

**Alpha Phi Alpha Senior Citizens v Zeta Zeta Lambda
Co., Inc.**

2019 NY Slip Op 34109(U)

September 27, 2019

Supreme Court, Queens County

Docket Number: 710037/14

Judge: Leonard Livote

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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: Honorable Leonard Livote
Acting Supreme Court Justice
IAS TERM, PART 33
Commercial

ALPHA PHI ALPHA SENIOR CITIZENS
and PRESIDENT OF ZETA ZETA LAMBDA
CHAPTER OF ALPHA PHI ALPHA
FRATERNITY INC.,
Index No: 710037/14

Plaintiff,

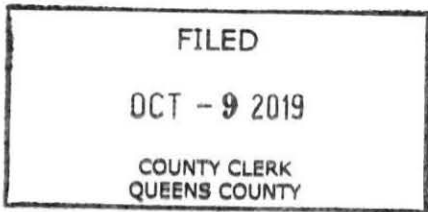
-- against --

Motion Date: 7/2/19

ZETA ZETA LAMBDA COMPANY, INC.,
(now known as The 1906 Project,
Inc.)JEAN DUCHARELLIER RAYMOND
GAMBLE, DAVID BLUFORD, JEFFERY
TERRY, EVERETT HOPKINS, ESQ, EGON
BROWN, ALDRIN INNIS,

Seq. No: 11

Defendants.



The following papers numbered 1 to 11 read on this motion by defendant for an Order enjoining plaintiffs, their directors, officers, agents, attorneys, counsel, and all other persons acting for or in their behalf during the pendency of this action from

- a. Interfering in all aspects of the defendants attempts to lease the vacant portion of its premises known as 220-01 Linden Boulevard, Cambria Heights, NY, ("Premises");
b. Interfering in all aspects of the defendants' lease negotiations with New York City Council Member I. Daneek Miller, his representatives and/or the City of New York and/or its agencies;
c. Taking any affirmative steps, or procuring any affirmative act in contravention of the defendants' rights to lease the vacant portion of the Premises to any party that they deem appropriate;
d. Preventing the individually names defendants from exercising all the rights and privileges incumbent upon the office of directors of the defendant corporation in conducting its business, and
e. Preventing the individually named defendants from exercising all the rights and privileges incumbent upon their respective positions as officers of the defendant corporation in conducting its business,

And a Cross-Motion for an Order

- (i) Dismissing defendants' motion for temporary restraining order.
- (ii) In the alternative, if this Court grants the defendants' motion, granting leave to join Council Member I. Daneek Miller to this action, and
- (iii) granting leave to file the 2nd Amended Verified Complaint.

PAPERS

	<u>NUMBERED</u>
Notice of Motion, Affirmation, Affidavits and Exhibits.....	1-4
Cross Motion, Affirmation, Affidavits and Exhibits.....	5-7
Answering Affirmations, Affidavits and Exhibits.....	8-9
Reply Affirmations, Affidavits and Exhibits.....	10-11
Other.....	

Upon the foregoing papers, the motion and cross-motion are decided as more fully set forth below:

The Plaintiffs commenced this action against the Zeta Zeta Lambda Company, Inc. (now known as The 1906 Project, Inc,) (the "Company") and its directors (together with the Company, the "defendants") seeking, among other relief, removal of the Company's directors and an accounting of the Company's financial management.

Defendant alleges that Defendant, The 1906 Project, Inc. f/k/a Zeta Zeta Lambda Company, Inc., ("Company") was organized as an IRS 501 (c)(2) non-charitable not-for-profit corporation in 1995 by individuals who happened to be members of Plaintiff, Zeta Zeta Lambda Chapter of Alpha Phi Alpha Fraternity, Inc., ("Chapter"). Its initial incorporated purpose was as a holding company to house a New York City funded adult day care center, operated by the Plaintiff Alpha Phi Alpha Senior Citizens Center, Inc., ("Center"). Per its certificate of incorporation, it was to turn over all of its net income to the Center.

On June 3, 1997, with the consent of the Attorney General and approval of a Justice of the Queens County Supreme Court, the Company amended its certificate of incorporation, which, inter alia, eliminated the net income distribution requirement. There were two primary reasons for the amendment. First to fulfill a condition of the closing with the Salvation Army with whom the Company purchased the Premises that the Company be an IRS

501(c)(3) charitable tax-exempt organization. Secondly, the Company anticipated entering into a lease with the Center, which was a New York City funded day care center and if the Company payed its net income to it, it would have constituted an illegal kickback.

The Company was organized as an entity separate and apart from the Chapter, had a self-perpetuating board and no membership. The individually named Defendants ("Directors") were all nominated by members of the Company's board of directors and at no time did the Chapter ever nominate any of the Directors. Throughout its history, the Chapter never exercised any authority or control over the Company and none of the Directors ever consented to be agents or under the direction and control of the Chapter. There has never been any governance agreement between the Chapter and either the Company or its Directors. The Company purchased the premises known as 220-01 Linden Boulevard, St. Albans, NY, by deed dated November 27, 1996.

Approximately ten years after the Company acquired the Premises and nine years after the amendment of its certificate of incorporation, the Center became a tenant of the Company by the execution of a Lease between the parties dated December 1, 1996. The lease contains the only legal obligations that exist between the Company and the Center.

Plaintiff alleges that in the Company's original bylaws, the Senior Center established its control over the Company by including a good standing with the Chapter requirement. At that time, the Company was still a 501(c)(2) organization and was required to be under the control of the organization entitled to the Company's net income (the Senior Center). After the Company amended its certificate of incorporation in or about June 3, 1997 to become a 501(c)(3) organization, the good standing requirement remained in the Company's bylaws, until the Senior Center and the Chapter sent the Company a termination notice.

In or about February 2013, the Chapter and Center served the defendants a termination notice. After the termination notice was delivered, the defendants amended the Company's original bylaws to remove the good standing requirement.

Defendant sought to lease a portion of its premises. Plaintiff's counsel sent a letter to the proposed tenant informing him of this litigation. Defendants seek to enjoin plaintiff from interfering with its proposed lease.

Defendants move for a preliminary injunction. "Preliminary

injunctive relief is a drastic remedy that will not be granted unless a clear right to it is established under the law and upon undisputed facts found in the moving papers, and the burden of showing an undisputed right rests upon the movant" (*Anastasi v. Majopon Realty Corp.*, 181 A.D.2d 706, 707 [2d Dept 1992]).

In order "to prevail on a motion for a preliminary injunction, the movant must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position" (*Apa Sec., Inc. v. Apa*, 37 A.D.3d 502, 503 [2d Dept 2008]).

In the instant case, there are numerous factual disputes concerning whether the defendant properly removed the "good standing" requirement. Thus, the defendant has failed to establish a probability of success on the merits. Accordingly, the motion is denied.

With respect to the cross-motion, plaintiff moves to file a second amended verified complaint.

In general, an application for leave to amend a pleading pursuant to 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 (*Lucido v Mancuso*, 49 AD3d 220, 221-22 [2d Dept 2008]). In the instant case, there is no prejudice from delay and the proposed amendment is not palpably insufficient or patently devoid of merit. Accordingly, the motion is granted and it is,

Ordered, that the complaint is amended to conform with the proposed second amended verified complaint annexed to the motion and the second amended verified complaint is deemed served upon service of a copy of this Order with notice of entry. It is further,

Ordered, that the defendant shall have 20 days from the date of service to serve an answer to the second amended verified complaint.

This constitutes the Order of the Court.

Dated: September 27, 2019

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Leonard Livote, A.J.S.C.

