

**Sanders Equities LLC v Maldonado**

2023 NY Slip Op 32119(U)

June 21, 2023

Supreme Court, Nassau County

Docket Number: Index No. 605681/2022

Judge: Sharon M.J. Gianelli

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU – Commercial Division Part 7  
Present: Hon. Sharon M.J. Gianelli

.....X  
SANDERS EQUITIES LLC, NEXT MILLENNIUM  
REALTY, LLC, AERIAL WAY AND ROBBINS LLC,  
123 FROST ASSOCIATES L.P., 135 NORTH  
BROADWAY LLC and 69 BLOOMINGDALE LLC,

Index No: 605681/2022

Plaintiffs,

Motion Seq. 001

-against-

Decision and Order

KEVIN MALDONADO and  
KEVIN MALDONADO AND ASSOCIATES, P.C.  
d/b/a KEVIN MALDONADO & ASSOCIATES  
d/b/a KEVIN MALDONADO & PARTNERS LLC,

Defendant(s).

.....X

Papers submitted on this motion:

Plaintiffs' Notice of Motion, Affirmation, Exhibits  
and Memo of Law in Support .....X

Plaintiffs now move for an Order granting Plaintiffs leave to file a Verified Amended  
Complaint alleging:

- (a) a Seventh Cause of Action for Fraud against Melissa Maldonado ("Mrs. Maldonado"), the spouse and business partner of Defendant Kevin Maldonado ("Maldonado");
- (b) in the alternative, an Eighth Cause of Action against Mrs. Maldonado for Aiding and Abetting Fraud;
- (c) a Ninth Cause of Action against Mrs. Maldonado for Aiding and Abetting Breach of Fiduciary Duty;

(d) a Tenth Cause of Action for Fraudulent Conveyance against Maldonado, Kevin Maldonado and Associates, P.C. d/b/a Kevin Maldonado & Associates d/b/a Kevin Maldonado & Partners LLC (the "Firm"), Kevin Maldonado and Melissa Maldonado, as Trustees of the Kevin and Melissa Maldonado Trust (the "Trust"), and Eagle Lake Holdings LLC ("Eagle Lake"), Bushman Hill Real Estate LLC ("Bushman Hill"), 567 Four Mile Point ("567 Four"), WM Welch Enterprises LLC ("WM Welch"), Blue Stone and Mulch LLC ("Blue Stone"), WMW Holdings LLC ("WMW Holdings"), and Hart Mansion LLC ("Hart Mansion," together with Eagle Lake, Bushman Hill, 567 Four, WM Welch, Blue Stone, and WMW Holdings, the "Fraudulent Entities"), under former Debtor and Creditor Law §§ 273, 274, 275, 276, and 276-a, applicable, applicable to transactions prior to April 4, 2020;

(e) in the alternative, or in addition to the Tenth Cause of Action, an Eleventh Cause of Action against Maldonado, the Firm, Kevin Maldonado and Melissa Maldonado, as Trustees of the Trust, and the Fraudulent Entities, for Voidable Transaction under current Debtor and Creditor Law §§ 273, 274, and 276-a, known as the Uniform Voidable Transactions Act, applicable to transactions on or after April 4, 2020.

This action was commenced by the filing of a Summons with Notice on May 2, 2022. An Amended Summons and a Complaint were filed on June 13, 2022. An Answer was filed on September 20, 2022.

Plaintiffs claim that, after the commencement of this action, an investigation was initiated to "ascertain whether Maldonado had identifiable assets with which to satisfy

the potentially enormous liability Maldonado and the Firm face from the Sanders Entities' pending claims in this lawsuit.”

Plaintiffs further claim that as a result of that investigation, information was obtained that leads Plaintiffs to believe that after the commencement of this lawsuit, Maldonado made several asset transfers that have left Maldonado and his Firm stripped of all if not most assets.

Plaintiffs argue that the proposed amendment poses no surprise or prejudice as this action is newly commenced and no discovery has taken place to date. Plaintiffs further argue that the newly brought claims are not palpably insufficient or patently devoid of merit.

No opposition has been filed with respect to this application.

#### *Law/Analysis*

CPLR §3025(b) provides, that, “a party may amend his or her pleading...at any time by leave of court or by stipulation of all parties. Leave shall be freely given...” It is well-settled that a motion for leave to amend pleadings is almost entirely left to the discretion of the Court, but such applications are to be freely granted “unless the proposed amendment is palpably insufficient or patently devoid of merit, or where the delay in seeking the amendment would cause prejudice or surprise to the opposing party.” See *Lucido v. Mancuso*, 49 A.D.3d 220, 851 N.Y.S.2d 238 (2nd Dep’t 2008).

The decision of whether to allow a pleading to be amended rests within the sound discretion of the court. *Pagan v. Quinn*, 51 A.D.3d 1299 (3rd Dept. 2008); *Trataros Const. Inc. v. New York City School Const. Authority*, 46 A.D.3d 874 (2nd Dept. 2007). “Leave to amend a pleading will be freely granted where the proposed amendment is not palpably insufficient or patently devoid of merit and will not prejudice or surprise the opposing party.” *Shovak v. Long Island Commercial Bank*, 50 A.D.3d 1118, 1120 (2nd Dept. 2008), lv to appeal dismissed in part, denied in part, 11 N.Y.3d 762 (2008); *Lucido v. Mancuso*, 49 A.D.3d 220, 245 (2nd Dept. 2008); *Bolanowski v. Trustees of Columbia University in City of New York*, 21 A.D.3d 340 (2nd Dept. 2005). “To establish prejudice, which must be significant, there must be some indication that the opposing party has incurred some change in position or hindrance in the preparation of the case which could have been avoided had the original pleading contained the proposed amendment.” *Spitzer v. Schussel*, 48 A.D.3d 233 (1st Dept. 2008).

The Court finds that the proposed amendment is not devoid of merit and there is no delay, surprise or prejudice.

Accordingly,

It is

ORDERED, that Plaintiffs’ motion for an Order granting Plaintiffs leave to file a Verified Amended Complaint, is Granted; and

It is

ORDERED, that the Proposed Amended Complaint annexed to Plaintiffs' moving papers is deemed served and filed as of the date of this Decision and Order; and

It is

ORDERED, that Defendants shall have thirty (30) days from the filing of this Order to interpose an Answer to the Amended Complaint; and


It is

ORDERED, that the parties shall appear before this Court for a Conference on August 29, 2023, at 10:00 a.m.

All applications not specifically addressed herein are denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York  
June 21, 2023



HON. SHARON M. GIANELLI  
Justice of the Supreme Court

**ENTERED**

**Jun 22 2023**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE