

American Express Bank, FSB v Bardach
2019 NY Slip Op 30748(U)
March 22, 2019
Supreme Court, New York County
Docket Number: 156488/2017
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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AMERICAN EXPRESS BANK, FSB
Plaintiff,
- V -
MOE BARDACH,
Defendant.

INDEX NO. 156488/2017
MOTION DATE 05/18/2019
MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54
were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is

By order dated and filed April 19, 2018, this Court granted a default judgment in favor of plaintiff American Express Bank, FSB and as against defendant Moe Bardach, in the amount of \$32,562.00, plus costs and disbursements as taxed by the Clerk of the Court, based on defendant's breach of a credit agreement. Doc. 19. Plaintiff now moves, in effect, pursuant to CPLR 3025 (b), to amend the caption to substitute American Express National Bank as plaintiff and for the entry of judgment in favor of the newly substituted plaintiff. The motion, which is unopposed, is granted.

Pursuant to CPLR 3025(b), a party may amend its pleading at any time by leave of court, and leave shall be freely given upon such terms as may be just. It is within the court's discretion whether to permit a party to amend its complaint. *See Peach Parking Corp. v 345 W. 40th Street, LLC*, 43 AD3d 82 (1st Dept 2007). On a motion for leave to amend, a plaintiff need not establish the merit of its proposed new allegations (*see Lucindo v Mancuso*, 49 AD3d 220, 227 [1st Dept

2008]), but must show that the proffered amendment is not palpably insufficient and not clearly devoid of merit. *See MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010); *Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 (1st Dept 2007).

Here, plaintiff's counsel submits proof that plaintiff American Express Centurion Bank and American Express Bank, FSB consolidated under a single national bank charter. American Express Centurion Bank changed its status from a state bank to a federal bank, American Express National Bank, and American Express Bank, FSB merged into the new federal entity. (Docs. 52 and 53). Thus, plaintiff has established that American Express National Bank is the proper plaintiff herein. The lack of any prejudice to defendant which could arise from the substitution of American Express National Bank as plaintiff is evident from the fact that defendant Bardach was served with the instant motion and failed to oppose the same. See CPLR 3025 (b).

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff American Express Bank, FSB to amend the caption to substitute American Express National Bank as plaintiff is granted; and it is further

ORDERED that the caption shall hereinafter read as follows:

AMERICAN EXPRESS NATIONAL BANK,

Plaintiff,

-against-

MOE BARDACH,

Defendant.

And it is further,

ORDERED that the order of this Court dated and filed April 19, 2018 shall otherwise remain in full force and effect; and it is further

ORDERED that newly substituted plaintiff, American Express National Bank, shall have judgment against defendant Moe Bardach in the amount of \$32,562.00, plus costs and disbursements as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly; and it is further

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

3/22/2019
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	