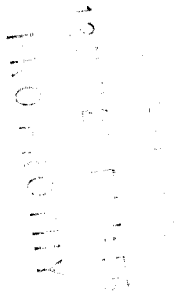
THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

EVERNU TECHNOLOGY, LLC,	:	AUGUST TERM 2010
Plaintiff,	:	
v.	:	No. 3953
ROHM & HAAS COMPANY,	:	
Defendant.	:	Commerce Program



OPINION

Plaintiff, EverNu Technology, LLC ("EverNu"), has appealed the order of this Court dated August 3, 2012 which granted Defendant Rohm & Haas' ("Rohm & Haas) Motion for Judgment on the Pleadings. For the reasons which follow, the Court respectfully suggests that its Order dated August 3, 2012 should be affirmed on appeal.

PROCEDURAL BACKGROUND

This matter is an appeal from a motion for judgment on the pleadings on an abuse of process claim. The underlying case arose from a dispute between EverNu and a former employee of Rohm & Haas, both companies that manufactures specialty chemical products. The CEO of EverNu, Dr. Lin ("Lin"), was employed at Rohm & Haas as a research scientist from 1989 until 1999. In 2000, Rohm & Haas brought suit against Lin in the Montgomery County Court of Common Pleas for misappropriation of trade secrets. That case, which involved extensive and acrimonious discovery practice, resulted in several default judgments entered for Rohm & Haas to enforce discovery sanctions, including a $32,000 default judgment against EverNu for failure to respond to a subpoena *duces tecum*. This default judgment was appealed to the Superior Court, which appeal was denied.

In the instant case, EverNu brought a claim for abuse of process against Rohm & Haas for its actions in the Montgomery County Case. This case was filed on August 27, 2010; it was originally filed in the Eastern District of Pennsylvania on June 2, 2010, but that court dismissed it for lack of subject matter jurisdiction on August 26, 2010.[1]

In its complaint, EverNu alleges abusive actions by Rohm & Haas conducted during the course of the Montgomery County Case with the purpose of improperly obtaining EverNu's research secrets. EverNu argued that Rohm & Haas used the litigation process to harass EverNu, to prevent it from profiting from Lin's research, and to obtain EverNu's research to its own benefit. EverNu's allegations focused on a subpoena that Rohm & Haas caused to be issued to EverNu on or about August 20, 2003, requiring an EverNu corporate designee to be deposed and demanding the production of documents. EverNu moved for a protective order, which was denied on December 16, 2003; the Superior Court quashed EverNu's appeal as interlocutory. Rohm & Haas then moved to compel production of the documents requested, and sought sanctions for EverNu's failure to produce them previously. This motion was granted on or about January 10, 2005; EverNu once again appealed, and the appeal was once again quashed as interlocutory. As a result of EverNu's continued non-compliance, on June 2, 2005 the Montgomery County Court imposed a sanction of $100 per day (EverNu again appealed this order, and the appeal was again quashed). In 2006, Rohm & Haas moved for a $32,000 judgment to be entered against EverNu, which judgment was entered in May 2006. EverNu's bank accounts were also frozen. In June 2007, the Superior Court ordered that the judgment be stricken. Rohm & Haas moved for a default judgment against Dr. Lin, and to hold her in contempt, in December 2007. These motions were granted on or about May 2, 2008, and the Montgomery County Court entered four money judgments against EverNu in July 2008. In

[1] EverNu Technology, LLC v. Rohm & Haas Company, 2:10-cv-02635-PD.

November 2008, the Superior Court ordered that these judgments be stricken.

EverNu also alleges actions taken by Rohm & Haas regarding EverNu's grant application with the U.S. Department of Energy. EverNu alleges that Rohm & Haas contacted the Department on May 13, 2008 and again on June 23, 2008, providing it with a copy of the default judgment it received against EverNu, and demanding that the Department cease doing business with EverNu. EverNu alleges that over the next two months, Rohm and Haas continued to send the Department emails about EverNu in which it "repeatedly sought information about the MAA Project, demanded that [the Department] cut off funding to EverNu and even sought information about how to serve [the Department] to collect on judgments Rohm and Haas had obtained against EverNu in the Montgomery County Litigation."

Rohm & Haas has filed the instant Motion for Judgment on the Pleadings, to which Evernu has responded. For the reasons discussed below, this Court granted Rohm & Haas' motion.

DISCUSSION

In its Motion for Judgment on the Pleadings, Rohm & Haas argued, correctly, that EverNu's claim was barred by the statute of limitations. There is a two-year statute of limitations for abuse of process.[2] EverNu argued that Rohm & Haas took affirmative actions that constitute continuing violations within the two-year statutory period, and that such continuing violations tolled the statute. However, this theory is not supported by Pennsylvania precedent. "In Pennsylvania, a cause of action accrues when the plaintiff could have first maintained the action to a successful conclusion" and the statute of limitations begins to run at that time.[3] Such claims

[2] 42 C.S.A. §5524(1).

[3] Fine v. Checcio, 582 Pa. 253, 266 ; 870 A.2d 850, 857 (2005).

initiate the statute of limitations "immediately upon the [alleged] improper use of process."[4]

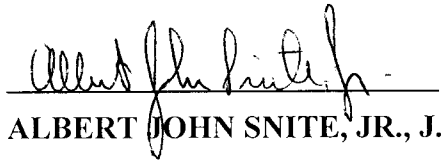
The acts that EverNu alleged in the Complaint were taken by Rohm & Haas occurred between August 20, 2003 (the date Rohm & Haas caused the subpoena in the underlying case to be issued) and June 23, 2008 (the latest specific date Rohm & Haas allegedly contacted the Department of Energy regarding the default judgment). EverNu would have been on notice of the alleged abuse of process when the subpoena was served, and this case should have been filed by August 20, 2005 at the latest to satisfy the statute of limitations.[5] However, it was not filed in this court until August 27, 2010.

The Court notes that this matter was originally filed in federal court on June 2, 2010 and dismissed for lack of jurisdiction; however, EverNu apparently did not follow the transfer procedure set forth in 42 P.A. C.S.A. §5103(b), which would have preserved the original filing date. Even had this date been preserved, however, it would still be well outside the statute of limitations.

CONCLUSION

For the foregoing reasons, this Court respectfully suggests that its Order dated August 3, 2012 should be affirmed on appeal.

DATED: November 21, 2012



ALBERT JOHN SNITE, JR., J.

[4] Stout v. Selective Way Ins. Co., 2010 Phila. Ct. Com. Pl. LEXIS 95, *53-4 (2010) (quoting Harvey v. Pincus, 549 F. Supp. 332, 340 (E.D. Pa. 1982)).

[5] The Complaint alleges that "over the next two months" Rohm & Haas continued to email the Department regarding EverNu, however no specific dates are mentioned. Moreover, EverNu's "continuing violations" theory lacks merit as discussed *supra*; even if the emails could constitute abuse of process, the cause of action would have accrued when EverNu could have first maintained its action, and it would still be barred due to the statute of limitations.