

Abraham Cohen & Collins Cash, Inc. v Pearl Capital Rivis Ventures LLC
2015 NY Slip Op 31267(U)
July 21, 2015
Supreme Court, New York County
Docket Number: 162309/2014
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

ABRAHAM COHEN and COLLINS CASH, INC.,

Index No.: 162309/2014

Plaintiffs,

Motion Date: 07/21/15

- v -

Motion Seq. No.: 002 & 003

PEARL CAPITAL RIVIS VENTURES LLC, MEIR
HURWITZ, AVRAHAM ZEINES and ARI KAPLAN,

Defendants.

The following papers, numbered 1 to ____ were read on this motion for a more definite statement/
dismiss and cross motion for leave to extend time to serve process/to compel answer

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

No (s) . 1

Notice of Cross Motion/Answering Affidavits - Exhibits _____

No (s) . 2

Replying Affidavits - Exhibits _____

No (s) . 3

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that the motion for a more definite statement shall granted and the cross motion for sanctions against defendants and to compel defendants to answer shall be denied. It is further ordered that the motion to dismiss the complaint to the extent that it seeks dismissal of the complaint against defendant Meir Hurwitz for lack of personal jurisdiction and dismissal of the complaint against the individual defendants for failure to state a cause of action shall be granted and the cross motion of plaintiffs to the extent that it seeks an extension of time to serve process upon defendant Meir Hurwitz shall be granted.

Motion Sequence Numbers 002 and 003 are consolidated for disposition.

- 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**

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

The court denies the motion of the individual defendants to dismiss the fifth and sixth causes of action pursuant to Labor Law §§ 193 and 215 commenced by the individual plaintiff. See Martinez v Alubon, Ltd., 11 AD3d 500, 501 (1st Dept 2013) ("Their allegations support holding Boneh personally liable for the Labor Law violations as an 'employer'").

The cross motion to the extent that it seeks to extend plaintiff's time to serve the summons and complaint upon defendant Meir Hurwitz is granted and the time is extended pursuant to 306-b in the interest of justice (Leader v Maroney, Ponzini & Spencer, 97 NY2d 95 [2011]).

As for the motion of defendants for a more definite statement, this court concurs with defendants that the complaint at bar is prolix, completely at odds with the concept of notice pleading, and extremely difficult to understand. This court hereby strikes certain matter, specifically with respect to the decretal paragraph wherein the corporate plaintiff seeks damages for emotional distress and mental anguish, such damages being unavailable to a corporate entity. Plaintiffs shall serve and file a more definite statement in the form of an amended complaint as the pleadings are ambiguous and defendants cannot reasonably be required to frame a response. See Rappaport v Diamond Dealers Club, 95 AD2d 743 (1st Dept 1983). Such amended complaint shall be drafted in simple active voice sentences that

delineate specific cognizable causes of action and factual allegations separately for the individual plaintiff and the corporate plaintiff.

The cross motions of plaintiffs for sanctions are themselves without merit and shall be denied. Such cross motions shall also be denied to the extent that they seek an order compelling defendants to answer for the reasons stated above.

Accordingly, it is

ORDERED that motion of defendants to the extent that it seeks an order directing plaintiffs to serve a more definite statement and striking certain matters (Motion Sequence Number 002) is granted, and matter is stricken from the complaint as stated above, and the cross motion of plaintiffs for sanctions and to compel defendants to serve an answer is denied, and plaintiff shall serve and file an amended complaint within sixty (60) days of the date hereof; and it is further

ORDERED that the motion of defendants to the extent that it seeks an order dismissing the fifth and sixth causes of action against defendants Avrham Zeines and Ari Kaplan (Motion Sequence Number 003) is denied and the cross motion of plaintiffs to the extent that it seeks to extend their time to serve process upon defendant Meir Hurwitz is granted pursuant to CPLR 306-b, and plaintiffs shall serve and file the amended complaint upon

defendant Hurwitz within sixty (60) days of the date hereof, and the cross motion is otherwise denied.

This is the decision and order of the court.

Dated: July 21, 2015

ENTER:

Debra A. James
J.S.C.

DEBRA A. JAMES