

<b>Bessemer Trust Co., N.A. v Hart</b>
2022 NY Slip Op 34238(U)
December 9, 2022
Supreme Court, New York County
Docket Number: Index No. 655830/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BESSEMER TRUST COMPANY, N.A., AS PRELIMINARY  
EXECUTOR OF THE ESTATE OF GEORGE S.  
KAUFMAN,

INDEX NO. 655830/2019

MOTION DATE 11/22/2022

Plaintiffs,

MOTION SEQ. NO. 009

- v -

**DECISION + ORDER ON  
MOTION**

EDWARD J. HART, STEVEN J. KAUFMAN, 18-19TH  
ASSOCIATES LLC, 19TH STREET ASSOCIATES LLC, 450  
7TH AVE. ASSOCIATES LLC, ABCO ASSOCIATES,  
KAUFMAN 8TH AVENUE ASSOCIATES, KAUFMAN  
ARCADE ASSOCIATES LP, KAUFMAN EASTCHESTER  
COMPANY, LLC, KAUFMAN TARRYTOWN COMPANY,  
LLC, KAUFMAN WALES ASSOCIATES LLC, KAUFWEIN-  
470 ASSOCIATES LLC, KWK ASSOCIATES, INC.,  
LUCAS BUILDING COMPANY, LLC, S.I.K. ASSOCIATES  
LLC, SPRINGFIELD COMPANY, LLC, STATION PLAZA  
COMPANY, LLC, WKK ASSOCIATES, INC.,

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431

were read on this motion to AMEND CAPTION/PLEADINGS.

Plaintiff Bessemer Trust Company, N.A. (Bessemer Trust), in its capacity as Preliminary Executor of the Estate of George S. Kaufman (the Estate) (collectively, "Plaintiff"), move pursuant to CPLR 3025 and 305, to amend its complaint and the case caption to reduce the number of defendants from eighteen to eleven, reduce the number of counts from eleven to eight, and present a narrower and more focused dispute for resolution in this Court. Defendants Edward J. Hart, Steven J. Kaufman, ABCO Associates, Kaufman Eastchester Company, LLC, Kaufman Tarrytown Company, LLC, Kaufman Wales Associates LLC, Kaufwein-470 Associates LLC, Lucas Building Company, LLC, S.I.K. Associates LLC, Springfield Company,

LLC, and Station Plaza Company, LLC (collectively, the Hart “Defendants”) oppose this motion in part.<sup>1</sup>

CPLR 3025(b) provides that “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . .” “Motions for leave to amend should be freely granted, absent prejudice or surprise . . . unless the proposed amendment is palpably insufficient or patently devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). Courts have held that prejudice “arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position” (*Valdes v Marbrose Realty*, 289 AD2d 28, 29 [1st Dept 2001]; *Anoun v City of New York*, 85 AD3d 694, 694 [1st Dept 2011]). A party opposing leave to amend “must overcome a heavy presumption of validity in favor of [permitting amendment].” (*CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 65 [1st Dept 2010]).

First, the Hart Defendants object to what they refer to as “completely irrelevant hyperbole” interjected into the proposed amended complaint and argue that these amendments are unnecessary. Regardless, the Hart Defendants do not dispute that the amendments are consistent with the allegations in the original complaint (NYSCEF 417 at 2 [br. in support]).

Second, the Hart Defendants object to the only new claim in the proposed amended complaint (Count Eight), which seeks a declaratory judgment that the Estate has the right to designate itself, the Dispositive Trust, or the Charitable Foundation as admitted members with all afforded rights and privileges in Kaufman Wales Associates LLC (“Kaufman Wales”), S.I.K.

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<sup>1</sup> The Hart Defendants do not oppose amendment of the caption (*see* NYSCEF 417 at 3 n1).

Associates LLC (“SIK”). “The general purpose of a ‘declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations.’ Thus, a declaratory judgment requires a ‘justiciable controversy,’ in which not only does the plaintiff ‘have an interest sufficient to constitute standing to maintain the action but also that the controversy involve present, rather than hypothetical, contingent or remote, prejudice to plaintiffs’” (*Touro Coll. v Novus Univ. Corp.*, 146 AD3d 679, 679-80 [1st Dept 2017] [internal citations omitted]).

Here, Plaintiff alleges that Hart and Steve Kaufman refuse to recognize the Estate’s, Dispositive Trust’s, or the Charitable Foundation’s rights in Kaufman Wales and SIK (NYSCEF 405 ¶108 [“Pr. Am. Compl.”]). The Hart Defendants argue that there is no justiciable controversy regarding the Estate’s current interests in SIK and Kaufman Wales, as Plaintiff failed to take the necessary action(s) pursuant to the applicable Operating Agreements to effectuate a transfer of George Kaufman’s interests (NYSCEF No. 417 [Opp. Memo at 5–6]). In response, Plaintiff alleges that there are disputes over (a) whether the Estate, the Dispositive Trust, or the Charitable Foundation holds a full membership interest – as opposed to only an economic interest – in SIK and Kaufman Wales and (b) whether George bequeathed his full membership interests in the two entities through his estate-planning documents or if Bessemer Trust must effectuate those transfers. Plaintiff further alleges that “Defendants’ unwillingness and refusal to acknowledge the Estate’s ownership and designation rights in Kaufman Wales and SIK, and instead impose restrictions on such interests, significantly diminishes the value of the Estate’s ownership and its ability to sell or transfer those interests for the benefit of the Charitable Foundation” ((NYSCEF 405 ¶63 [“Pr. Am. Compl.”]).

Plaintiff has sufficiently alleged that there is a justiciable controversy. If the Hart Defendants wish to eliminate the controversy by conceding the point in their Answer or otherwise, they are free to do so. At this stage, the Hart Defendant's arguments go to the merits of this claim, which on its face, has not been shown to be palpably insufficient or patently devoid of merit.

Finally, Plaintiff represents that the proposed amendment does not expand the scope of discovery (NYSCEF 404 ¶15 ["Newman Aff."]). With the understanding that the Court will hold Plaintiff to that representation, the Court finds that the proposed amendment will not be unduly prejudicial and may in fact streamline the proceedings to some extent.

Accordingly, it is

**ORDERED** that the motion by Plaintiff for leave to file its proposed Amended Complaint is **GRANTED**; it is further

**ORDERED** that Plaintiff shall file the amended complaint on NYSCEF within 5 business days of the date of this Order; it is further

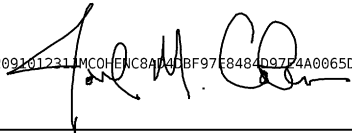
**ORDERED** that Defendants shall serve an answer or otherwise respond to the Amended Complaint within 20 days from the date of said filing; it is further

**ORDERED** that the caption be amended to reflect the Amended Complaint and that all future papers filed with the court bear the amended caption; and it is further

**ORDERED** that Plaintiff shall serve a copy of this order with notice of entry and its amended complaint upon the Clerk of the Court (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 change in the caption herein.

This constitutes the Decision and Order of the Court.

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**JOEL M. COHEN, J.S.C.**

12/9/2022  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<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