

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

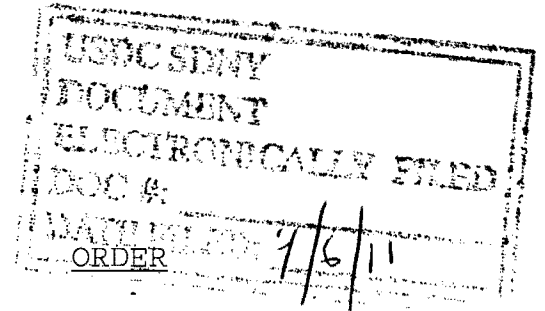
-----x
2FA TECHNOLOGY LLC,

Plaintiff,

-against-

ORACLE CORPORATION, a Delaware
Corporation, and ORACLE SYSTEMS
CORPORATION,

Defendants.
-----x



10 Civ. 9648 (BSJ) (MHD)

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE:

Defendants have moved to stay this recently filed lawsuit in anticipation of a decision by the District Court on a pending summary-judgment motion in the related case Oracle Systems Corp. v. 2FA Tech. LLC, et al.,¹ 08 Civ. 10986 (BSJ). The motion is granted in view of the substantial overlap between the claims asserted by plaintiff 2FA Technology in this case and the counterclaims that it has asserted in the earlier case.

¹ This case was formerly known as Passlogix Inc. v. 2FA Tech. LLC, et al.. In light of Oracle Corporation's acquisition of Passlogix and Passlogix's subsequent dissolution, counsel for Passlogix and Oracle moved to substitute Oracle Systems Corporation for Passlogix in this and related cases. This motion was granted March 24, 2011. (See Endorsed Order, 3, Mar. 24, 2011).

A number of the claims asserted here are substantially the same as counterclaims that 2FA asserted in the original case, and the disposition of the summary-judgment motion may well preclude assertion of those claims here. Moreover, the factual premises for the various 2FA claims in both cases substantially overlap and hence determination of factual and legal issues in the earlier case may radically narrow or even preclude any new legal theories asserted here by the plaintiff.

Furthermore, discovery has been completed in the first lawsuit and, as noted, a summary-judgment motion has been fully briefed and is now pending. To open up proceedings in this case would result in inevitable inefficiencies as the parties plow ground already covered earlier, and even if the court ordered that discovery in the first case be available here, almost certainly the parties will end up disputing whether new discovery requests here duplicate what has already been covered.

Under these circumstances, the court acts well within its discretion in staying the current case. Given the posture of the first case, plaintiff here has no compelling interest in the rapid pursuit of pretrial proceedings in this case, and defendants and the court have substantial and justified interest in not being

unnecessarily burdened with duplicative proceedings. See, e.g., Catskill Mountains Chapter of Trout Unlimited, Inc. v. Uited States EPA, 630 F. Supp.2d 295, 304-06 (S.D.N.Y. 2009); Regions Bank v. Wieder & Mastroianni, P.C., 170 F. Supp.2d 436, 439-41 (S.D.N.Y. 2001). See also Semmes Motors, Inc. v. Ford Motor Co., 429 F.2d 1197, 1203 (2d Cir. 1970).

The arguments that plaintiff principally pursues in opposition to this conclusion are that (1) it did not get full discovery in the first case (Pl.'s Opp'n to Defs.' Mot. to Stay, 1-2, Mar. 16, 2011), an assertion that is both false and in any event subject to evaluation in the first case by way of a Rule 56(d)² showing (if plaintiff made such an effort), and (2) that plaintiff has a strong case on its claims (Opp'n at 2-6), an assertion that is not subject to assessment on the current stay motion but rather on the pending Rule 56 motion. Moreover, the fact that Oracle was not originally a party to the first case does not, as plaintiff implies (Opp'n at 9-11), alter the analysis. Oracle has apparently purchased the assets of Passlogix and may well be bound by findings made in the first case, but if the District Court should find no proof of

² Rule 56(f) was recodified as Rule 56(d) in 2010. Rule 56(d) "carries forward without substantial change the provisions of former subdivision (f)." See Fed. R. Civ. Pro. 56(d), Advisory Committee Notes, 2010 Amendment.

misconduct by Passlogix, that would substantially or completely eviscerate any case that plaintiff here may have against Oracle. In any event, efficiency and fairness concerns dictate that the second case not proceed until, at the very least, the summary-judgment motion now pending before the District Court is decided.

CONCLUSION

Defendants' motion for a stay is granted on the terms noted. When a decision is issued on the summary-judgment motion in Oracle Systems Corp. v. 2FA Tech. LLC, 08 Civ. 10986 (BSJ), the parties are to notify this court within seven days and make whatever application they deem appropriate at that time.

Dated: New York, New York
April 6, 2011



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Order have been mailed today to:

Steven M. Kayman, Esq.
Proskauer Rose LLP
1585 Broadway
New York, New York 10036-8299

Laurence Singer, Esq.
1629 K Street NW
Suite 300
Washington, D.C. 20006