

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
METROPOLITAN PROPERTY AND)	
CASUALTY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 15-12939-LTS
)	
SAVIN HILL FAMILY)	
CHIROPRACTIC, INC. et al.,)	
)	
Defendants.)	
_____)	

ORDER ON MOTIONS TO DISMISS COUNTERCLAIMS AND TO STRIKE

September 10, 2018

SOROKIN, J.

Plaintiffs have filed a variety of motions challenging counterclaims and allegations contained in answers and counterclaims of some of the defendants in this action. Each of the pending motions are addressed below.

Regarding the Clinic Defendants, Plaintiffs moved to dismiss certain counterclaims asserted by Defendants Savin Hill Family Chiropractic and Logan Chiropractic and for a more definite statement as to Counterclaim I asserted by these two entities. Doc. No. 609. After Plaintiffs filed that motion, the two entities amended their counterclaims, Doc. No. 628, and Plaintiffs filed a revised motion to dismiss Counterclaims II, III, IV, V and VI and for a more definite statement as to Counterclaim I. Doc. No. 636. After the parties completed briefing on the second motion to dismiss, each of these two entity defendants filed for bankruptcy. Doc. Nos. 771 and 772. Accordingly, all proceedings as to these two defendants only, including resolution

of the motions to dismiss, are STAYED due to the automatic stay. The Clerk shall administratively terminate both Joint Motions to Dismiss, Doc. Nos. 609 and 636; upon the lifting of the bankruptcy stay, the clerk shall administratively restore the second motion to dismiss, Doc. No. 636, to the active motion list.

Regarding the law firm defendant, Plaintiffs moved to dismiss, Doc. No. 623, the counterclaims that the Law Offices of Jeffrey Glassman (“the Law Office”) asserted by in its answer, Doc. No. 578; moved to strike, Doc. No. 625, certain paragraphs from the Law Office’s Answer as well as for sanctions; moved to dismiss, Doc. No. 640, the counterclaims asserted by the Law Office in its Amended Answer, Doc. No. 633; and moved to strike, Doc. No. 638, certain paragraphs from the Law Office’s Amended Answer, Doc. No. 633, as well as for sanctions. The initial Motion to Dismiss, Doc. No. 623, and Motion to Strike, Doc. No. 625, are DENIED AS MOOT in light of the amended answer and subsequent motions filed by the Plaintiffs.

Before turning to the merits of Plaintiffs’ Joint Motion to Dismiss the Law Office’s counterclaims, Doc. No. 640, the motion raises a procedural matter. In support of this motion, Plaintiffs filed a 20-page memorandum of law as permitted by the Local Rules. However, in the Motion, Plaintiffs state:

As a threshold matter, the Plaintiffs specifically incorporate herein by reference and renew their Motion to Dismiss the Law Offices of Jeffrey S. Glassman, LLC’s Counterclaim, as well as their supporting Memorandum of Law (Docs. No. 623-24), in support of the dismissal of all counts of Glassman Law Office’s Amended Counterclaims (“AC”) (Doc. No. 633).

Doc. No. 641 at 1.

In this sentence, Plaintiffs appear to seek two forms of relief not available to them. First, the Law Office’s Amended Answer supersedes and replaces its original answer. Thus, the request by the

Plaintiffs to “renew” their original motion to dismiss is DENIED. Only the counterclaims asserted in the Amended Answer are pending; the counterclaims asserted in the original answer are not. Second, Plaintiffs purport to “incorporate” the memorandum of law filed in support of the original motion to dismiss into the memorandum supporting the motion to dismiss the Amended Answer. This Plaintiffs may not do. The rules permit Plaintiffs 20 pages of argument to support a motion. They, like all parties, are limited to the 20 pages absent a court order authorizing additional pages. Such an order has been neither sought nor entered. Accordingly, the Court does not consider at all the memorandum filed in support of the motion to dismiss the counterclaims asserted in the Law Office’s initial Answer in resolving the Plaintiffs’ motion to dismiss the counterclaims asserted in the Law Office’s Amended Answer.

Turning to the merits of the two pending motions, Plaintiffs move to strike certain allegations in the Amended Answer largely as in violation of confidentiality rules governing mediations or as argumentative or scandalous. See Doc. No. 639 at 2-3. The allegations concerning sanctions allegedly previously imposed upon Metropolitan or the conduct of the Plaintiffs’ expert are not subject to striking from the Amended Answer. Whether the allegations set forth in ¶ 17 reveal information from a mediation subject to a confidentiality order is not at all suggested, let alone established, within the four corners of the Amended Answer. Plaintiffs have failed to cite statutes, rules or case law permitting the Court to look beyond the Amended Answer to determine whether the allegation in ¶ 17 (or any other challenged allegation) reveals confidential information. Assuming without deciding that the Court could examine other documents or information, the Plaintiffs have failed to submit evidence supporting their asserting that the allegations derive from confidential information in mediation. They have done nothing more than submit, without a verifying affidavit, an agreement to mediate coupled with factual

assertions in their memorandum of law regarding the derivation of the information. This is insufficient. L.R. 7.1(b)(1). Accordingly, the Motion to Strike, Doc. No. 638, is DENIED.

The Motion to Dismiss the counterclaims, Doc. No. 640, is DENIED WITHOUT PREJUDICE to renewal of the Plaintiffs' challenge to the counterclaims in a motion for summary judgment. The Law Office has set forth sufficient factual allegations to plausibly state its counterclaims.¹

SO ORDERED.

/s/ Leo T. Sorokin
Leo T. Sorokin
United States District Judge

¹ Although the docket in this action has nearly 800 entries, and fact discovery has continued for nearly a year, the parties have not even concluded interrogatories or document discovery. Indeed, the Plaintiffs did not even serve interrogatories until over half of the fact discovery period had elapsed. In addition, the parties' submissions are replete with assertions regarding the bad motivations of the other side. See, e.g., Doc. No. 638 (asserting that certain challenged allegations "have only been included in . . . [a] blatant and improper attempt to disparage" the other side, its lawyers and experts). Putting aside that counsel generally lack a firm, and sometimes any, factual basis for assertions regarding the state of mind or purposes of their opposition, all counsel would be well-served by focusing on the facts and the law while dispensing with the ad hominem attacks or characterizations.