

**Dual Diagnosis Treatment v Complete Bus.
Solutions**

2020 NY Slip Op 31936(U)

June 18, 2020

Supreme Court, New York County

Docket Number: 655860/2018

Judge: Andrew Borrok

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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. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

DUAL DIAGNOSIS TREATMENT
Plaintiff,

- v -

COMPLETE BUSINESS SOLUTIONS
Defendant.

-----X

INDEX NO. 655860/2018
MOTION DATE 02/18/2020
MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 250, 251, 252, 253, 254, 263, 269, 270, 271, 272, 273, 281, 282 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, Complete Business Solutions Group, LLC and New York Unity Factor, LLC's (the Counterclaim Plaintiffs) motion for leave to file an amended answer with counterclaims (the Proposed Counterclaims; NYSCEF Doc. No. 254) is granted.

The Relevant Facts and Circumstances

Familiarity with the facts is presumed (see Mtn. Seq. Nos. 005, 007). The Counterclaim Plaintiffs now seek leave to file their Proposed Counterclaims against Dual Diagnosis Treatment Center, Inc. d/b/a/ Sovereign Health of California d/b/a Sovereign Health Group and Tonmoy Sharma (collectively, Dual Diagnosis) for: (i) breach of contract, (ii) breach of guaranty, (iii) conversion, and (iv) unjust enrichment.

In sum and substance, the Counterclaim Plaintiffs seek to recover sums allegedly due from Dual Diagnosis pursuant to three merchant cash advance agreements, dated February 28, 2018, May 1,

2018, and June 29, 2018 respectively, each by and between the Dual Diagnosis and Broadway Advance LLC a/k/a Broadway Advance Funding (the **MCA Agreements**; NYSCEF Doc. Nos. 4, 6, 7), whereby Broadway Advance LLC extended a loan to Dual Diagnosis by purchasing future account receivables of Dual Diagnosis. Mr. Sharma also signed a personal guaranty that covered the obligations of Dual Diagnosis under the MCA Agreements.

The Counterclaim Plaintiffs allege that the rights, duties, and obligations of Broadway Advance LLC under the MCA Agreements were then assigned to Complete Business Solutions Group, LLC and ultimately New York Unity Factor, LLC pursuant to two Assignment Agreements (i) dated June 29, 2018, by and between Broadway Advance LLC as assignor and Complete Business Solutions Group Inc. as assignee and (ii) dated June 30, 2018, by and between Complete Business Solutions Group Inc. as assignor and New York Unity Factor, LLC as assignee (the **Assignment Agreements**; NYSCEF Doc. Nos. 73, 74).

The Counterclaim Plaintiffs allege that they were authorized by the MCA Agreements to debit Dual Diagnosis's bank accounts for repayment of the loan, but from July 5, 2018 onwards, Dual Diagnosis restricted access to their receivables, which left the Counterclaim Plaintiffs unable to recover a portion of the loan due under the MCA Agreements (NYSCEF Doc No. 254, ¶¶ 12-25).

Discussion

The Counterclaim Plaintiffs argue that leave to amend should be granted as discovery is ongoing, Dual Diagnosis was already aware of the factual basis for the Proposed Counterclaims, and that

there is no prejudice to Dual Diagnosis. In opposition, Dual Diagnosis argues that the instant motion for leave to amend should be denied due to the Counterclaim Plaintiffs' delay in seeking leave to amend and because the Proposed Counterclaims are palpably insufficient and devoid of merit since the Counterclaim Plaintiffs have no standing to assert counterclaims. Dual Diagnosis' arguments are unavailing.

Pursuant to CPLR § 3025 (b), leave to amend pleadings should be freely given and denied only where there is prejudice or surprise resulting from the delay to the opposing party, or if the proposed amendment is "palpably improper or insufficient as a matter of law" (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]). The party opposing the amendment must overcome a heavy presumption in favor of the proposed amendment.

Mere delay does not defeat a motion for leave to amend (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011] [citation omitted]). Rather, prejudice requires some indication that the opposing party has been hindered in preparing the case or has been prevented from taking some measure to support its position (*Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981]). Ultimately, leave to amend is "committed to the court's discretion" (*Edenwald Contr. Co. v New York*, 60 NY2d 957, 959 [1983]).

Although the Counterclaim Plaintiffs sought leave to amend one year after filing their Answer, mere delay, without more, is not sufficient to defeat a motion for leave to amend (*see Kocourek*, 85 AD3d at 504). Dual Diagnosis cannot claim to be surprised by the Counterclaims because the parties' dispute involves the clarification of what sums, if any, are owed pursuant to the MCA

Agreements. Further and significantly, Dual Diagnosis is not prejudiced by the Proposed Counterclaims because document discovery remains ongoing, depositions have not yet been conducted, and in any event “the need for additional discovery does not constitute prejudice sufficient to justify denial of an amendment” (*Jacobson v McNeil Consumer & Specialty Pharms.*, 68 AD3d 652, 654 [1st Dept 2009]).

Inasmuch as Dual Diagnosis argues that the Proposed Counterclaims are without merit, it is well settled that the Counterclaim Plaintiffs are not required to establish the merits of their proposed allegations, but must “simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]). Here, the Counterclaim Plaintiffs have demonstrated that their Proposed Counterclaims are neither palpably insufficient nor devoid of merit. The Proposed Counterclaims sufficiently allege claims pursuant to the MCA Agreements, which obligations were assigned to the Counterclaim Plaintiffs. In other words, the Proposed Counterclaims indicate that the Counterclaim Plaintiffs have proper standing to recover sums due under the MCA Agreements, by virtue of the Assignment Agreements. If Dual Diagnosis wishes to test the merits of the Proposed Counterclaims and raise factual arguments about the same, Dual Diagnosis may move for dismissal or summary judgment at the appropriate time.

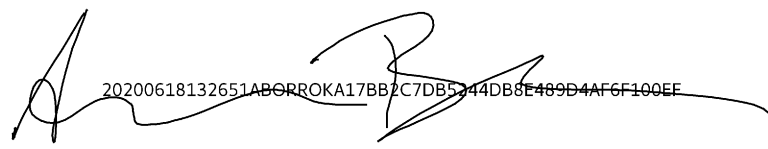
Accordingly, it is

ORDERED that the Counterclaim Plaintiffs’ motion seeking leave to file its Proposed Counterclaims is granted; and it is further

ORDERED that the Counterclaim Plaintiffs shall serve their Proposed Counterclaims within 5 days of this decision and order; and it is further

ORDERED that Dual Diagnosis shall serve a reply to the Proposed Counterclaims or otherwise respond thereto within 20 days from the date of said service.

6/18/2020
DATE


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ANDREW BORROK, J.S.C.

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