

20 Broad St. Owner LLC v Sonder USA, Inc.
2021 NY Slip Op 32293(U)
October 26, 2021
Supreme Court, New York County
Docket Number: Index No. 653493/2020
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA JAMES

PART 59

Justice

-----X

20 BROAD STREET OWNER LLC,

Plaintiff,

- v -

SONDER USA, INC. AND, SONDER CANADA, INC,
SONDER GROUP HOLDINGS LLC, SONDER HOLDINGS
INC., XYZ CORP., JOHN DOE, and JANE DOE,

Defendants.

-----X

INDEX NO. 653493/2020

MOTION DATE 02/03/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 169

were read on this motion to/for

AMEND CAPTION/PLEADINGS

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendants Sonder USA Inc., Sonder Canada, Inc., Sonder Group Holdings, LLC and Sonder Holdings Inc. for leave to amend their answer (motion sequence number 002) is granted and the First Amended Verified Answer in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED the purported "Counterclaims and Third-Party Claims" and "Claims for Relief" filed by defendants on September 8, 2020 is hereby deemed as Counterclaims interposed by defendants against

plaintiff in their First Amended Verified Answer, and any purported third-party claim is deemed a nullity; and it is further

ORDERED that the Answer to the Third-Party Complaint filed by plaintiff on October 7, 2020, upon prompt filing of a verification signed by a principal of the plaintiff of same, is hereby deemed an Amended Verified Reply to the foregoing Counterclaims; and it is further

ORDERED that plaintiff may supplement its papers in support of its motion for summary judgment (motion sequence number 001) no later than November 9, 2021; and it is further

ORDERED that defendants may supplement their papers in opposition to plaintiff's motion for summary judgment (motion sequence number 001) no later than November 24, 2021; and it is further

ORDERED that plaintiff may supplement its papers in further support of its motion for summary judgment no later than December 8, 2021; and it is further

ORDERED that oral argument of the papers on motion sequence number 001, via Microsoft Teams, is adjourned from October 27, 2021 to December 9, 2021, 11:30 AM, and the Clerk of the IAS Part 59 shall implement such adjournment and transmit the link for such virtual appearances to counsel of record, accordingly.

DECISION

The current state of the pleadings on the part of all parties to this action is far from artful. The purported Third-Party Complaint filed by defendants (NYSCEF Document Number 19) did not constitute same as there is no proof that defendants ever served same on the purported third-party defendant Metro Management LLC, or that defendants ever procured a third-party action index number. Defendants wholly improperly incorporated such purported third-party action against non-party Metro Management LLC into their original Answer and Counterclaims (see CPLR § 3011).

However, in compounding such error by serving a purported Answer to Third Party Complaint (NYSCEF Document Number 31), plaintiff waived any defect in defendants' pleadings (see Weinstein v Corwin, 239 AD2d 261 [1st Dept. 1997]). Thus, this Court shall deem defendant's Third-Party Complaint as Counterclaims interposed in the Verified First Amended Answer, and plaintiff's "Answer" thereto as a Verified Amended Reply to such Counterclaims.¹ Given the state of the pleadings in this action, there is no need for plaintiff to file any further

¹ As there is no action pending against any third-party defendant, but only a first party action, all papers filed by any party henceforth may not contain the third-party action caption, unless and until a third-party complaint, with separate index number, is served and filed.

pleadings (see Stephanie R. Cooper, P.C. v Robert, 78 AD3d 572, 573 [1st Dept. 2010]).

As to paragraphs captioned "Statement of Facts", including the "Introduction" and "General Allegations", the First Amended Answer proposed by defendants is prolix and unnecessarily avers evidentiary facts. Nonetheless, as "neither prolixity, nor repetitiousness nor the unnecessary averment of evidentiary facts destroys [an answer's] sufficiency" (Pomerance v Pomerance, 301 NY 254 [1950]), this court shall disregard such defects.

Such proposed amended pleading is verified by a principal of one of the defendants. This court agrees with defendants that such verification suffices as an affidavit of merits (see CPLR § 105(u) and Farrell v K.J.D.E. Corp. (244 AD2d 905 [4th Dept 1997])).

Moreover, this court disagrees with plaintiff that the Counterclaims are not adequately pled. In fact, the proposed First Amended Answer, though extremely prolix, is unlike the proposed amended pleading in East Asiatic Co. v Corash, (34 AD2d 432 [1st Dept 1970]), as the instant proposed pleading is not vague and in fact makes far more than enough factual allegations to state meritorious Counterclaims.

Debra A. James

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10/26/2021

DATE

DEBRA JAMES, 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