay Plaintiffs the fees and costs expended in litigating this Motion. *Millbrook Owners Ass’n v. Hamilton Std.*, 257 Conn. 1, 9-10 (Conn. 2001) (court has inherent authority to impose sanctions against an attorney and his client for bad faith and harassing litigation conduct, even in the absence of a violation of a specific rule or court order).

² Even if the identity of the parties were a factor, the allegedly different party—Nucap US—is not a party to the Non-Competition Agreement. Thus, Bosco has filed wasteful claims for breach of the Non-Competition Agreement against an entity that is not a party to that Agreement. Bosco should not be able to make an “end run” around the forum selection clause by naming an entity that is not a party to the Non-Competition Agreement Bosco is admittedly seeking to enforce.

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 2nd day of September, 2015 to all counsel and self-represented parties of record, as follows:

Stephen J. Curley, Esq.
Brody Wilkinson P.C.
2507 Post Road
Southport, CT 06890
scurley@earthlink.net

David A. DeBassio, Esq.
Hinckley Allen & Snyder LLP
20 Church Street
Hartford, CT 06103
ddebassio@haslaw.com

Gene S. Winter, Esq.
St. Onge Steward Johnston & Reens
986 Bedford Street
Stamford, CT 06906
gwinter@ssjr.com

/s/Nicole H. Najam

Nicole H. Najam