

TJ Global Mgt., LLC v KT Med. Mgt., Inc.
2020 NY Slip Op 32136(U)
June 29, 2020
Supreme Court, Kings County
Docket Number: 503035/2016
Judge: Lawrence S. Knipel
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At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29th day of June, 2020.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice,

-----X

TJ GLOBAL MANAGEMENT, LLC,

Plaintiff,

-against-

Index No. 503035/2016

KT MEDICAL MANAGEMENT, INC., DR. JOSEPH PUMA AND
SORIN MEDICAL, P.C.

Defendants.

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KT MEDICAL MANAGEMENT, INC., JOSEPH PUMA AND
SORIN MEDICAL, P.C.,

Third-Party Plaintiffs,

-against-

VLADIMIR GRESSEL AND KARINA TILIS,

Third-Party Defendants.

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The following e-filed papers read herein:

NYCEF Doc. Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed_____

113, 114

Opposing Affidavits (Affirmations)_____

122, 129

Reply Affidavits (Affirmations)_____

135, 136

Upon the foregoing papers, plaintiff TJ Global Management, LLC (TJ Global or plaintiff), moves, in motion sequence (mot. seq.) five, for an order, pursuant to CPLR 3025 (b), granting it leave to file and serve an amended and supplemental complaint

naming additional defendants, and for costs and disbursements associated with making this motion.

Background

TJ Global brings this action against defendants/third-party plaintiffs KT Medical Management, Inc. (KT Medical), Joseph Puma (Puma) and Sorin Medical, P.C. (Sorin) (collectively defendants) for rent arrears pursuant to a lease agreement for two condominium units that it owns located at 8686 Bay Parkway in Brooklyn (the subject premises). Third-party defendants Vladimir Gressel (Gressel) and Karina Tilis (Tilis), who are husband and wife, are TJ Global's principals.

Prior to 2012, Gressel, a doctor, was the sole owner of East Shore Medical, P.C. (East Shore), which operated a medical practice at the subject premises. KT Medical had been East Shore's management arm, and prior to 2012, Tilis, East Shore's office manager, was KT Medical's sole principal. On January 1, 2012, Puma purchased East Shore from Gressel for \$3.9 million. On the same day, Salvatore Lee Puma (Salvatore), Puma's son, purchased KT Medical from Tilis for one dollar. Salvatore subsequently transferred 50% of his shares in KT Medical to his mother, Puma's wife, Terri Puma (Terri). Thereafter, Puma's accountant, Joseph Pronesti (Pronesti) created Sorin, transferred East Shore's business and assets to Sorin, and dissolved East Shore.¹ Sorin became KT Medical's sole client until KT Medical ceased to do business in 2016. KT Medical, with Tilis as managing officer, continued to manage East Shore after Puma took

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In his affidavit in opposition to plaintiff's motion, Pronesti states he filed East Shore's dissolution papers in November, 2014, and that it was dissolved in 2015.

over, and then managed Sorin, including payment of all utilities, nonprofessional salaries and rents, until November, 2014, when Puma's relationship with Gressel and Tilis soured.

TJ Global leased the subject premises to KT Medical. The parties dispute the nature of their lease agreement. TJ Global contends that KT Medical leased the subject premises for a ten-year term pursuant to a written lease executed on or about April 1, 2011 by Gressel on behalf of TJ Global and Tilis on behalf of KT Medical. Defendants argue that this April, 2011 lease was fraudulently created and claim that KT Medical leased the units pursuant to an oral agreement. Defendants also contend that Gressel and Tilis did not give them notice that the alleged lease agreement existed and never sought to enforce its terms. In addition, defendants assert that they were unaware, until discovery ensued, that TJ Global and East Shore entered into a 20-year lease agreement for the subject premises on February 24, 2011 at a rate of almost half of the amount of the fraudulent KT Medical lease, and that this lease was improperly used by TJ Global to obtain funds from Chase Bank.

TJ Global contends that KT Medical made rental payments until October, 2012, but that in November, 2012, no rent was paid and that thereafter, rental payments became irregular and always fell short of the amount due. Plaintiff alleges that after Sorin was created, Sorin became a subtenant of the subject premises under the lease, as it funded KT Medical's payment of utility bills, non-professional salaries and rents. According to plaintiff, as of February 8, 2016, the tenants were in rental arrears of \$533,000, allegedly in breach of the lease agreement. Defendants deny that they failed to pay rent, and claim that any irregularity in payment was caused by Tilis, but that otherwise rent was paid

when due under an oral agreement between the parties.

On March 3, 2016, TJ Global commenced this action for rent arrears solely against KT Medical. Just prior to completion of discovery, TJ Global moved for leave to file and serve a supplemental and amended complaint adding Puma and Sorin as defendants. On January 10, 2018, the court granted the motion. Thereafter, on March 23, 2018, KT Medical, Puma and Sorin filed the third-party summons and complaint, and on May 9, 2018, Gressel and Tilis filed an answer.

During discovery, on September 4, 2019, Pronesti testified that KT Medical's officers, Salvatore and Terri were compensated \$166,034 and \$28,100, respectively, in 2015, and \$25,053 and \$15,058, respectively, in 2016. At the beginning of 2016, KT Medical's total liabilities and shareholders equity was \$194,798, which was also the same as its assets, but that by the end of the year, there were no assets recorded on its balance sheet. Pronesti testified that KT Medical completely ceased doing business on December 31, 2016,² was dissolved effective June 8, 2018, and that it did not have any assets at the time of its dissolution. Pronesti also admitted that he was aware, in 2016, of the instant action, but did not provide notice of the dissolution to any creditors or potential creditors of KT Medical.

On September 26, 2019, plaintiff filed this motion to amend and supplement the

² In his affidavit, Pronesti states that on February 26, 2016, he created TSC Medical Management Inc. (TSC) on behalf of Salvatore and Terri to replace KT Medical's functions, and that as of July 1, 2016, Sorin's payroll was on TSC's books. According to Pronesti, KT Medical ceased doing business because Sorin, its only client at the time, decided for valid business reasons to stop doing business with KT Medical and KT Medical had no other sources of income.

complaint to add Salvatore and Terri as defendants. The first twenty-eight paragraphs of the proposed pleading are identical to those in the operative complaint. The proposed complaint adds twelve additional paragraphs and alleges that Salvatore and Terri conspired with Puma and Sorin to dissolve KT Medical, knowing that KT Medical was liable to plaintiff for rent arrears and thereby frustrating plaintiff's attempt to collect a judgment against it. Plaintiff also alleges that Salvatore and Terri are responsible for KT Medical's liabilities. The proposed complaint demands a judgment jointly and severally against KT Medical, Puma, Sorin, Salvatore and Terri for \$533,000 in rent arrears, with interests, costs and disbursements.

Parties' Contentions

Plaintiff's Motion

Plaintiff contends that leave to amend should be granted because Salvatore and Terri filed to dissolve KT Medical in 2016, while they were fully aware of the existence of this action, in an effort to avoid creditors and a judgment. Plaintiff alleges that Salvatore and Terri acted in concert with Puma and Sorin in failing to fund KT Medical, which was Sorin's management arm. In support of this contention, plaintiff submits Pronesti's deposition testimony acknowledging that TJ Global was not given notice of the dissolution. Plaintiff contends that the motion is timely made because plaintiff's counsel received the transcript of the deposition on the day prior to filing this motion.

Defendants' Opposition

Defendants contend that plaintiff's motion is untimely as it was brought on the eve of the close of discovery, which was set to be completed by December 31, 2019.

Defendants allege that plaintiff's principals, Gressel and Tilis, have known of Salvatore and Terri's role in KT Medical since 2012 and should have moved to add these defendants two years ago when they sought to amend the complaint to add Puma and Sorin as defendants. Defendants argue that if Salvatore and Terri were added as defendants now, it would set back the trial date by a year or more, since each defendant has the right to retain independent counsel³ to mitigate potential conflicts and each defendant would also be entitled to discovery.

Defendants also contend that plaintiff, in essence, seeks to "pierce the corporate veil" to hold Salvatore and Terri responsible for KT Medical's debts, and that such a cause of action is not supported by the facts or law. Pronesti avers that in 2012, 2013 and 2014, Salvatore and Terri worked for KT Medical without payment or wages because the medical practice did not generate enough earnings to allow them to be paid. According to Pronesti, in 2013-2014, Salvatore increasingly assumed supervisory duties and control of KT Medical's affairs, and in 2015, he was in charge. In the first 11 months of 2015, Salvatore was allegedly only paid a \$26,034.44 salary. At the end of 2015, Puma and Sorin specifically earmarked \$150,000 in additional wages, which Pronesti claims explains the distribution of funds from KT Medical to Salvatore. Pronesti alleges that the payments to Salvatore and Terri were separate events and unrelated to KT Medical's dissolution. Pronesti also avers that it was prudent for Puma, in order to prevent being defrauded by Gressel and Tilis, to start fresh by dissolving East Shore and KT Medical and creating Sorin and TSC in their place. Defendants also contend that plaintiff had

³ Defense counsel acknowledges that Salvatore and Terri may retain him to represent them.

actual and/or constructive notice that KT Medical was dissolved.

Defendants further argue that Gressel and Tilis have unclean hands in that the lease that plaintiff claims is the operative lease is a fabrication, and that, therefore, this equitable remedy is unwarranted. Defendants allege that at the time of the 2012 East Shore and KT Medical share transfers, Gressel and Tilis falsely warranted that there were no financial liabilities or pending lawsuits when in actuality there were multiple pending medical malpractice lawsuits, as well as a Medicare audit that resulted in Medicare demanding the corporations return \$1,000,000 that was allegedly overpaid to East Shore. Defendants also claim that in October, 2012, Gressel took out a promissory note from Chase bank under the pretense that he was still the sole shareholder and officer of East Shore.

In addition, defendants argue that the proposed amendment does not properly plead the elements of common law or statutory fraud, that the pleading lacks the requisite specificity, and is therefore without merit.

Plaintiff's Reply

In reply, plaintiff insists that the motion is timely. In this regard, plaintiff submits that it is defendants who have delayed this case by not providing discovery⁴ and by not making Pronesti available for a deposition until seven months after plaintiff served notice of his deposition.⁵ Plaintiff argues that the information in Pronesti's testimony was

⁴ Plaintiff alleges that it took several good faith attempts to resolve a discovery dispute and two motions to compel compliance to produce documents concerning rent amounts for the location.

⁵ According to plaintiff, notice of Pronesti's deposition was served on February 28, 2019 and returnable on March 28, 2019, but due to either defense counsel or Pronesti's schedule, did not take place until September 4, 2019. Plaintiff received the transcript about two weeks later, and

essential to its seeking leave to amend, since that was the first time that plaintiff learned that KT Medical was dissolved and that \$244,245 of KT Medical's cash assets were distributed to its shareholders, Salvatore and Lee, long after this action for rent arrears was commenced. Plaintiff denies having any prior actual or constructive notice of KT Medical's dissolution. Plaintiff contends that the amendment only includes allegations concerning occurrences subsequent to commencement of this litigation which are related to its original claim.

Plaintiff also argues that defendants have not established that they would be prejudiced by the amendment. Plaintiff further alleges that Puma is familiar with the scenario of dissolving a corporation to avoid paying a debt, because he allegedly dissolved East Shore to avoid paying the line of credit issued by Chase bank. In addition, plaintiff alleges that the lease and its validity is an issue for trial but does not impact this motion to amend.

Plaintiff argues that defendants' continuous reference to plaintiff's desire to pierce the corporate veil assumes that there is still a corporation with a veil to be pierced, and that since the corporation has been dissolved, there is no longer a corporation, and the proposed defendants, Salvatore and Terri, opened themselves up to liability by dissolving the entity and distributing its assets without notice to plaintiff.

Discussion

A party may amend its pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of the court or by stipulation

this motion was made on September 26, 2019.

of parties (*see* CPLR 3025 [b]; *Cullen v Torsiello*, 156 AD3d 680, 681 [2d Dept 2017]). “Leave shall be freely given upon such terms as may be just” (CPLR 3025 [b]; *see also* *Cullen*, 156 AD3d at 681). A court has broad discretion to grant a motion to amend the pleadings, even after trial, when there is no actual prejudice or surprise to the opposing party (*see Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014]; *Murray v City of New York*, 43 NY2d 400, 405 [1977], *rearg dismissed* 45 NY2d 966 [1978]; *Cullen*, 156 AD3d at 681). The passage of time alone, without a showing of prejudice, is insufficient to deny leave to amend a pleading (*see Eng v DiCarlo*, 79 AD2d 1018 [2d Dept 1981]). “Prejudice is more than mere exposure of the party to greater liability” (*Kimso*, 24 NY3d at 411) (internal quotations and brackets omitted). Rather, the party opposing the amendment must demonstrate that it has been hindered in preparing its case or prevented from taking some measure in support of its position (*id.*; *National Recruiting Group, LLC v Bern Ripka LLP*, 183 AD3d 831 [2d Dept 2020]). While leave to amend is freely given, it will be denied where the proposed amendment is “palpably insufficient or patently devoid of merit” (*Marcum, LLP v Silva*, 117 AD3d 917, 917 [2d Dept 2014]; *Trataros Construction, Inc. v New York City Housing Authority*, 34 AD3d 451, 452 [2d Dept 2006]).

A motion to amend or supplement the pleadings must be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions made to the pleading (CPLR 3025 [b]; *Drice v Queens County District Attorney*, 136 AD3d 665 [2d Dept 2016]). Here, plaintiff has complied with this mandate by submitting a proposed amended and supplemental complaint clearly delineating the changes and

additions to the operative complaint.

The court also finds that plaintiff's motion to amend was timely made. Plaintiff claims that it only learned of KT Medical's dissolution and of the payments to Salvatore and Terri in September, 2019, when Puma's accountant, Pronesti, was deposed. Plaintiff further asserts that Pronesti's deposition was delayed due to Pronesti's and defense counsel's schedule. While defendants claim that plaintiff had actual or constructive notice of KT Medical's dissolution when it moved to amend the original complaint, defendants do not provide evidence of plaintiff's knowledge. Indeed, Pronesti testified that he did not notify plaintiff of KT Medical's dissolution or of the fact that Salvatore and Terri received payments of over \$200,000 from KT Medical in 2015 and 2016. Additionally, defendants do not dispute that they were responsible for the half-year delay in Pronesti's deposition. The court has also reviewed the docket and notes that the other delays in moving the case to trial are attributable equally to plaintiff and defendant, as both parties have been the subject of motions to compel discovery (*see* mot. seq. two and three). In any event, the mere passage of time is insufficient to deny leave to amend (*see Eng*, 79 AD2d at 1018), and defendants have not established that they would be prejudiced, hindered in preparing their case, or prevented from taking some measure if the pleading were allowed (*see Kimso*, 24 NY3d at 411). Defendants merely argue that Salvatore and Terri would have to hire counsel and obtain discovery, which would set the case back another year. This is a timeliness, rather than a prejudice, argument.

The proposed amended and supplemental complaint pleads an action for rent arrears arising out of TJ Global's lease with KT Medical, and that KT Medical was

wrongfully defunded and dissolved in the middle of this litigation without notice to TJ Global in order to avoid creditors, such that TJ Global now seeks to collect the debt personally from KT's principals, Salvatore and Terri. While the proposed amendment may be inartfully drafted, it cannot be said that it is "palpably insufficient or patently devoid of merit" (*Marcum*, 117 AD3d at 917; *Trataros*, 34 AD3d at 452). Moreover, plaintiff "is not required to establish the merit of the proposed amendment in the first instance" (*Lucido*, 49 AD3d at 227; *see also National Recruiting Group*, 183 AD3d 831). Defendants' arguments concerning the allegedly fraudulent lease between TJ Global and KT Medical, as well as Gressel and Tilis' other allegedly fraudulent acts, are matters for the trier of fact to resolve.

The court is confident that, once the amended pleading is filed and served, the parties will proceed with interposing a response and with exchange of discovery expeditiously, as it appears that the bulk of discovery has already been completed. The court has also considered the remainder of the parties' contentions, and finds them to be without merit.

Accordingly, it is

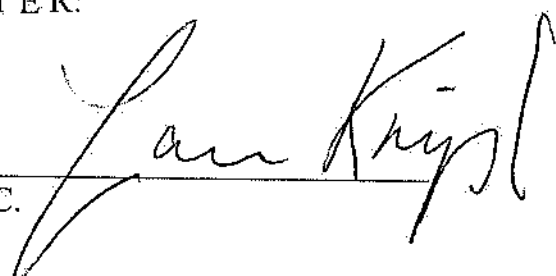
ORDERED that plaintiff's motion, in mot. seq. five, for an order, pursuant to CPLR 3025 (b), granting it leave to file and serve the proposed amended and supplemental complaint is granted; and it is further

ORDERED that, in exercise of the court's discretion, plaintiff's request for costs and disbursements associated with this motion is denied.

This constitutes the decision and order of the court.

ENTER:

J. S. C.


Justice Lawrence Knipel