

Sigerson v Fisher

2014 NY Slip Op 30283(U)

January 28, 2014

Supreme Court, New York County

Docket Number: 650923/2011

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH PART 54
Justice

Index Number : 650923/2011
SIGERSON, KARI
vs
FISHER, MARC B.
Sequence Number : 005
AMEND CAPTION/PARTIES

INDEX NO.
MOTION DATE 1/15/14
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 175-196
Answering Affidavits — Exhibits No(s) 201-229
Replying Affidavits No(s) 231

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 1/28/14

SHIRLEY WERNER KORNREICH
S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
KARI SIGERSON and MIRANDA MORRISON,

Index No.: 650923/2011

Plaintiffs,

DECISION & ORDER

-against-

MARC B. FISHER, MARC FISHER LLC, and
FISHER SIGERSON MORRISON LLC,

Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.:

Plaintiffs Kari Sigerson and Miranda Morrison move, pursuant to CPLR 3025(b), for leave to file a Second Amended Complaint to add new defendants that are allegedly liable under a veil piercing and de facto partnership theory. Plaintiffs' motion is denied for the reasons that follow.

Plaintiffs commenced this action on April 6, 2011, asserting, *inter alia*, claims of sexual harassment and wrongful termination.¹ The court limits its discussion to the facts pertinent to the instant motion.

In short, in 2006, plaintiffs sold a controlling stake in their high-end women's footwear company to defendants. Plaintiffs then signed employment agreements with the new company, defendant Fisher Sigerson Morrison LLC (FSM), whereby they became the "co-heads of design" and obtained minority equity interests in FSM. They were fired on March 10, 2011.

¹ A related action (Index No. 401486/2011) commenced by defendants has been consolidated with this action.

FSM claims plaintiffs were fired for cause due to their failure to show a certain shoe collection in December 2010. Plaintiffs claim this proffered reason is pretext, that they were sexually harassed by FSM's managing member, defendant Marc B. Fisher (Fisher), and that they are owed unpaid wages. The court assumes familiarity with the full scope of plaintiffs' claims, some of which have been dismissed in prior orders of the court.

Discovery is complete and the Note of Issue has been filed. Yet, on this motion, plaintiffs contend that evidence supposedly newly discovered at the very end of discovery warrants the requested amendment. Specifically, at the deposition of Susan Itzkowitz, the head of FSM's day-to-day operations (who was not noticed to be deposed on corporate structure issues). Itzkowitz testified that she worked for "Marc Fisher Footwear" (MFF), as opposed to FSM. Plaintiffs aver that MFF is a de facto partnership comprised of a multitude of alter ego companies operated by Fisher. Plaintiffs, therefore, seek discovery of the MFF entities so they can attempt to recover against them under a veil piercing or de facto partnership theory of liability.

In opposition, defendants establish that MFF is an unincorporated trade name and presented evidence that Fisher's other companies legitimately operate as separate legal entities. For instance, Fisher's companies utilize centralized services, such as human resources – a structure that is both efficient and common practice. Moreover, corporate formalities are observed through the use of inter-company loans and separate accounting. In sum, defendants produced credible evidence that MFF is merely a trade name and that Fisher's companies operate as distinct legal entities. Plaintiffs, on the other hand, have proffered nothing more than bald allegations of malfeasance.

More problematic is that plaintiffs knew of an entity called MFF and the existence of other footwear companies run by Fisher since the very inception of the parties' relationship in 2006. Plaintiffs were high level FSM employees for approximately five years and do not present any evidence rebutting the notion that they always knew about MFF and Fisher's related companies. To be sure, plaintiffs may not have known every detail about each of Fisher's companies. Yet, plaintiffs were fully capable of seeking discovery on these companies from the outset of this case. They did not. Instead, three years later, after discovery has been completed and this case is set to proceed to summary judgment, plaintiffs propose reopening discovery to bolster their veil piercing and de facto partnership theories. This would take months to complete, cost substantial sums of money and significantly delay the resolution of this 2011 case, thereby prejudicing defendants.²

Pursuant to CPLR 3025(b), leave to amend a pleading should be freely given unless it would result in prejudice or surprise or the amendment is palpably improper or insufficient. *McCaskey, Davies & Assocs., Inc. v N.Y.C. Health & Hosps. Corp.*, 59 NY2d 755, 757 (1983). This court has discretion to determine, on a case by case basis, whether to grant leave. *Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 959 (1983). Leave to amend should be denied if the plaintiff waited an unreasonable time to bring its motion. *Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 22 (1st Dept 2003).

² Delay would not only be due to the extra discovery, but also for the complex motion practice that predictably would ensue to challenge both the pleading sufficiency and merits of the veil piercing claims. If the proposed amendment were allowed, it is unlikely that this case could be trial ready until late 2015.

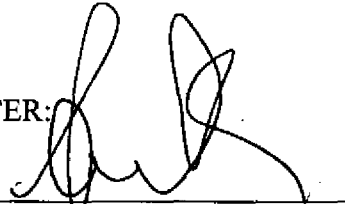
Given plaintiffs' prior knowledge of Fisher's related companies and that the evidence presented on this motion suggests that it is unlikely that plaintiffs would be able to clear the high hurdle of the veil-piercing or de facto partnership standards,³ plaintiffs may not amend. Plaintiffs' delay in seeking this discovery is simply unreasonable. Plaintiffs' redress is limited to post-judgment enforcement proceedings under Article 52 and the Debtor and Creditor law. Accordingly, it is

ORDERED that the motion to amend by plaintiffs Kari Sigerson and Miranda Morrison is denied; and it is further

ORDERED that within 7 days of the entry of this order on the NYSCEF system, the parties are to call the court after 4:00 pm, at which time a summary judgment briefing schedule will be set.

Dated: January 28, 2014

ENTER:



J.S.C.

³ For instance, even if some corporate formalities were not strictly adhered to, under the applicable law (either Delaware or New York, as the briefs are not entirely clear about which law governs), veil piercing is not warranted unless the sham company was used to defraud the plaintiff. See *Honeywell Int'l Inc v Northshore Power Sys., LLC*, 32 Misc3d 1223(A), at *9 (Sup Ct, NY County 2011) (Fried, J.), citing *Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 (1993) and *Wallace v Wood*, 752 A2d 1175, 1183-84 (Del Ch 1999). There is absolutely no evidence of fraud, nor do plaintiffs proffer facts to support such an accusation.