

Harty Built LLC v Ninety-Five Madison Co., L.P.

2020 NY Slip Op 31991(U)

June 22, 2020

Supreme Court, New York County

Docket Number: 157349/2018

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

HARTY BUILT LLLC

Plaintiff,

- v -

NINETY-FIVE MADISON COMPANY, L.P.,

Defendant.

-----X

INDEX NO. 157349/2018
MOTION DATE 02/27/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, Harty Built LLC's (the Plaintiff) motion to amend its complaint is granted.

The Plaintiff commenced this action for services rendered and an account stated to recover the cost of work, labor, and services that the Plaintiff performed for Ninety-Five Madison Company, LP (the Defendant). The Plaintiff now seeks leave to file an amended complaint and add a third cause of action for quantum meruit and a fourth cause of action for unjust enrichment (NYSCEF Doc. No. 28).

Under 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. Prejudice “requires some indication that the [opponent] has been hindered in the preparation of his case or has been prevented from taking some measure in support of his 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]).

The Plaintiff argues that it should be granted leave to file an amended complaint because there is no prejudice to the Defendant when discovery remains ongoing, note of issue has not been filed, and the new claims involve the same underlying facts. In opposition, the Defendant argues that leave to be amend should be denied because the instant motion was brought approximately 18 months after the action was commenced, the Plaintiff does not offer a reasonable excuse for its delay, and that the Plaintiff should have been aware of the factual basis for its proposed amendment when the Defendant filed its answer.

Here, the Plaintiff did not delay in seeking leave to amend when the instant motion was filed after the Defendant confirmed its position that the work performed by the Plaintiff required a written requisition (NYSCEF Doc. No. 23, ¶ 2). In addition, the Defendant fails to demonstrate any prejudice from the proposed amendment as the deposition of the Defendant’s representative, Ms. Sklar, has not taken place, discovery remains ongoing, and dispositive motions have not yet been filed (*contra Panasia Estate, Inc. v Broche*, 89 AD3d 498, 498 [1st Dept 2011] [denying plaintiff’s motion for leave to amend 18 months after action commenced because of prejudice to defendant where complaint already amended twice, discovery tailored to theory of liability in

second amended complaint was nearly complete, and court had resolved prior motions for summary judgment]).

Put another way, this is not a case that involves an inordinate delay which should result in denial of the motion seeking leave to amend (*contra Oil Heat Inst. v RMTS Assoc., LLC*, 4 AD3d 290, 294 [1st Dept 2004] [denying leave to amend where defendant offered no reasonable excuse for delay where defendant should have known of facts giving rise to proposed amendment almost 10 years prior]; *Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 24 [1st Dept 2003] [denying leave to amend after a trial and no reasonable excuse for six year delay in asserting punitive damages claim]). The Plaintiff's proposed claims in quasi-contract are not palpably improper or devoid of merit and inasmuch as discovery remains outstanding, the Defendant will not suffer any prejudice. Under these circumstances, the Plaintiff's motion for leave to file its amended complaint is granted.

Accordingly, it is

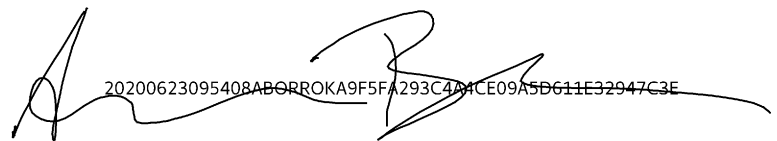
ORDERED that the Plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. No. 25) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the Defendant shall serve an answer to the amended complaint or otherwise respond thereto within 30 days from the date of said service; and it is further

ORDERED that a status conference will take place on July 29, 2020 at 11:30am with the parties to provide a deposition schedule; and it is further

ORDERED that depositions shall be completed by September 30, 2020; and it is further

ORDERED that note of issue shall be filed by October 15, 2020.



20200623095408ABORROKA9F5FA293C4AACE09A5D611E32947C3E

6/22/2020

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE