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| <b>Zeidman v Harrison Chen, DDS, P.C.</b>  |
| 2022 NY Slip Op 33148(U)   |
| September 19, 2022   |
| Supreme Court, New York County   |
| Docket Number: Index No. 656793/2022   |
| Judge: Arlene P. Bluth   |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

ANDREW ZEIDMAN,

Plaintiff,

- v -

HARRISON CHEN, DDS, P.C. A/K/A HARRISON CHEN
DDS UPPER EASTSIDE P.C., HARRISON CHEN

Defendants.

-----X

INDEX NO. 656793/2022

MOTION DATE 09/15/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for DISMISS DEFENSES

Plaintiff's motion to dismiss the counterclaims and affirmative defenses asserted by the named corporate defendants is denied as moot and the Court dismisses all claims by plaintiff against the non-existent corporate entity and sever that entity from this action (therefore the counterclaims alleged by the corporate defendant, who is no longer in the case, automatically are no longer pending). Only claims against, and alleged by, Harrison Chen remain.

Background

Here, the plaintiff entered into contracts to sell his dental practice to Harrison Chen, DDS, P.C. and sued that entity as well as Mr. Chen individually. That entity appeared and asserted defenses and counterclaims on behalf of itself and Mr. Chen. It turns out that the actual corporate entity has a middle initial in the corporate name – it is Harrison L. Chen, DDS, P.C.

Now plaintiff makes this motion, admitting that neither the contracting party nor the named entity legally exist. Defendant did not seem to care about this oversight and proceeded as

though the correct entity was named and served. Nevertheless, instead of asking to amend the caption to reflect the correct entity name (with an a/k/a or a d/b/a, or something to account for this error and reference both the correct entity and the contracting party), plaintiff demands that this Court permit a non-entity to be a defendant and simultaneously preclude that defendant from offering defenses.

People make mistakes all the time. People enter into contracts as the wrong entity, people sue the wrong parties, and people spell names incorrectly. These mistakes routinely get cleaned up by amending the caption, routinely on consent, or the parties focus on the merits and remedy the situation later.

Apparently, plaintiff is not interested in cleaning up the error and just moving along to the merits— instead, plaintiff appears to want to play “gotcha.” In other words, plaintiff seeks judgment against an entity that it claims does not exist but also seeks to prevent that illusory defendant from defending itself. The Court declines to play along with such gamesmanship.

However, this Court cannot ignore the reality of having a defendant that does not exist. Plaintiff admits that the named defendant is not a legal entity. This is a court of law and so this Court cannot ignore that there is no such corporation. The fact that this entity does not exist means, of course, that this entity was never served and this Court has no jurisdiction over the non-entity. Therefore, the corporate defendant is severed and dismissed from this action.

The only claims remaining are the claims and counterclaims between plaintiff and Mr. Chen, individually. Under these circumstances, the Court declines to award defendants any sanctions as defendant did not cross-move for this relief and, technically, the corporate entity does not exist.

Accordingly, it is hereby

ORDERED that all claims against named defendant, HARRISON CHEN, DDS, P.C. A/K/A HARRISON CHEN DDS UPPER EASTSIDE P.C. and the counterclaims/affirmative defenses asserted by this entity are severed and dismissed, as this Court has no jurisdiction against this named defendant; and it is further

ORDERED that the plaintiff’s motion to preclude the non-entity HARRISON CHEN, DDS, P.C. A/K/A HARRISON CHEN DDS UPPER EASTSIDE P.C. from asserting claims and defenses is denied as moot; and it is further

ORDERED that this action shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 14**

----- X  
**ANDREW ZEIDMAN,**  
**Plaintiff,**

**-against-**

**HARRISON CHEN**  
**Defendant.**  
----- X

and it is further


ORDERED that counsel for plaintiff shall, within 7 days, serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the removal of the corporate defendant; 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])

Conference: October 26, 2022 at 11 a.m. On or before October 19, 2022, the remaining parties are directed to upload 1) a discovery stipulation signed by all parties 2) a stipulation of partial agreement or 3) letters explaining why no agreement could be reached. The Court will then assess whether or not a conference is necessary. For instance, an in-person conference will not be required if the parties submit a stipulation signed by all parties and is acceptable to the Court.

If nothing is submitted by October 19, 2022, then the conference will be adjourned. If this order is not properly served on the General Clerk’s office as directed above, then the conference will be adjourned.

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| <u>9/19/2022</u>      |   |  |
| DATE                  |   | ARLENE P. BLUTH, J.S.C.   |
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED              | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                             |
|                       | <input type="checkbox"/> GRANTED                    | <input type="checkbox"/> GRANTED IN PART  |
|                       | <input checked="" type="checkbox"/> DENIED          | <input type="checkbox"/> OTHER  |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER               | <input type="checkbox"/> SUBMIT ORDER   |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT  |
|                       |   | <input type="checkbox"/> REFERENCE  |