

Venture v Preferred Mut. Ins. Co.

2019 NY Slip Op 31133(U)

April 16, 2019

Supreme Court, New York County

Docket Number: 155587/2014

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ROBERT R. REED PART 43

Justice

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DANIEL VENTURE, ISABEL VENTURE,
Plaintiff,

- v -

PREFERRED MUTUAL INSURANCE COMPANY,
Defendant.

INDEX NO. 155587/2014
MOTION DATE 09/11/2018
MOTION SEQ. NO. 008

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 214 were read on this motion to AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

Plaintiffs move, pursuant to CPLR 3124 and 3025(b) to, (1) compel responses by defendant Preferred Mutual Insurance Company (“Preferred”) and third-party plaintiff JPMorgan Chase Bank, National Association (“Chase”) to plaintiffs’ document demands to defendants, dated March 8, 2018, and (2) to amend the complaint to add causes of action directly against Chase and to add additional causes of action against Preferred. In response to the motion, Preferred provides what it purports to be adequate responses to plaintiffs’ document demands, and opposes the motion to the extent it seeks to amend the complaint. Chase opposes the motion to compel and to amend the complaint, and cross-moves to discontinue the third-party complaint.

Under CPLR 3025(b), leave to amend is to be freely granted in the absence of prejudice. Here, there is no showing of actual prejudice to Preferred or Chase. Nor are the proposed amendments, in the context of this contentious and complex litigation setting, palpably improper. This part of the motion is granted.

As stated above, Preferred provides in response to plaintiffs' motion documents it asserts address the four (4) sets of documents demanded by plaintiffs. In their reply, plaintiffs do not highlight any inadequacy of the documents belatedly provided by Preferred. Thus, with respect to Preferred, the court views the motion to compel as moot.

In their motion, plaintiffs contend that responses Chase previously provided are inadequate. For demand numbers 1 and 3, the responses Chase provide seem to be in the form of responses to interrogatories. What plaintiffs seek are actual documents supporting or reflecting the substance provided in Chase's original responses. Chase must provide documents containing the information sought and not just statements articulating such information. This request is granted.

For demand number 2, Chase provided no substantive response, but, rather, an objection. It states that documents responsive to this demand are protected by attorney-client privilege or other privileges. To successfully invoke the protection of the attorney client privilege or other privileges, Chase must provide a privilege log that chronicles the documents that are responsive to the demand and asserts the specific basis of the privilege, and provide forthwith such documents as do not specifically qualify for the privilege. This request is granted.

With regard to demand number 4, Chase offered standard objections, but nonetheless did provide documents that appear to be responsive to the demand. This request is denied.

Under CPLR 3217(b), a court may enter an order of voluntary discontinuance upon terms and conditions, as the court deems proper. Here, there is no prejudice to plaintiffs in permitting the discontinuance of the third-party complaint inasmuch as they are able now to bring their causes of action against Chase directly, by virtue of this court's ruling herein on their motion to

amend. Additionally, there is no prejudice to Preferred, because Chase has subrogated its interest in the claim to Preferred. This motion is granted.

Accordingly, it is

ORDERED that Plaintiffs' motion to amend the complaint to add causes of action against Preferred and Chase is granted; and it is further

ORDERED that plaintiff shall file an amended complaint in the form annexed to the moving papers with the Clerk within 10 days and the Clerk is respectfully directed to receive such amended complaint for filing and to mark his files accordingly; and it is further

ORDERED that Preferred and Chase shall file their responses to the amended complaint within 30 days of the filing of said amended complaint; and it is further

ORDERED that plaintiffs' motion to compel as against Chase is granted with respect to demand numbers 1, 2 and 3; and it is further

ORDERED that Chase, within 30 days, shall produce the documents responsive to demand numbers 1 and 3; and it is further

ORDERED that Chase, within 30 days, shall provide a privilege log that specifically identifies the documents that are responsive to demand number 2, and details the asserted basis of privilege for specific documents, and, to the extent particular responsive documents are not privileged, Chase shall produce the documents demanded, and it is further

ORDERED that plaintiffs' motion to compel as against Chase is denied with respect to demand number 4; and it is further

ORDERED that plaintiffs' motion to compel as against Preferred is denied as moot; and it is further

ORDERED that Chase's cross-motion to discontinue is granted, and it is further

ORDERED that the third-party complaint is hereby discontinued, and the Clerk is respectfully directed to mark his files accordingly; and it is further

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DANIEL VENTURE, ISABEL VENTURE,
Plaintiff,

- v -

PREFERRED MUTUAL INSURANCE COMPANY and
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
Defendant.

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ORDERED that the Clerk is respectfully directed to amend the caption as follows and to mark his files accordingly;

This constitutes the decision and order of the court.



4/16/2019
DATE

ROBERT R. REED, J.S.C.

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