Hospitality Concepts, LLC v Bernhardt
2020 NY Slip Op 35780(U)
November 18, 2020
Supreme Court, Onondaga County
Docket Number: Index No. 006995/2019
Judge: Deborah H. Karalunas
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SUPREME COURT
STATE OF NEW YORK   COUNTY OF ONONDAGA

HOSPITALITY CONCEPTS, LLC,

Plaintiff,

v.

JAY BERNHARDT,

Defendant.

DECISION and ORDER

Index No.: 006995/2019

In this action, plaintiff Hospitality Concepts, LLC ("Hospitality") seeks damages against defendant Jay Bernhardt ("Bernhardt") for alleged "bad faith" and fraudulent conveyance of funds initially received by non-party Bedford Falls Enterprises, LLC ("Bedford Falls") from the August 30, 2018 sale of its sole asset, the Gould Hotel. Plaintiff maintains that defendant Bernhardt, the sole member of Bedford Falls, fraudulently transferred, without consideration, proceeds from sale of the Gould Hotel to himself and/or other entities in which he had ownership interests. Bedford Falls was formally dissolved on or about June 12, 2019.

By way of background, Hospitality provided goods and services to Bedford Falls between July 2017 and July 2018 in the total amount of $62,112.07. When Bedford Falls failed to pay for the goods and services, Hospitality commenced a collection action against Bedford Falls in Seneca County, New York. On June 28, 2019, Hospitality obtained a judgment against Bedford Falls for the full amount due and owing, $62,112.07, plus interest.

The parties in the present action have exchanged documentary discovery; no depositions have taken place. By notice of motion filed November 4, 2020, defendant moves to amend its answer pursuant to CPLR § 3025(b) to add affirmative defenses of *res judicata* and collateral estoppel and, based on those defenses, to dismiss plaintiff's complaint. By notice of cross-motion filed October 28, 2020, plaintiff seeks to amend its complaint to: (1) add as additional parties Bedford Falls, J.G.B. Enterprises, Inc. ("JGB, Inc." and J.G.B. Properties, LLC ("JGB, LLC"); (2) add "specific facts revealed in discovery relative to Bernhardt's self-dealing transfer of $1,468,269.55 from Bedford Falls;" add a cause of action under Debtor and Creditor Law § 274; and (4) add a cause of action for attorneys' fees under Debtor and Creditor Law § 276-a.

CPLR § 3025(b) permits a party to amend its pleadings by leave of the court, and "[l]eave shall be freely given upon such terms as may be just." However, where there is prejudice to the nonmoving party or the proposed amendment patently lacks merit leave will not be granted. Carro v. Lyons Falls Pulp & Paper, Inc., 56 A.D.3d 1276, 1277 (4th Dep't 2008); see also, Landers v. CSX Transp., Inc., 70 A.D.3d 1326, 1327 (4th Dep't 2010).

Here, neither party articulates justifiable prejudice to amendment of the pleadings. As to the merits, however, plaintiff maintains amendment of the answer to include affirmative defenses of *res judicata* and collateral estoppel would be futile because neither defense is applicable to the claims plaintiff asserts in the complaint or the proposed amended complaint. Defendant maintains that the proposed amended complaint would be futile because plaintiff was obligated to pursue the proposed claims against Bernhardt and the proposed new defendants in the prior Seneca County action.

Pursuant to the doctrine of *res judicata*, *i.e.*, claim preclusion:

> a valid final judgment bars future actions between the same parties on the same cause of action. As a general rule, once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories

> or if seeking a different remedy. Thus, *res judicata* applies to issues which were or could have been raised in [a] prior action.

Bielby v. Middaugh, 120 A.D.3d 896, 898 (4th Dep't 2014); see also, Parker v. Blauvelt Volunteer Fire Co., 93 N.Y.2d 343, 347 (1999); O'Brien v. City of Syracuse, 79 A.D.2d 874, 875 (4th Dep't 1980). Where *res judicata* applies, a party is foreclosed from relitigating a cause of action which was the subject matter of a former lawsuit or from raising issues or defenses that might have been litigated in the first suit. Chisholm-Ryder Co. v. Sommer & Sommer, 78 A.D.2d 143, 144 (4th Dep't 1980).

Collateral estoppel, on the other hand, precludes a party from relitigating an issue that has already been decided against that party.

> Two requirements must be met before collateral estoppel can be invoked. There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling. The litigant seeking the benefit of collateral estoppel must demonstrate that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party. The party to be precluded from relitigating the issue bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination."

Bielby, 120 A.D.3d at 898; see also Ryan v. New York Tel. Co., 62 N.Y.2d 494 (1984).

Here, it appears the allegations in the present complaint raise different, albeit related, issues and claims to those raised in the prior Seneca County action. In the Seneca County action, the Court addressed only a debt owed by Bedford Falls to Hospitality, not any alleged fraudulent or wrongful transfer of assets by Bedford Falls to JGB, Inc., JGB, LLC or Bernhardt. While it appears that neither *res judicata* nor collateral estoppel will bar the claims asserted in plaintiff's amended complaint, the court declines to decide that issue in the procedural context of a motion to amend. Accordingly, at this time, prior to completion of discovery, plaintiff's motion to amend the complaint is GRANTED, and defendant's motion to amend its answer to include affirmative defenses of *res judicata* and collateral estoppel also is GRANTED. Defendant's motion to dismiss the complaint is DENIED. Defendant's answer must be served within 20 days of service of the amended complaint.

The parties are to complete discovery and file the trial note of issue on or before April 30, 2021.

It is so ORDERED.

Dated: November 18, 2020

Hon. Deborah H. Karalunas, J.S.C.