SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA CRANE** **PART** **60M**

Justice

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INDEX NO. 159948/2014

WORLDVIEW ENTERTAINMENT HOLDINGS INC.,WORLDVIEW ENTERTAINMENT HOLDINGS LLC,ROSELAND VENTURES LLC,

MOTION DATE 12/15/2021, 12/15/2021

Plaintiff,

MOTION SEQ. NO. 019 020

- v -

CHRISTOPHER WOODROW, SARAH WOODROW, THE ESTATE OF CONSTANCE WOODROW, GOETZ FITZPATRICK LLP, AARON BOYAJIAN, ESQ.,

DECISION + ORDER ON MOTION

Defendant.

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CHRISTOPHER WOODROW

Third-Party
Index No. 595330/2021

Plaintiff,

-against-

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 019) 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 642

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 634, 643

were read on this motion to/for DISMISS.

In this action to recover damages for breach of fiduciary duty, third-party defendants Maria A. Cestone and Molly Conners separately move, pursuant to CPLR 3211 (a) (5) and (7), to dismiss defendant/third-party plaintiff Christopher Woodrow's third-party complaint as asserted

against them. Woodrow opposes the motions and cross-moves, pursuant to CPLR 3025 (b), for leave to file an amended third-party complaint.

BACKGROUND

Plaintiff Worldview Entertainment Holdings Inc. (Worldview Inc.) is a movie production company. Plaintiff Worldview Entertainment Holdings LLC (Holdings LLC) is Worldview Inc.'s sole shareholder. Plaintiff Roseland Ventures LLC (Roseland) is a member of Holdings LLC.

In October 2014, Worldview Inc., Holdings LLC, and Roseland (collectively, plaintiffs) commenced this action against Christopher Woodrow (Woodrow), his wife Sarah Woodrow, and the estate of his mother Constance Woodrow (collectively defendants). Plaintiffs allege that Woodrow, who was Worldview Inc.'s President and Chief Executive Officer (CEO) until he was fired on June 2, 2014, commingled or improperly disbursed escrow funds intended to be invested in movie productions (NYSCEF Doc. No. 262).

In November 2014, defendants filed an "Answer with Counterclaims" (Original Answer) asserting counterclaims against plaintiffs. Defendants also asserted improper counterclaims against Maria A. Cestone (Cestone) and Molly Conners (Conners), both nonparties in the main action (NYSCEF Doc. No. 6).

In May 2015, defendants moved, pursuant to CPLR 3025 (b), for leave to amend the Original Answer (NYSCEF Doc. No. 102). Defendants' proposed amended pleading, the "Amended Answer with Counterclaims" (Amended Answer), asserted improper counterclaims against Cestone and Conners again.

Pending the motion for leave to amend, defendants submitted a revised proposed amended pleading, titled "Amended Answer with Counterclaims and Third-Party Claims"

(Revised Amended Answer) (NYSCEF Doc. Nos. 135 & 140). Defendants included Woodrow's third-party claims against Cestone and Conners in the Revised Amended Answer (NYSCEF Doc. No. 141).

In the Revised Amended Answer, Woodrow alleges that, in 2007, he founded Worldview Inc. to invest in feature films. He formed various entities with his business partner, Cestone, to operate Worldview Inc., including Worldview Holdings and Roseland. Woodrow asserts he obtained over $100 million in financing and arranged financing for over 20 films by 2014. One of those films, *Birdman*, won four Oscars, in 2015.

Woodrow claims that Cestone used her control over Roseland to appoint herself the sole director of Worldview Inc. in secret. Cestone then terminated Woodrow without notice or cause in May 2014. Woodrow alleges that Cestone and Conners (Worldview Inc.'s CEO after Woodrow's termination) destroyed Worldview Inc.'s business by breaching contracts with business partners, appointing friends to executive positions, and creating instability among investors by spreading misinformation about Woodrow.

Woodrow asserts that Cestone used Worldview Inc. funds without authorization or approval to pursue this litigation and to defend Conners. Woodrow also alleges that Cestone breached Worldview Inc.'s purported agreement with Woodrow to advance Woodrow's fees and defense costs for this action, and that he was forced to seek Chapter 7 bankruptcy protection as a result.

In the Revised Amended Answer, Woodrow asserts third-party causes of action against Cestone and Conners for breach of fiduciary duty, waste of corporate assets, tortious interference with business relations, and defamation. Woodrow also asserts causes of action against Cestone for negligent misrepresentation, promissory estoppel, and "alter-ego liability."

Cestone and Conners now move, separately, to dismiss Woodrow's third-party claims against them pursuant to CPLR 3211 (a) (5) and (7). Woodrow cross-moves for leave to amend the Revised Amended Answer. For the following reasons, the motions to dismiss are granted and the cross motion for leave to amend is denied.

DISCUSSION

I. *Breach of Fiduciary Duty, Waste of Corporate Assets and Tortious Interference (Against Conners and Cestone)*

When moving to dismiss an action pursuant to CPLR 3211 (a) (5) on statute of limitations grounds, "the defendant bears the initial burden of demonstrating, prima facie, that the time within which to commence the cause of action has expired" (*MTGLQ Invs., LP v Wozencraft*, 172 AD3d 644, 644-645 [1st Dept 2019]). "Once that showing has been made, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled, an exception to the limitations period is applicable, or the plaintiff actually commenced the action within the applicable limitations period" (*Flintlock Constr. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020] [internal quotation marks and citation omitted]).

Woodrow does not take issue with Conner's and Cestone's contention that the statute of limitations for Woodrow's breach of fiduciary duty, corporate waste, and tortious interference claims began to run, at the latest, on December 4, 2015, when Woodrow filed the Revised Amended Answer including those claims. Those claims accrued on, or prior to, December 4, 2015. Therefore, the three-year statute of limitations period for Woodrow's breach of fiduciary claim (seeking purely monetary damages) expired at the latest on December 4, 2018 (*see* CPLR 214 [4]; *ALP, Inc. v Moskowitz*, 204 AD3d 454, 458 [1st Dept 2022] ["The statute of limitations

for breach of fiduciary duty is three years where a plaintiff seeks 'purely monetary' damages and six years where equitable relief is sought."], quoting *IDT Corp. v Morgan Stanley Dean Muer & Co*., 12 NY3d 132, 139 [2009]).

The statute of limitations for the corporate waste claim is also three years and expired on or before that same December 2018 date (*see Tatko v Sheldon Slate Prods. Co*., 2 AD3d 1030, 131 [3d Dept 2003]; *Grika v McGraw*, 55 Misc 3d 1207 [A], *13, 2016 NY Slip Op 51878(U) [Sup Ct, NY County 2016], *affd* 161 AD3d 450 [1st Dept 2018]).

The court notes that CPLR 213 (7) provides for a six-year limitations period for actions brought "by or on behalf of a corporation against a present or former director, officer, or stockholder . . . to recover damages for waste or for injury to property." The CPLR 213 (7) limitations period "*supplants* any shorter statute of limitations applicable to the claim [it encompasses], including claims to recover monetary damages" (*Troffa v Troffa*, 192 AD3d 718, 720 [2d Dept 2021][emphasis in original]). However, Woodrow does not argue that CPLR 213 (7) is applicable, and he seeks damages in his individual capacity, not on a corporation's behalf. Accordingly, CPLR 213 (7) does not encompass these claims.

Woodrow's tortious interference with business relations claim is also governed by a three-year statute of limitations (*see* CPLR 214 [4]; *Linkable Networks, Inc. v Mastercard Inc*., 184 AD3d 418, 419 [1st Dept 2020]; *Bandler v DeYonker*, 174 AD3d 461, 462 [1st Dept 2019]). The statute of limitations "begins to run when the defendant performs the action (or inaction) that constitutes the alleged interference" (*Thome v Alexander & Louisa Calder Found*., 70 AD3d 88, 108 [1st Dept 2009]). The statute of limitations for this claim also expired, at the latest, on December 4, 2018.

It is undisputed that Woodrow did not file a third-party summons with the clerk of the court until February 18, 2021. A third-party action is commenced "by filing . . . a third-party summons and complaint with the clerk of the court in the county in which the main action is pending" (CPLR 1007). Accordingly, Woodrow's breach of fiduciary duty, corporate waste, and tortious interference with business relations claims are time-barred.

Woodrow argues that he timely brought these claims because he served the Revised Amended Answer on May 11, 2016. The court granted in part Woodrow's motion to amend his answer in the May 2016 order (Rakower, J.) and stated that the Revised Amended Answer "shall be deemed served on the parties upon service of a copy of this Order with notice thereof" (NYSCEF Doc. No. 173). Woodrow asserts that he timely commenced these claims more than two years prior to the expiration of the statute of limitations on December 4, 2018. This argument is without merit.

First, the court directed in the May 2016 order that the Revised Amended Answer "shall be deemed served *on the parties* upon service of a copy of this Order with notice thereof." Conners and Cestone were not parties to the action when the order was entered (*see Worldview Entertainment Holdings, Inc. v Woodrow*, 204 AD3d 629 [1st Dept 2022] [ruling that Cestone and Conners were not parties to the action in December 2020]). The Appellate Division noted that Woodrow had yet to file a third-party summons and complaint against Conners and Cestone with the clerk of the court as of December 2020 (*see id.*, citing CPLR 1007 and *Rosenblum v 170 W. Vil. Assoc.*, 175 AD2d 702, 703 [1st Dept 1991] ["It is very basic that, as a general matter, jurisdiction cannot be obtained over a defendant except through strict compliance with the statutorily mandated procedures."]).

Even if the pleading is "deemed served" on Conners and Cestone as of May 11, 2016, the statute of limitations is not keyed to the *service* of the pleading. The limitations period is the time in which an action "must be commenced" (CPLR 201). "While courts have discretion to waive other time limits for good cause (*see* CPLR 2004), the Legislature has specifically enjoined that 'no court shall extend the time limited by law for the commencement of an action' (CPLR 201)" (*McCoy v Feinman*, 99 NY2d 295, 300 [2002]). As noted, a third-party action is commenced "by *filing* . . . a third-party summons and complaint" (CPLR 1007 [emphasis added]).

Woodrow contends that this is a technical issue that the court should disregard under CPLR 2001. CPLR 2001 states:

> "At any stage of an action, including the filing of a summons with notice, summons and complaint or petition to commence an action, the court may permit a mistake, omission, defect or irregularity, including the failure to purchase or acquire an index number or other mistake in the filing process, to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded, provided that any applicable fees shall be paid"

(CPLR 2001). Woodrow argues that the court should overlook this problem because neither Conners nor Cestone would be prejudiced. The court lacks that discretion under CPLR 2001.

In *Goldenberg v Westchester County Health Care Corp.* (16 NY3d 323, 328 [2011]), the Court of Appeals held that a plaintiff's failure to file a summons in conjunction with the filing of a petition for leave to serve a late notice of claim was not subject to correction under CPLR 2001 and granted the defendant's motion to dismiss the action as untimely. The Court relied on the legislative history of the 2007 bill that amended CPLR 2001, noting that the introducer's memorandum in support of the bill emphasized that the amendments were *not* intended to "excuse a complete failure to file within the statute of limitations" (*id.* at 328, quoting Senate

Introducer's Mem in Support, Bill Jacket, L 2007, ch 529, at 5-6). The *Goldenberg* court also highlighted the following language from the memorandum:

> "in order to properly commence an action, a plaintiff or petitioner would still have to *actually file a summons and complaint or a petition. A bare summons, for example, would not constitute a filing.* The purpose of this measure is to clarify that a mistake in the method of filing, AS OPPOSED TO A MISTAKE IN WHAT IS FILED, is a mistake subject to correction in the court's discretion"

(*id.* [capitalization in original Mem; emphasis added by Court of Appeals]). The *Goldenberg* Court concluded that "[g]iven the absence of a summons, there was a complete failure to file within the statute of limitations, which CPLR 2001 does not allow [the court] to disregard" (*id.* at 328).

Here, Woodrow asks the court to disregard a defect in *what* he filed, as opposed to a mistake in the *method* of filing. The court does not have the discretion to correct or disregard this type of error (*see id*.).

Woodrow also argues that Cestone "waived" this defense by acknowledging service of the relevant pleading. In this regard, Woodrow apparently argues that lack of personal jurisdiction is a waivable defense. However, the court lacks *subject matter* jurisdiction where the party failed to file the summons and/or compliant, and lack of subject matter jurisdiction cannot be waived (*see O'Brien v Contreras*, 126 AD3d 958, 958-959 [2d Dept 2015]; *see generally Financial Indus. Regulatory Auth., Inc. v Fiero*, 10 NY3d 12, 17 [2008]).

Relying on *Patrician Plastic Corp. v Bernadel Realty Corp*. (25 NY2d 599 [1970]), Woodrow next argues that the court can and should disregard his filing errors because the defendants had adequate notice of the claims. Woodrow's reliance on *Patrician Plastic* is misplaced because it predates *Goldenberg* and the legislative history of the 2007 bill that

amended CPLR 2001. *Goldenberg* is controlling to the extent there is any tension between the two cases.

In any event, *Patrician Plastic* is inapplicable. The *Patrician Plastic* Court decided "whether a supplemental summons, in addition to an amended complaint, [had to] be served by a newly added plaintiff on a defendant originally sued in the action" (*id* at 602). The party defendant was already in the action there (*id.* at 607 [emphasis added]). Here, Conners and Cestone were not parties to this action in May 2016. While Conners and Cestone are parties to other related actions joined with this case "for purposes of joint discovery" (Dec & Order [3-30-16], NYSCEF Doc. No. 236 under Index No. 152444/2015), cases joined for the purposes of discovery are not consolidated. For reference, those cases are *Johnson v Cestone* (Sup Ct, NY County, Index No. 152444/2015), *Morgan v Worldview Entertainment Holdings Inc*. (Sup Ct, NY County, Index No. 652323/2014) and *Shanahan Capital Ventures LLC v Cestone, et al.*(Sup Ct, NY County, Index No. 652034/2015).

The court rejects Woodrow's argument that his third-party claims relate back to *the date of service* of the Revised Amended Answer for statute of limitations purposes pursuant to CPLR 203 (c). CPLR 203 (c) provides: "[i]n an action which is commenced by filing, a claim . . . is interposed . . . *when the action is commenced*" (emphasis added). It does not mention the date of service.

Woodrow further argues that his claims are timely because the statute of limitations was tolled under 11 USC § 108 (a) upon his filing for bankruptcy on March 14, 2019. 11 USC § 108 (a) provides:

> "(a) If applicable nonbankruptcy law . . . fixes a period within which the debtor may commence an action, *and such period has not expired* before the date of the filing of the petition, *the trustee may commence* such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief"

(emphasis added).

As discussed, the statute of limitations for Woodrow's breach of fiduciary duty, corporate waste, and tortious interference claims expired at the latest on December 4, 2018. Woodrow filed for bankruptcy on March 14, 2019. The two-year extension does not apply because the statute of limitations on these claims had already run. Further, "the plain language of Section 108 (a) makes clear that this extension is granted *to the trustee, not the debtor*" (*Baker v Bank of Am., N.A.*, 2016 WL 9409022, *3, 2016 US Dist. LEXIS 195462, *9 [SDNY 2016] [and cases cited therein]; *see also In re Chenault*, No. ADV. 09-09071, 2010 WL 797015, at *3, 2010 Bankr. LEXIS 510 [Bankr CD Ill 2010]).

Woodrow cannot invoke the two-year extension in 11 USC § 108 (a). Even if he were permitted to utilize the extension, it would only extend the limitations period to March 14, 2021 (*see Baker v Bank of Am., N.A.*, 2016 WL 9409022, *3, 2016 US Dist. LEXIS 195462, *9 ["Section 108 does not toll the statute of limitations. Rather, it provides a two-year extension from the time the debtor files for bankruptcy. Once those two years have expired, Section 108 is no longer relevant"]). Woodrow's breach of fiduciary duty, corporate waste, and tortious interference claims would still be time-barred.

Accordingly, the court dismisses the third-party causes of action for breach of fiduciary duty, corporate waste, and tortious interference with business relations.

II. ***Defamation (Against Conners and Cestone)***

The statute of limitations applicable to a defamation claim is one year. The one-year period generally begins to run from the time of the first publication (*see* CPLR 215 [3]; *Biro v*

Condé Nast, 171 AD3d 463, 463 [1st Dept 2019]; *Hochberg v Nissen*, 180 AD2d 435, 436 [1st Dept 1992]). The statute of limitations for the defamation claim accrued at the latest, on December 4, 2015. Therefore, the one-year statute of limitations expired, at the latest, on December 4, 2016.

Woodrow did not commence the third-party action until February 18, 2021, so his defamation claim is also time barred. The court has already considered and rejected the arguments raised by Woodrow in opposition to Conner's and Cestone's prima facie showing for this claim.

Accordingly, the court dismisses the third-party defamation cause of action.

III. *Negligent Misrepresentation (Against Cestone)*

A negligent misrepresentation claim is governed by the three-year statute of limitations period in CPLR 214 (4) unless it is based upon allegations of fraud. If the claim is based on fraud, the court applies a six-year limitations period (*see CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 67 [1st Dept 2016]; *Colon v Banco Popular N. Am*., 59 AD3d 300, 301 [1st Dept 2009]; *Broadway Sky, LLC v 53rd St. Holdings, LLC*, 2020 NY Slip Op 33360[U] [Sup Ct, NY County 2020]).

Even assuming Woodrow alleges fraud adequately, the claim accrued on the date of the alleged misrepresentations relied on by Woodrow (*see Gerschel v Christensen*, 143 AD3d 555, 557 [1st Dept 2016]). Woodrow alleges that Cestone misrepresented and intentionally omitted "material facts regarding the compensation he would receive" for his services and "other terms and conditions of his engagement with the Worldview Companies" (NYSCEF Doc. No. 581, at & 236). Woodrow alleges that he provided services "to the Worldview Companies until June

2014," so the alleged misrepresentations must have occurred prior to that date (*id*. at ¶¶ 68, 112). Therefore, the six-year statute of limitations expired in June 2020 at the latest.

This claim is also untimely because Woodrow did not commence the third-party action against Cestone until February 18, 2021. The court has already considered and rejected Woodrow's arguments in opposition to Cestone's prima facie showing for this claim.

Accordingly, the court dismisses Woodrow's third-party cause of action for negligent misrepresentation.

IV. ***Promissory Estoppel (Against Cestone)***

The six-year statute of limitations period in CPLR 213 (2) applies to Woodrow's third-party claim for promissory estoppel (*see Seidenfeld v Zaltz*, 162 AD3d 929, 933 [2d Dept 2018]; *Wald v Graev*, 137 AD3d 573, 574 [1st Dept 2016]). The period begins on the date of the alleged promise (*see Seidenfeld v Zaltz*, 162 AD3d at 933).

Here, Woodrow alleges that he relied on Cestone's promises regarding the compensation he would receive for services he performed for the Worldview Companies (NYSCEF Doc. No. 581, at ¶¶ 242-251). As noted, Woodrow alleges that he rendered those services until June 2014. Therefore, the statute of limitations expired in June 2020 at the latest.

Woodrow also premises this claim on his alleged reliance on Cestone's promises regarding his entitlement to advancement and reimbursement of legal fees and costs incurred in connection with this matter and in related litigation. Woodrow alleges that these promises are based on agreements entered between December 4, 2009 and January 5, 2011 (NYSCEF Doc. No. 581, ¶¶ 84-87). Therefore, the statute of limitations expired on January 5, 2017 at the latest.

Woodrow did not commence the third-party action against Cestone until February 18, 2021, so the promissory estoppel claim is untimely. The court has already considered and rejected Woodrow's arguments in opposition to Cestone's prima facie showing for this claim.

Accordingly, the court dismisses Woodrow's cause of action for promissory estoppel.

V. *Alter-Ego Liability (Against Cestone)*

Woodrow seeks to hold Cestone personally liable for plaintiffs' alleged wrongdoing against him. Cestone argues that this cause of action is time-barred pursuant to CPLR 214. However, Cestone cites no authority addressing the applicability of CPLR 214 here. Therefore, she fails to establish her entitlement to dismissal of this claim under CPLR 3211 (a) (5).

Nonetheless, the court grants Cestone's motion to dismiss this claim pursuant to CPLR 3211 (a) (7). Affording Woodrow's pleading a liberal construction, accepting the facts alleged as true, and according him the benefit of every favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]), Woodrow fails to set forth a viable basis for alter-ego liability against Cestone.

"[A]lter-ego liability is not an independent cause of action" (*Ferro Fabricators, Inc. v 1807-1811 Park Ave. Dev. Corp*., 127 AD3d 479, 480 [1st Dept 2015]; *see PK Rest., LLC v Lifshutz*, 138 AD3d 434, 436 [1st Dept 2016]). "[R]ather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners" (*Matter of Morris v State Dept. of Taxation & Fin*., 82 NY2d 135, 141 [1993]; *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]).

"Broadly speaking, the courts will disregard the corporate form, or, to use accepted terminology, 'pierce the corporate veil,' whenever necessary 'to prevent fraud or to achieve equity'" (*Matter of Morris*, 82 NY2d at 140 [citation omitted]). The corporate veil may be

pierced where a plaintiff sufficiently states that: "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*id.* at 141; *see TIAA Global Invs., LLC v One Astoria Sq. LLC*, 127 AD3d 75, 90 [1st Dept 2015]).

Here, Woodrow alleges that Cestone completely dominated plaintiffs, disregarded corporate formalities, and used them to wage this action and other "mutually-ruinous litigation" against him to satisfy a personal vendetta. Woodrow alleges that Cestone caused plaintiffs to breach their obligation to advance and reimburse Woodrow's defense costs while dominating and controlling the plaintiff entities.

Assuming Cestone caused the plaintiff entities to breach their obligation to advance and reimburse Woodrow for legal fees and costs, Woodrow's claim sounds in breach of contract. "[A] simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil" (*Bonacasa Realty Co., LLC v Salvatore*, 109 AD3d 946, 947 [2d Dept 2013]; *see WorldWide Packaging, LLC v Cargo Cosmetics, LLC*, 193 AD3d 442, 443 [1st Dept 2021]; *Chiomenti Studio Legale, L.L.C. v Prodos Capital Mgt. LLC*, 140 AD3d 635, 636 [1st Dept 2016]; *see also Matter of Morris*, 82 NY2d at 141-142 ["While complete domination of the corporation is the key to piercing the corporate veil . . . such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required."]).

The court finds Woodrow's attempt to ground his proposed corporate veil claim on allegations of Cestone's personal vendetta equally unavailing. To the extent the litigation has merit, it does not constitute a fraud or wrong against Woodrow. To the extent Woodrow claims that Cestone used her domination and control to engage in malicious prosecution (*i.e.*, the

"malicious institution of judicial proceedings without probable cause for doing so which finally ends in failure"), he must wait for the litigation to be completed and then bring such an action (*Curiano v Suozzi*, 63 NY2d 113, 118 [1984]; *see Maspeth Fed. Sav. & Loan Assn. v Elizer*, 197 AD3d 1253, 1254-1255 [2d Dept 2021]). To the extent Woodrow seeks to impose sanctions against Cestone under CPLR 8303-a or 22 NYCRR § 130-1.1, New York does not recognize an independent cause of action for the imposition of sanctions under those provisions (*see Wells Fargo Bank, N.A. v Mitselmakher,* 197 AD3d 781, 782 [2d Dept 2021]; *Cerciello v Admiral Ins. Brokerage Corp*., 90 AD3d 967, 968 [2d Dept 2011]).

Accordingly, Woodrow's "alter-ego liability" claim against Cestone is dismissed for failure to state a cause of action pursuant to CPLR 3211 (a) (7).

VI. ***Woodrow's Cross Motion***

Woodrow cross-moves, pursuant to CPLR 3025 (b), for leave to file an "Amended Third-Party Complaint" (NYSCEF Doc. No. 634; NYSCEF Doc. No. 618). While recognizing that leave to amend should be "freely given" (CPLR 3025 [b]; *see Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]), the court denies the application.

Woodrow annexed a copy of the proposed amended pleading to his cross motion but does not clearly show the changes or additions to be made, as required by CPLR 3025 (b) (*see Cafe Lughnasa Inc. v A&R Kalimian LLC*, 176 AD3d 523, 524 [1st Dept 2019] ["The proposed third amended complaint also fails to 'clearly show[] the changes or additions' between it and the second amended complaint, as directed by the court and required by CPLR 3025 (b)"]). The court may overlook a movant's failure to supply a redlined proposed amended complaint as a "technical defect" where the changes or additions are highlighted in the moving papers (*see Berkeley Research Group, LLC v FTI Consulting, Inc*., 157 AD3d 486, 490 [1st Dept 2018]).

Here, Woodrow gives short shrift to this requirement in his moving papers and fails to clearly describe all the changes or additions that he proposed.

Woodrow also failed to provide a reason for the years of delay in seeking this relief. He asserts that that the proposed amendments to his third-party claims "clarify the allegations and [are] based on information uncovered during discovery." Nevertheless, he does not fully explain when the facts and/or issues that underly his proposed amendments were known to him. Indeed, it is clear that Woodrow was aware of at least some of these facts and/or issues since the start of this litigation (*see Sutton Apts. Corp. v Bradhurst 100 Dev. LLC*, 160 AD3d 508, 509-510 [1st Dept 2018]).

Accordingly, Woodrow's cross motion is denied.

CONCLUSION

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Molly Conners's motion to dismiss Christopher Woodward's third-party complaint is granted, and the third-party complaint is dismissed as against her (Mot. Seq. No. 019); and it is further

ORDERED that Maria A. Cestone's motion to dismiss Christopher Woodward's third-party complaint is granted, and the third-party complaint is dismissed as against her (Mot. Seq. No. 020); and it is further

ORDERED that Christopher Woodrow's cross motion for leave to amend the Amended Answer with Counterclaims and Third-Party Claims is denied; and it is further

ORDERED that the Clerk of the court shall enter judgment accordingly.

7/1/2022
DATE

MELISSA CRANE, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE