

ENTRONIX INTERNATIONAL, INC., Plaintiff, v. SAMSUNG TELECOMMUNICATIONS AMERICA, L.P. f/k/a SAMSUNG TELECOMMUNICATIONS AMERICA, INC., Defendant.

Civil No. 3:02-CV-1672-H

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

June 10, 2003, Decided

June 11, 2003, Filed

DISPOSITION: Defendant's Motion to Strike Demand for Jury Trial denied, and plaintiff's Motion for Jury Trial granted.

COUNSEL: For Entronix International Inc, PLAINTIFF: Ashley T Parrish, Cantey & Hanger, Dallas, TX USA.

For Entronix International Inc, PLAINTIFF: Shayne Daniel Moses, Cantey & Hanger, Fort Worth, TX USA.

For Samsung Telecommunications America LP, DEFENDANT: Nancy Jones Bush, Munsch Hardt Kopf & Harr, Dallas, TX USA.

Will Pryor, PROVIDER, Pro se, Dallas, TX USA.

JUDGES: BAREFOOT SANDERS, SENIOR JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS.

OPINION BY: BAREFOOT SANDERS

OPINION

MEMORANDUM OPINION AND ORDER

Before the Court are Defendant's Motion to Strike Plaintiff's Demand for Jury Trial, filed April 11, 2003, Plaintiff's Response and Counter-Motion for Jury Trial, filed May 1, 2003, and Defendant's Response to Plaintiff's Motion for Jury Trial, filed May 21, 2003.

I. Background

This case was filed August 6, 2002. At the time of filing, neither Entronix International, Inc. ("Entronix") nor Samsung Telecommunications America, L.P. ("Samsung") requested a jury trial. On April 8, 2003, the Court granted Samsung's Unopposed Motion for Leave to File Defendant's First Amended Answer. On April 9, 2003, the Court granted Entronix's unopposed Motion for Leave to Amend Complaint, filed April 8, 2003. On

April 11, 2003, Samsung filed its Motion to Strike Entronix's Demand for Jury Trial and Entronix responded with a counter-motion for jury trial pursuant to Federal Rule 39(b).

Samsung seeks to strike Plaintiff's jury demand on the ground that it did not intend to agree to it, and that it was untimely filed. At the time of the motion to amend, Samsung told Entronix it did not object to Entronix amending its complaint, but now argues that "had [Samsung] known that [Entronix] intended to amend for the purpose of seeking a trial by jury, it never would have agreed to Entronix's motion." Def.'s Mot. to Strike at 2. Entronix does not dispute that the Amended Original Complaint does not assert new causes of action, and that the demand for jury trial was untimely under Federal Rule 38. Furthermore, Entronix concedes that Samsung may not have understood that Plaintiff's Amended Complaint would add a jury demand.

II. Discussion

Federal Rule of Civil Procedure 38 allows any party to demand a trial by jury "not later than 10 days after the service of the last pleading directed to such issue." *FED. R. CIV. P. 38(b)*. Furthermore, failure to properly serve and file a demand waives the right to trial by jury. *FED. R. CIV. P. 38(d)*. Both parties are in agreement that Plaintiff waived its right to a jury trial in this case by untimely notifying the Court of its desire to have a jury trial. But a finding of waiver does not end the analysis. *Rule 39(b)* grants the Court the discretion to relieve a party from its waiver of a jury trial. *Fed. R. Civ. P. 39(b); Farias v. Bexar County Bd. of Trustees*, 925 F.2d 866, 873 (5th Cir. 1991). Generally, "a court should grant a jury trial in the absence of strong and compelling reasons to the contrary." *Mesa Petroleum Co. v. Coniglio*, 629 F.2d 1022, 1029 (5th Cir. 1980). Where the failure to make a timely jury demand is the result of "mere inadvertence" it is not an abuse of discretion to deny a *Rule 39(b)* motion. *Farias v. Bexar County Bd. of Trustees*, 925 F.2d 866, 873 (5th Cir. 1991). However, even where the failure is due to inadvertence, it is still within the Court's discretion to grant a *Rule 39(b)* motion.

Samsung argues that Entronix's failure to file a jury demand within the time constraints set out by *Rule 38* is not excusable here because it was due to "mere inadvertence." Samsung does not indicate that there are any "strong and compelling reasons" why this case should not be tried to a jury. Entronix's Motion to Amend was timely filed under the Scheduling Order, and was filed after Samsung filed its Amended Answer. Furthermore, Samsung did not oppose the motion at the time of its filing.¹ This case is currently set for non-jury trial on the October 2003 docket, more than four months from the date of this Memorandum Opinion and Order and more than six months from the filing of the Amended Complaint. Samsung has not shown any good cause why this case should not be tried to a jury.

¹ The purpose of Local Rule 7.1's conference requirement is to allow counsel to confer to determine whether a motion is opposed. Samsung argues that it was unaware of the nature of the amendment at the time it indicated that it was

unopposed to Plaintiff's Motion. However, Samsung was contacted prior to the filing of Entronix's Motion to Amend and had an opportunity to review the document, or at least receive some summary of the changes from the original Complaint, before agreeing that it was unopposed.

III. Conclusion

Under *Rule 39(b)* the decision to grant a jury trial at this point is in the Court's discretion. As this matter is a discretionary one, Samsung's Motion to Strike Demand for Jury Trial is **DENIED** and Entronix's Motion for Jury Trial is **GRANTED**.

SO ORDERED.

DATED: June 10, 2003.

BAREFOOT SANDERS, SENIOR JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS