

Triantafillakis v Madden
2022 NY Slip Op 31466(U)
May 4, 2022
Supreme Court, New York County
Docket Number: Index No. 652319/2018
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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JOHN TRIANTAFILLAKIS, ATHANASIOS
 TRIANTAFILLAKIS,

Plaintiff,

- v -

JENNIFER MADDEN, LAKI KOKOTAS, HOWARD
 ROSENBLUTH

Defendant.

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INDEX NO. 652319/2018

MOTION DATE 04/18/2022

MOTION SEQ. NO. 005

**DECISION + ORDER ON
 MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111

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

BACKGROUND

Plaintiffs commenced this action to collect proceeds from the sale of a family dinner which they had an interest in but were never paid the proceeds for.

PENDING MOTION

On March 21, 2022, plaintiffs moved for leave to amend the complaint to assert additional claims and add five new parties pursuant to CPLR §§ 1001(a), 1002(b), 1003, and 3025(b); and for an order directing Mr. Peter Marc Stern, Esq. to pay a New York State tax bill related to the subject matter from the funds in his escrow account and to deposit all remaining proceeds that are in his escrow account and which are related to this matter, with the Court.

On April 18, 2022, the motion was fully briefed and submitted to this court for determination. For the reasons set forth below, the motion is granted to the extend of granting leave to amend the complaint.

ALLEGED FACTS

This action arises from the sale of plaintiffs' family owned and operated business, the Pom Pom Diner ("the Diner"), and defendants' alleged failure to split the proceeds of the sale with the plaintiffs as they had promised to do. In 2014, defendant Howard Rosenbluth (Rosenbluth) through his and Robert J. Gans' (Gans) shell company, HR Pom Pom, LLC ("HR Pom Pom"), purchased the Diner from Trian West, LLC (Trian). Trian was the official owner of the Diner; that is, the owner on "paper." The sole member of Trian is Jennifer Madden (Madden). She came to be the owner of Trian/Diner by agreement with the plaintiffs.

Years earlier, for various financial reasons, plaintiffs had transferred the Diner to Madden/Trian with the understanding that plaintiffs would retain their ownership interests in the Diner and, among other things, upon the sale of the Diner (with plaintiffs' approval), the proceeds of any such sale would be divided equally between plaintiffs and Defendant Laki Kokotas (Kokotas). At the time, Kokotas was engaged to Madden. He is plaintiffs' cousin and nephew. At all times, by agreement, Kokotas and plaintiffs always retained their respective 1/3 interest in the Diner as well as their respective 1/3 interest in the proceeds of any sale of the Diner.

In 2013, Gans approached plaintiff John Triantafillakis (JT) to purchase the Diner. Gans owns Metro Lumber with his partner Rosenbluth. They also own HR Pom Pom which was ultimately used as the vessel to purchase the Diner. Gans actively participated in the negotiations and sale of the Diner to HR Pom Pom. Ultimately, the Purchase Agreement for the Diner, with a purchase price of \$1.5 mil, was drafted as between Trian (as the seller) and HR Pom Pom (as the buyer). The Purchase Agreement was signed on behalf of HR Pom Pom by Rosenbluth as "member". Metro Lumber paid the purchase price for the sale according to the checks so far

produced in this case by Rosenbluth. Mr. Stern acted as the Escrow Agent for the sale of the Diner.

DISCUSSION

CPLR § 3025 provides that, “a party may amend his or her pleading . . . at any time by leave of court,” and such leave is to be “freely given upon such terms as may be just.” N.Y. C.P.L.R. § 3025(b) (McKinney 2016). There is a strong presumption in favor of permitting amendment of pleadings. *Otis Elevator Co. v. 1166 Ave. of Ams. Condo.*, 166 A.D.2d 307 (1st Dep’t 1990). “Leave to amend pleadings under CPLR § 3025 should be . . . denied only if[:] [1] there is ‘prejudice or surprise resulting directly from the delay,’ or [2] the proposed amendment ‘is palpably improper or insufficient as a matter of law.’” *STC Textile, Inc. v. Ariknmaz*, 2016 WL 852412, at *1 (Sup. Ct. N.Y. Cty. Mar. 2, 2016). The prejudice necessary to warrant denial of such a motion requires a showing by the opposing party that it has been hindered in the preparation of its case or prevented from taking measures in support of its position. *Tri-Tec Design, Inc. v. Zatek Corp.*, 123 A.D.3d 420, 420 (1st Dep’t 2014). The party moving to amend need not establish the merit of its proposed new allegations, but only that the amendment is not clearly devoid of merit. *Fairpoint Cos., LLC v. Vella*, 134 A.D.3d 645, 645 (1st Dep’t 2015); *see also Pier 59 Studios, LP v. Chelsea Piers, LP*, 40 A.D.3d 363, 365 (1st Dep’t 2007).

Through this motion, Plaintiffs seek to add HR Pom Pom, Gans, Metro Lumber, Trian and Mr. Stern as defendants and to supplement their complaint with additional facts that assert that veil piercing is appropriate in this case. This Motion also seeks to add more claims against the Defendants. Moreover, the Motion seeks an Order directing Mr. Stern to pay a New York State tax bill arising from the sale and to deposit any remaining funds from the sale that are still in his escrow/attorney-trust account, with the Court.

When this action was commenced, HR Pom Pom was not specifically named as a defendant even though it is a necessary party to this action. Plaintiffs now assert that Gans and Metro Lumber are subject to alter ego liability for any claim against HR Pom Pom. Plaintiffs further assert that Gans and/or Metro Lumber are the owner/parent company of HR Pom Pom and that they are responsible for the debts of HR Pom Pom due to their failure to follow corporate formalities. Plaintiffs further assert Gans is liable due to representations he made to plaintiffs during the course of the negotiations for the sale of the Diner.

Plaintiffs argue Trian should have been named as a defendant in this case because it is the seller of the Diner.

Finally, plaintiffs assert that Peter Marc Stern, Esq. is also a necessary party, solely as a stakeholder at this point, since the sale proceeds in dispute were to be held in his escrow account according to the Purchase Agreement and Escrow Agreement signed by the other Parties.

Defendants primary opposition is that this motion is made four years after the commencement of this action and will delay this action.

Though this matter is years old, due in part to the pandemic and changes of counsel, very little discovery has been accomplished. While some documents have been exchanged, depositions have yet to be taken. Madden and Kokatos have not substantially participated in this matter or in any discovery at all.

The cases cited by defendant in opposition are distinguishable. In this case plaintiffs have provided a reasonable explanation as to the delay in amending the complaint and sufficient evidence of the merit of the proposed amendments. Additionally, plaintiffs assert they were not aware of all of the facts they are asserting until recently, and defendant has not shown substantial prejudice by the amendments.

Based on the foregoing, plaintiffs' motion to amend is granted.

However, as to the request regarding Peter Stern and the deposit of moneys and payment of bills, the court finds it would be better to wait until Mr. Stern has been added as a party, and afford him an opportunity to be heard prior to ordering such relief. As such that portion of the motion seeking an order directing him to make payment or transferring the funds into court is denied without prejudice to renewal after Mr. Stern has been added as a party.

COCNCLUSION

WHEREFORE it is hereby:

ORDERED that the plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that as to the current defendants the amended complaint is deemed served and they shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOHN TRIANTAFILLAKIS and ANTHANASIOS
TRIANAFILLAKIS,

Plaintiffs,

vs.

JENNIFER MADDEN; LAKI KOKOTAS; HOWARD
ROSENBLUTH; HR POM POM, LLC; TRIAN WEST, LLC

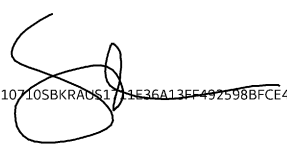
d/b/a POM POM DINER; ROBERT J. GANS;
METRO LUMBER HARDWARE & BUILDING SUPPLIES, INC.;
and PETER MARC : STERN, ESQ. as Escrow Agent and
Stakeholder,
Defendants.

_____:

And it is further

ORDERED that counsel for plaintiffs shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk 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)].


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SABRINA KRAUS, J.S.C.

5/4/2022
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT

REFERENCE

CHECK IF APPROPRIATE: