UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GYM DOOR REPAIRS, INC. ET AL.,

Plaintiffs,

- against -

YOUNG EQUIPMENT SALES, INC. ET AL.,

Defendants.

15-cv-4244 (JGK)

OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The plaintiffs Gym Door Repairs, Inc. ("GDRI") and Safepath Systems LLC ("SPS") (collectively, the "plaintiffs") bring this suit against nineteen defendants to obtain permanent injunctive relief, damages, and attorneys' fees and costs for the defendants' alleged infringement of the plaintiffs' patent, copyrights, and trademarks, and---under New York State law---for unfair competition, tortious interference with business relationships, and civil conspiracy. The plaintiffs assert that the defendants have illegally inspected, maintained or repaired safety systems for electrically operated folding partitions, called the "Safe Path System," that the plaintiffs sold to New York State schools.

The defendants are Young Equipment Sales, Inc., YES Service and Repairs Corporation, Richard Young, Brian Burke, Dennis Schwandtner (collectively, "YES" or the "Young defendants"); Guardian Gym Equipment, Qapala Enterprises, Inc., James

Petriello (collectively, the "Guardian defendants"); Tri-State Folding Partitions, Inc., Peter Mucciolo (collectively, the "Tri-State defendants"); Educational Data Services, Inc. ("EDS"); Total Gym Repairs, Inc. ("Total Gym"); Carl Thurnau ("Thurnau"), who is sued both individually and as the Director of the New York State Department of Education Office of Facilities Planning; the New York State School Facilities Association ("SFA"); the School Facilities Management Institute ("SFMI"); Eastern Suffolk Board of Cooperative Educational Services, or BOCES ("ESBOCES"); Nassau BOCES; Bellmore Public Schools ("Bellmore"); and the New York City Department of Education ("NYCDOE") (collectively, "the defendants"). The defendants filed nine motions to dismiss the Second Amended Verified Complaint (the "SAC").[1]

For the reasons that follow, these motions are **granted in part and denied in part**.

I.

In deciding a motion to dismiss pursuant to Rule 12(b)(6), the allegations in the complaint are accepted as true, and all reasonable inferences must be drawn in the plaintiff's favor. McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir.

[1] The plaintiffs and EDS have entered into a settlement agreement and the claims against EDS have been dismissed. ECF Dkt. Nos. 209-10. Accordingly, EDS's motion to dismiss is denied without prejudice.

2007). The Court's function on a motion to dismiss is "not to weigh the evidence that might be presented at a trial but merely to determine whether the complaint itself is legally sufficient." Goldman v. Belden, 754 F.2d 1059, 1067 (2d Cir. 1985). The Court should not dismiss the complaint if the plaintiff has stated "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

While the Court should construe the factual allegations in the light most favorable to the plaintiff, "the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." Id.; see also Springer v. U.S. Bank Nat'l Ass'n, No. 15-cv-1107 (JGK), 2015 WL 9462083, at *1 (S.D.N.Y. Dec. 23, 2015). When presented with a motion to dismiss pursuant to Rule 12(b)(6), the Court may consider documents that are referenced in the complaint, documents that the plaintiff relied on in bringing suit and that are either in the plaintiff's possession or that the plaintiff knew of when bringing suit, or matters of which judicial notice may be taken. Chambers v. Time Warner, Inc., 282 F.3d 147, 153

(2d Cir. 2002); see Springer, 2015 WL 9462083, at *1; see also Mercator Corp. v. Windhorst, No. 15-CV-02970 (JGK), 2016 WL 519645, at *1 (S.D.N.Y. Feb. 10, 2016).[2]

II.

The following facts alleged in the SAC are accepted as true for purposes of the defendants' motion to dismiss.

In 2001, the New York State legislature passed, and the governor signed into law, N.Y. Educ. Law § 409-f, which requires all public and private schools in New York State to install and maintain safety devices on all electrically operated partition doors to stop the forward and stacking motion of the doors when a body or other object is present. N.Y. Educ. Law § 409-f and the regulations that the New York Commissioner of Education promulgated in response to it require school districts to post conspicuous notices in the immediate vicinity of the equipment regarding its proper use and supervision and establish procedures concerning the training of employees who regularly

[2] The Guardian and Tri-State defendants moved to dismiss pursuant to Rule 12(b)(6) and Rule 12(d). Rule 12(d) allows the Court to treat a Rule 12(b) motion as one for summary judgment when all parties are "given a reasonable opportunity to present all the material [outside the pleadings] that is pertinent to the motion." Fed R. Civ. P. 12(d). The plaintiffs did not receive notice about converting this motion to dismiss into a motion for summary judgment and there has been no discovery. The motion should be decided on the basis of the sufficiency of the SAC. Under the circumstances of this case, converting this Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment, pursuant to Rule 12(d), is unwarranted.

use the equipment. See New York State Education Department Commissioner's Regulation § 155.25. Pursuant to the law and the regulation, districts must inform their employees of the penalties for disabling the safety devices on the doors and maintain records indicating that training has been done and that the safety devices have been maintained in accordance with the manufacturer's instructions. The plaintiffs allege that this legislation was adopted in 1991 after the tragic death of two New York school children. SAC ¶¶ 25-29

The plaintiffs are the manufacturer of the Safe Path System, a safety device used on electrically operated doors in New York State. The plaintiffs' device was patented until the patent expired on October 17, 2011. SAC ¶¶ 34-36 (citing Patent No. 5,244,030 (the "'030 Patent") for "Electrically Operated Folding Operable Walls"). According to the SAC, between 2003 and 2012, the Safe Path System was the only device approved for use in New York City public schools. SAC ¶ 32. According to the SAC, Safe Path Systems are currently installed in more than 4,700 schools throughout the State. SAC ¶ 45.

Although they had been urging compliance with N.Y. Educ. Law § 409-f and Regulation § 155.25 since 2003, the plaintiffs began in earnest in 2009 to voice their concerns that some schools in New York State were still out of compliance because they had electrically operated partitions without safety

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