

Sabr Chems. Group, LLC v Northeast Chems., Inc.
2022 NY Slip Op 33964(U)
November 18, 2022
Supreme Court, New York County
Docket Number: Index No. 650608/2019
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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SABR CHEMICALS GROUP, LLC

Plaintiff,

- v -

NORTHEAST CHEMICALS, INC.,

Defendant.

-----X

INDEX NO. 650608/2019

MOTION DATE 11/16/2022

MOTION SEQ. NO. 006 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 222, 223

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff to serve a second amended complaint is granted, in part, as follows: leave is granted to amend the caption, introduction (except for paragraph 3 thereof), first, second, and third causes of action and to add the fourth cause of action for breach of contract as set forth in the proposed amended complaint in the form annexed to the moving papers, but leave is denied with respect to paragraph 3 of the introduction and the proposed fifth cause of action for perjury and/or bad faith litigation tactics; and it is further

ORDERED that, within thirty (30) days from entry of this order, plaintiff shall serve a copy of this order with notice of entry and the second amended complaint in conformity herewith; and it is further

ORDERED that the defendant shall answer the second amended complaint or otherwise respond thereto within twenty (20) days from the date of such service; and it is further

ORDERED that the motion of plaintiff to consolidate is granted and the above-captioned action is consolidated in this Court with Sabr Chemicals Group, LLC vs. United Foods Corporation , Index No. 651899/2022, pending in this Court; and it is further

ORDERED that the consolidation shall take place under Index No. 650608/2019 and the consolidated action shall bear the following caption:

x _____ x
 SABR CHEMICALS GROUP, LLC,

 Plaintiff,

 -against-

 NORTHEAST CHEMICALS, INC., UNITED FOODS
 CORPORATION, and JIMMY HSU,

 Defendants.
 x _____ x

And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within sixty (60) days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court 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); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-

filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within forty-five (45) days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that counsel are directed to post on NYSCEF a proposed discovery status conference order or proposed competing status conference order(s) on January 26, 2023, on which date counsel shall appear via Microsoft Teams, unless such appearance shall be waived by the court.

DECISION

With respect to consolidation, Cronin v Sordoni Skanska Constr Corp, 36 AD3d 448, 449 (1st Dept 2007) is completely distinguishable on its facts from those before this court, as in Cronin, the appellate court found an "absence of common questions of law or fact". Unlike the lawsuits in Cronin, both actions that are the subject of plaintiff's herein motion to consolidate concern the same transaction, i.e., the sale of Vitamin C.

Based on law of the case, with respect to paragraph 3 of the proposed second amended complaint, this court's Order dated February 19, 2020 cannot be the basis of venue in light of the determination of the Appellate Division, First Department, in Sabr Chemicals Group, LLC v Northeast Chemicals, Inc., 192 AD3d 647 (1st Dept 2021).

As to the proposed amended fourth cause of action to assert breach of contract, defendant "has not identified any way in which [it] would be prejudiced" (Kocourek v Booz Allen Hamilton Inc, 85 AD3d 502, 505 [1st Dept 2011]), given that the subject Contract was incorporated by reference and appended to both the original and first amended complaints.

With respect to the proposed fifth cause of action alleging perjury and/or bad faith litigation tactics of the second amended complaint, this court agrees with defendant, that, as held in Yalkowsky v Shedler, 94 AD2d 684 (1st Dept 1983), "allegations of perjury do not form the basis of a civil action for damages." Defendant is likewise correct that the exception to such rule does not apply here, as plaintiff does not allege that the perjury was merely a means to the accomplishment of a larger fraudulent scheme. As in Yalkowsky, the gravamen of plaintiff's allegations at bar are that "the purpose of the claimed perjury was to obtain a favorable ruling from the court on the issue [choice of forum/personal jurisdiction and venue]

to which the allegedly perjured evidence was addressed." Nor is the alleged spoliation of evidence an independent cause of action under New York State law. See Ortega v City of New York, 9 NY3d 69, 79-80 (2007).

Debra A. James

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11/18/2022

DATE

DEBRA A. 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