

American Express Bank. FSB v Thompson
2018 NY Slip Op 33162(U)
December 3, 2018
Supreme Court, New York County
Docket Number: 156006/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. KATHRYN E. FREED</u> <i>Justice</i> -----X AMERICAN EXPRESS BANK, FSB, Plaintiff, - v - LUSHAWNDA THOMPSON and HAPILOS ENTERTAINMENT GROUP, INC. Defendant.	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">PART</td> <td style="width: 50%;">IAS MOTION 2</td> </tr> <tr> <td>INDEX NO.</td> <td><u>156006/2016</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>11/30/2018</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>002</u></td> </tr> </table> DECISION AND ORDER	PART	IAS MOTION 2	INDEX NO.	<u>156006/2016</u>	MOTION DATE	<u>11/30/2018</u>	MOTION SEQ. NO.	<u>002</u>
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MOTION SEQ. NO.	<u>002</u>								

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35
were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is hereby ordered that the motion is decided as follows.

Plaintiff American Express Bank, FSB commenced this action against defendants Lushawnda Thompson (“Thompson”) and Hapilos Entertainment Group, Inc. (“HEG”) on July 19, 2016. In the complaint, plaintiff claims breach of contract and an account stated arising from defendants’ alleged failure to pay credit card debt in the amount of \$26,982.01.

Plaintiff now moves for leave to amend the caption to reflect the fact that American Express Centurion Bank (Centurion) and American Express Bank, FSB (FSB) have been consolidated under a single national bank charter, that Centurion changed its status from a state bank to a federal bank named American Express

National Bank (AENB), and that FSB merged into the new entity. Plaintiff submits proof from a government website for the Federal Deposit Insurance Corporation, which reflects that the new entity is known as AENB. Doc. No. 32, Exhibit D.

It is well settled that “[m]otions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit.” (*Y.A. v Conair Corp.*, 154 AD3d 611, 612 [1st Dept 2017]; *see* CPLR 3025 [b]; *Pichler v Jackson*, 157 AD3d 450 [1st Dept 2018].) Under this standard, the motion must be granted.

Plaintiff additionally moves for leave to extend its time to re-serve the defendants pursuant to CPLR 306-b.

CPLR 306-b permits a court, “in the interest of justice, [to] extend the time for service” of the summons and complaint beyond the initial 120 days prescribed by the statute. A plaintiff moving for an extension of time must “establish good cause in support of its request” by demonstrating that it “act[ed] with reasonable

diligence in trying to effect service.” (*Goldstein Group Holding, Inc. v 310 E. 4th St. Hous. Dev. Fund Corp.*, 154 AD3d 458, 459 [1st Dept 2017].)

Given that plaintiff has demonstrated reasonably diligent efforts to effectuate service and only requests an additional 90 days to effect service, this Court finds plaintiff has met its burden and grants plaintiff’s motion, pursuant to CPLR 306-b to extend its time for service.

Therefore, in light of the foregoing, it is hereby

ORDERED that the motion is granted, and plaintiff is permitted an additional 90 days from the date that this order is entered in which to re-serve defendants Lushawnda Thompson and Hapilos Entertainment Group, Inc. with the summons and complaint; and it is further

ORDERED that the caption shall be amended to reflect that plaintiff’s proper name is now American Express National Bank; and it is further

ORDERED that the action shall hereinafter bear the following caption:

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

-----X

AMERICAN EXPRESS NATIONAL BANK,

Plaintiff,

- v -

LUSHAWNDA THOMPSON AND HAPILOS
ENTERTAINMENT GROUP, INC.,

Defendants.

-----X

And it is further

ORDERED that counsel for plaintiff is directed to e-file a completed
“Notice to County Clerk” (Form EF-22), with a copy of this order attached thereto,
within 20 days after this order is entered, and the Clerk is directed to mark this
Court’s records to reflect the new caption set forth above; and it is further

ORDERED that this constitutes the decision and order of this Court.

12/3/2018

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

KATHRYN E. FREED, J.S.C.