

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,)
)
 Plaintiff,)
)
v.)
)
SDRC INC.,)
a South Dakota Corporation,)
)
 Defendant.)

CIV. NO. 15-270

MOTION FOR MORE
DEFINITE STATEMENT

COMES NOW Plaintiff, the State of South Dakota, by and through its undersigned counsel, and in response to the Counterclaim of Defendant, moves for a more definitive statement as follows:

FACTS

The Plaintiff is the State of South Dakota. On or about October 16, 2015, Plaintiff filed a complaint against Defendant, SDRC Inc. On or about November 19, 2015, Defendant SDRC Inc. filed its Answer and Counterclaim. The Counterclaim is vague and ambiguous within the meaning of SDCL 15-6-12(e), to wit:

Count I

Paragraph 6: The allegation that the State of South Dakota's termination resulted in the loss of revenue for the Defendant, "in regards to other projects," is vague and ambiguous, as the term "other projects" is overly broad and does not reasonably permit the Plaintiff to frame a responsive pleading.

Count II

Paragraph 8: The allegation that “[t]here existed between SDRC Inc. and various entities valid business relationship or expectancies”, is vague and ambiguous, as the terms “various entities” and “valid business relationships or expectancies” are overly broad and ambiguous and do not reasonably permit Plaintiff to frame a responsive pleading.

Paragraph 9: The allegation that “[t]he State was aware of the relationship or expectancy between SDRC Inc. and Dakota Natural Meats as well as other similar entities”, is vague and ambiguous, as the term “other similar entities” is overly broad and ambiguous and does not reasonably permit Plaintiff to frame a responsive pleading.

Paragraph 10: The allegation that “[t]he State engaged in an intentional and unjustified act of interference in that relationship” is vague and ambiguous, as “that relationship,” implicates the “other similar entities” in paragraph 9, and thus is overly broad and ambiguous and does not reasonably permit the Plaintiff to frame a responsive pleading. Further, the reference to “an intentional and unjustified act of interference” is vague and ambiguous and does not reasonably permit Plaintiff to frame a responsive pleading.

Paragraph 11: The allegation that, “SDRC Inc. sustained damages because of its relationship or expectancy with Dakota Natural Meats and similarly situated entities was disrupted by the State” is vague and ambiguous, as the term “similarly situated entities” is overly broad and ambiguous and does not reasonably permit Plaintiff to frame a responsive pleading.

Count III

Paragraph 13: The allegation that “[t]he State, through the Division of Banking, the Governor’s Office, and other State agencies and employees, intentionally engaged in tortious conduct,” is vague and ambiguous, as the term, “other State agencies and employees,” is overly

broad and does not reasonably permit Plaintiff to frame a responsive pleading. Further, the reference to “tortious conduct” is overly broad and does not reasonably permit Plaintiff to frame a responsive pleading.

Paragraph 15: The allegation that “[t]he State’s conduct was the cause in fact of such injuries to SDRC Inc.,” is vague and ambiguous, as it implicates unnamed “State agencies and employees,” in paragraph 13, and is overly broad and cannot reasonably permit Plaintiff to frame a responsive pleading. Further, the term “tortious conduct” is overly broad and does not reasonably permit Plaintiff to frame a responsive pleading.

Count IV

Paragraph 18: The allegation that “[t]he State’s conduct in dealing with SDRC Inc. violated the implied covenant of good faith and fair dealing” along with the listed example is vague and ambiguous, as it fails to specify how the covenant of good faith and fair dealing was violated and it does not reasonably permit Plaintiff to frame a responsive pleading.

Count V

Paragraph 20: The allegation that “[t]he State engaged in libel and slander against SDRC Inc. by its statements which exposed SDRC Inc. and its agents to hatred, contempt and ridicule and caused them to be shunned, avoided and had a tendency to injure them in their occupation,” is vague, ambiguous and overly broad and does not reasonably permit Plaintiff to frame a responsive pleading. No information is provided as to the purported proponents of any statements or the contents of such statements.

Paragraph 21: The allegation that, “[s]uch statements directly injured SDRC Inc. and its agents with respect to their office, profession, trade or business by imputing to them general disqualification in those respects and by imputing something to them with respect to their office,

profession, trade or business that had a natural tendency to lessen their profit,” is vague and ambiguous, as such claim is compounding, disjunctive, speculative, overly broad, and does not reasonably permit Plaintiff to frame a responsive pleading.

Count VI

Paragraph 23: The allegation that “[t]he State improperly managed the Regional Center since it terminated the contract with SDRC Inc. Such improper management has resulted in damages to SDRC, Inc.,” is vague and ambiguous, as the claim is overly broad and does not reasonably permit Plaintiff to frame a responsive pleading.

ARGUMENT

SDCL 15-6-8(e)(1) requires that Defendant’s pleading be simple, concise, and direct. The above listed Counterclaim paragraphs are vague and ambiguous in accordance with SDCL 15-6-12(e).¹ If a complaint is in indefinite and uncertain, the proper method to correct that defect is by a motion to make the complaint more definite and specific. *Walkin v. Nokken*, 38 S.D. 289, 161 N.W. 194. “SDCL 15-6-12(e) provides that a Motion for More Definite Statement must be made before interposing a responsive pleading.” *Matter of V.D.D.*, 278 N.W.2d 194, 196 (S.D. 1979).

Defendant’s Counterclaim alleges without any simplicity, conciseness, or directness, that the State has: 1) somehow damaged other unnamed projects (Count I, Paragraph 6); 2) somehow damaged relationships *or* the expectancy of relationships with some unnamed parties (Count II, Paragraphs 8-11); 3) through unnamed State actors and agencies, took part in tortious conduct against the Defendant (Count III, Paragraphs 13 and 15); 4) engaged in libel and slander

¹ SDCL 15-6-12(e) provides that when the Plaintiff cannot reasonably be required to frame a responsive pleading, the Plaintiff may move for a more definite statement before interposing its responsive pleading. The Plaintiff shall point out the defects complained of and the details desired. If the Plaintiff’s motion is granted, and the order of this Court not obeyed within ten (10) days after notice of the order or within such other time as this Court may fix, this Court may strike the pleading to which the motion was directed or make such order as this Court deems just.

(Count V, Paragraph 20) and that such libel and slander imputed general disqualification to the Defendant in one of four separate and disjunctive ways (Count V, Paragraph 21); and 5) through an unnamed State agency, improperly managed the Regional Center (Count VI, Paragraph 23).

The vague and ambiguous allegations made by the Defendant do not permit Plaintiff to reasonably frame a responsive pleading. Without a more definite Counterclaim, Plaintiff may fail to plead certain defenses, affirmative and otherwise. At best, such a nebulous Counterclaim may work to preclude suits under the merger wing of *res judicata*. At worse, the Plaintiff is deprived of a meaningful defense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant judgment in favor of the State and against SDRC Inc. as follows:

1. Grant Plaintiff's Motion for More Definite Statement in its entirety;
 2. Order that Defendants correct the defects as stated herein;
 3. Order that Plaintiff's time in which to Answer the Defendant's Counterclaim be tolled until ten (10) days after the service of a more definite statement;
 4. Order that failure by Defendant to plead a more definite statement within ten (10) days after notice of the order shall result in this Court striking the aforementioned pleadings;
- and

5. For such other relief as the Court may deem appropriate.

Dated this 4th day of December, 2015.

MORENO, LEE & BACHAND, P.C.

BY: /s/ Paul E. Bachand
Paul E. Bachand
Special Assistant Attorney General
206 W. Missouri Ave.
P.O. Box 1174
Pierre, SD 57501-1174
(605) 224-0461
pbachand@pirlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Plaintiff's Motion for More Definite Statement in the above-referenced case was served upon the following person by electronic case filing at the addresses listed below:

Jeffrey T. Sveen
Siegel Barnett & Schutz LLP
Attorneys for Defendant
Email: jsveen@sbslaw.net
PO Box 490
Aberdeen, SD 57402-0490

Dates this 4th day of December, 2015.

MORENO, LEE & BACHAND, P.C.

/s/ Paul E. Bachand
Paul E. Bachand
Special Assistant Attorney General
P.O. Box 1174
Pierre, SD 57501
(605) 224-0461
pbachand@pirlaw.com