

**American Express Travel Related Serv. Co., Inc. v
Frontline Communications Intern'l, Inc.**

2008 NY Slip Op 33681(U)

January 14, 2008

Sup Ct, New York County

Docket Number: 102360/05

Judge: Louis B. York

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. LOUIS B. YORK
Justice

PART 2

-----X
AMERICAN EXPRESS TRAVEL RELATED SERVICES
COMPANY, INC.,

Plaintiff,

-against-

FRONTLINE COMMUNICATIONS INTERN'L, INC.,
Defendant.
-----X

Index No. 102360/05

Motion Date _____

Motion Seq. No. 002

Motion Cal. No. _____

The following papers, numbered 1 to _____ were read on this motion to Amend

NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

PAPERS
FILED
JAN 22 2008
NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff, American Express Travel Related Services Company, Inc. ("American Express"), moves to add additional parties and to assert additional causes of action for violation of the federal Rico statute and common law fraud. It also seeks additional discovery from Frontline or an order striking the defendant's pleadings for inadequate responses to discovery demands and an extension of discovery and Note of issue deadlines. A copy of the proposed amended complaint is annexed to plaintiff's moving papers as Exhibit A.

In December, 2003, defendant Frontline communications International, Inc. ("Frontline"), a telecommunications company that engages in carrier to carrier sales for the international long distance market, began doing business with proposed additional parties Hale & Dale Marketing, Inc. ("Hale & Dale"). Hale & Dale was represented to plaintiff American Express as a legitimate telecommunications company which supplied Frontline with goods and services. The internal records of American Express and certain public records introduced from the investigation by American Express' counsel and Walter Gibbs, a senior Bankruptcy and Reserve Specialist, with American Express, showed that by August 2004 Frontline had defaulted on some \$1.2 million in charges, the entire sum of which was owed to Hale & Dale. American Express then brought an action for breach of contract and unjust enrichment.

After the lawsuit had begun, plaintiff found out from public records that Jerome Goldman was an officer and director of Hale & Dale and in-house counsel to ~~Hale & Dale~~ ^{Frontline}. American Express also discovered that the entire \$1.2 million debt resulted from transactions by Frontline with Hale & Dale. In responses to discovery requests by American Express, Frontline failed to produce any documentation showing the goods and services it purportedly furnished to Frontline.

Plaintiff American Express charges that Frontline and Hale & Dale fraudulently conspired to engage in a scheme of factoring. That is, by credit card, Frontline made payment to Hale & Dale for merchandise Frontline never received. American Express then paid Hale & Dale who divided the money between it and Frontline while American Express was never reimbursed by Frontline for the payment to Hale & Dale.

As a result of the factoring scheme, the plaintiff seeks to amend the Summons and Complaint to add the additional parties involved and additional causes of action in the factoring scheme.

Defendant Frontline opposes the amended complaint, arguing that this is a simple contract case and the additional causes of action unduly complicate this action and should be litigated in a separate action. It also states that there is no affidavit of merit from a person with personal knowledge of the facts which also should bar this Court's acceptance of the amended Summons and Complaint. Defendant also opposes that part of the motion to strike its answer or for an order compelling additional responses to the discovery demands contending that it has appropriately answered the discovery demands.

The Court grants the motion to amend the complaint. Where claims for common-law fraud are made and, the Court believes, by logical extension, that there are Rico violations, the proof required is more relaxed as to detail because knowledge

of the fraud is “peculiarly within the knowledge of the party against whom the claim is asserted” (*DaPuggo v Reznick, Fedder and Silverman*, 14 AD3d 302, 788 NYS2d 69 [1st Dept 2005]).

Furthermore, a motion to amend is to be granted when an attorney recites sufficient facts which are in his knowledge and/or introduces documents which support the amended pleading (*Beberman v Halbrecht*, 105 AD2d 876, 482 NYS2d 75 [1st Dept 1984]; see, also, *Patruno v Mobile Oil Corp.*, 17 AD2d 408 [1st Dept 1991]).

The additional causes of action with additional defendants requires expanded discovery, and, therefore, moots the part of the motion seeking to strike the answer or to compel answers to questions already propounded. A new discovery schedule is necessary to accommodate the amended Summons and Complaint. Accordingly, it is

ORDERED that the amended Summons and Complaint appended to plaintiff's Order to Show Cause is granted; and it is further

ORDERED that plaintiff may serve Frontline by ordinary mail and the additional defendants in accordance with the CPLR; and it is further

ORDERED that the motion to strike Frontline's Answer or to compel further responses to plaintiff's discovery demands is denied; and it is further

ORDERED that an amended Preliminary conference is scheduled for March 5, 2008.

Dated: January 14, 2008

Enter:



Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

FILED
JAN 22 2008
NEW YORK
COUNTY CLERK'S OFFICE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE