

Missionstaff LLC v Duzy Iod, LLC
2020 NY Slip Op 33502(U)
October 22, 2020
Supreme Court, New York County
Docket Number: 653342/2020
Judge: Arlene P. Bluth
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PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

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INDEX NO. 653342/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

- v -

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

were read on this motion to/for

PARTIES - ADD/SUBSTITUTE/INTERVENE

were read on this motion to/for DISMISSAL

The motion (MS001) by non-parties Pfluger Consulting LLC, Micheline Pfluger, Artol Consulting LLC, Arthur Tolchinsky and Andrea Piesetzkie (“Proposed Intervenor”) for leave to intervene is granted.

The motion (MS002) by defendant to dismiss for failure to name necessary parties is denied.

Background

This case arises from the purported breach of a staffing agreement between plaintiff and defendant. Plaintiff is a professional staffing company that specializes in providing staff for technology-based companies. Defendant is a tech company that provides services to monetize online videos and livestreams.

The parties entered into an agreement in August 2019 which required plaintiff to recruit, interview, select and assign consultants for defendant. Plaintiff contends it did so and hired Tolchinsky, Pfluger and Piesetzkie. Plaintiff invoiced over \$150,000 in services and argues that defendant failed to pay (except for a minimal \$5,000 payment).

Plaintiff asserts that when defendant failed to pay the monies owed for the consultants, defendant asked to hire the consultants directly in spite of the fact that the agreement prohibited defendant from hiring consultants for one year after the consultancy period terminated unless plaintiff provided written consent. Plaintiff argues that it declined to provide written consent because it would ensure that defendant would never pay for the consulting services rendered.

Plaintiff alleges that defendant surreptitiously hired the consultants directly and continues to refuse to pay the outstanding bills. Plaintiff now brings claims for breach of contract for the unpaid invoices, breach of contract for the contractual non-solicitation provision, and tortious interference with contractual relations.

MS001

Proposed Intervenors claim that they should be allowed to participate in this action because plaintiff seeks to enjoin defendant from employing or contracting with them. They point out that plaintiff brought a separate case in Pennsylvania against them and that defendant is not a party to that case. Proposed Intervenors assert that plaintiff intentionally divided its claims into two cases despite the fact that the relief requested would necessarily affect both the Proposed Intervenors and defendants.

Proposed Intervenors assert that if plaintiff wins this case, they will be enjoined from working for defendant even though they are not parties to this action and, therefore, they should be permitted to intervene.

In opposition, plaintiff claims that Proposed Intervenors do not have an interest in this case and this is merely an action against defendant for its failure to pay for consulting services. Plaintiff emphasizes that Proposed Intervenors are not parties to the contract between plaintiff and defendant. It asserts that it brought a case in Philadelphia against Proposed Intervenors because that is where it could assert personal jurisdiction and it speculates that they would not have consented to jurisdiction in this court. Plaintiff argues that Proposed Intervenors' interests are protected by defendant's participation in this case.

"CPLR 1012(a), specifically, subdivisions 2 and 3, provides that upon timely motion, any person shall be permitted to intervene in an action when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment (subdivision 2) or when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment (subdivision 3). CPLR 1013 provides that upon timely motion, a court may, in its discretion, permit intervention when, inter alia, the person's claim or defense and the main action have a common question of law or fact, provided the intervention does not unduly delay determination of the action or prejudice the rights of any party" (*Yuppie Puppy Pet Products, Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 200-01, 906 NYS2d 231 [1st Dept 2010] [internal quotations and citations omitted]).

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action. Distinctions between intervention as of right and discretionary intervention are no longer sharply applied" (*id.* at 201) [internal quotations and citations omitted]).

Here, there is no question that intervention is appropriate and the Court grants the motion. The complaint seeks “an award of injunctive relief against Duzy, enjoining Duzy from continuing to breach the Agreement’s non-solicitation and no-hire provision” (NYSCEF Doc. No. 1 at 7). That relief necessarily affects the rights of the Proposed Intervenors. If plaintiff is successful, then they will not be able to work for defendant. Clearly, they have a right to intervene in this case.

Although it may be that defendant and the Proposed Intervenors have similar interests in this case, the Court cannot simply assume (as plaintiff argues) that defendant can represent Proposed Intervenors’ interests. In accordance with the liberal view of intervention required under New York law, permitting these parties to intervene is justified.

MS002

The Court denies defendant’s motion to dismiss for failure to name certain necessary parties as moot. In its moving papers, Defendant asserts that it “moves in the alternative” to dismiss because Motion Sequence 001 had not yet been granted. In reply, defendant requests that the motion to intervene be granted and only seeks dismissal in the alternative.

Because the Court grants the motion to intervene, it need not consider the motion to dismiss for failure to name the Proposed Intervenors.

Accordingly, it is hereby

ORDERED that the motion (MS001) by non-parties Pfluger Consulting LLC, Micheline Pfluger, Artol Consulting LLC, Arthur Tolchinsky and Andrea Piesetzkic (“Proposed Intervenors”) for leave to intervene is granted and these parties shall be entitled to appear as party defendants; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding the above-named parties as party defendants and listing them in the caption; and it is further

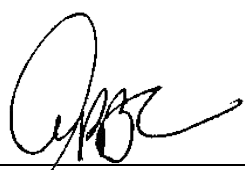
ORDERED that the proposed intervention pleading (NYSCEF Doc. No. 15) setting forth the defenses of the movants that accompanied the motion shall be deemed to have been served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenors shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the motion (MS002) by defendant to dismiss is denied; and it is further

ORDERED that counsel are directed to appear for a remote preliminary conference on January 14, 2021. The parties are free to e-file a proposed preliminary conference signed by all parties at any time prior to the scheduled conference.

<u>10/22/2020</u>			
DATE		ARLENE P. BLUTH, 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