

624 Art Holdings, LLC v Hill

2017 NY Slip Op 30102(U)

January 17, 2017

Supreme Court, New York County

Docket Number: 652835/2015

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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624 ART HOLDINGS, LLC,

Plaintiff,

-against-

DAVID HILL, NANCY HILL, JAMES HILL,
DOBUY, LLC, and JOHN DOE,

Defendants.
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DECISION AND
ORDER

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HON. ANIL C. SINGH, J.:

Plaintiff moves for leave to amend the complaint pursuant to CPLR 3025. Defendants oppose the motion and cross-move for: a) a protective order pursuant to CPLR 3103 suppressing all records, documents and/or information obtained by plaintiff through the use of third-party subpoenas duces tecum without simultaneously serving copies of the subpoenas upon defendants in accordance with CPLR 3120(3), and without providing notice to defendants pursuant to CPLR 3120(3) that documents produced in response to plaintiff's third-party subpoenas duces tecum were being made available to defendants for inspection and copying at a specific time and place; and b) an order compelling plaintiff to identify and produce to defendants all subpoenas duces tecum issued and/or utilized by

plaintiff in connection with this proceeding, and all documents and/or information received by plaintiff in connection with this proceeding, and all documents and/or information received by plaintiff in response to plaintiff's improperly issued subpoenas duces tecum; and c) and an order denying plaintiff's motion to amend the complaint.

Motions for leave to amend pleadings are governed by the liberal standard of CPLR 3025(b). "In the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (In re Eshaghian, 144 A.D.3d 1155 [2nd Dept., 2016]).

Plaintiff seeks to amend the complaint to add related claims under the Debtor Creditor Law based upon additional facts discovered during litigation. Plaintiff contends that while the original complaint identified conveyances totaling a conservative estimate of \$738,000, discovery has yielded evidence of over \$2,775,000 of cash transfers conveyed to defendants between 2007 and 2015.

Defendants contend that the amended complaint fails to allege fraud or misconduct with particularity as required by CPLR 3016(b).

The Court has carefully reviewed the proposed amended complaint. In short, we find that the amended complaint adds related claims that are pled with

sufficient particularity to satisfy CPLR 3016(b). Further, it is clear to the Court that the amendment will not result in any prejudice or surprise to defendants.

Defendants in their cross-motion seek a protective order suppressing all records, documents and information obtained by plaintiff through the use of third-party subpoenas duces tecum served in accordance with CPLR 3120(3).

The Court finds that the application for a protective order must be denied for two reasons.

First, plaintiff served the subpoenas in issue under CPLR 5223 and 5224. The notice requirements of CPLR 3120(3) do not apply to such subpoenas (Encalada v. CPS1 Realty LP, 2014 WL 2623602 [Sup. Ct., N.Y. County, 2014]).

Second, defendants have not shown that they suffered any prejudice because they were unable to make an application for a protective order. Defendants have not shown that the documents, records and information in issue are confidential or privileged.

Accordingly, it is


ORDERED that plaintiff's motion for leave to amend the complaint is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the cross-motion is granted only to the extent that plaintiff shall produce to defendants within twenty days: 1) all subpoenas duces tecum issued and/or utilized by plaintiff in connection with this proceeding; and 2) all documents and/or information received by plaintiff in response to plaintiff's subpoenas duces tecum, to the extent that plaintiff has not yet provided all such subpoenas, documents or information to the defendants.

The foregoing constitutes the decision and order of the court.

Date: January 17, 2017
New York, New York



Anil C. Singh