

**200 CPS Retail Holdings LLC v 305 Fitness Studio  
58th St LLC**

2023 NY Slip Op 32290(U)

July 5, 2023

Supreme Court, New York County

Docket Number: Index No. 650844/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

-----X

200 CPS RETAIL HOLDINGS LLC,  
Plaintiff,

- v -

305 FITNESS STUDIO 58TH ST LLC,SADIE KURZBAN  
Defendant.

-----X

**INDEX NO.** 650844/2022

**MOTION DATE** 06/15/2023

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

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

Plaintiff’s motion for leave to file an amended complaint is granted in part and denied in part.

**Background**

In this breach of lease case, plaintiff seeks to recover unpaid rent from defendant 305 Fitness Studio 58<sup>th</sup> St LLC (the “Tenant”) and from the purported guarantor (Ms. Kurzban). The Court previously dismissed the claims against Ms. Kurzban on the ground that the only guarantor listed on the lease was 305 Fitness, Inc., not Ms. Kurzban (NYSCEF Doc. No. 48 at 2).

Plaintiff now moves to amend to add claims against Kurzban based upon the Debtor Creditor Law and to add the purported guarantor. It explains that eight months after this action was commenced, the Tenant was dissolved. It claims that pursuant to the Limited Liability Company Law, a limited liability company must distribute its assets to creditors, but plaintiff maintains that it has received nothing from the Tenant despite it owing unpaid rent.

Plaintiff alleges that the Tenant had assets when it was dissolved and that these assets were distributed to Ms. Kurzban for nothing in exchange.

In opposition, Ms. Kurzban contends that the proposed amended pleading did not identify a single transfer to her or any particular assets that were transferred. She emphasizes that she was already dismissed from this case and the alleged fraudulent conveyance claims have nothing to do with the allegations in this case (a breach of lease).

In reply, plaintiff contends that Ms. Kurzban has no standing to oppose the motion because she is no longer a party to this case. It claims that it is a creditor and that the Tenant voluntarily dissolved with full knowledge about this case.

### **Discussion**

“Motions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit” (*Y.A. v Conair Corp.*, 154 AD3d 611, 612, 62 NYS3d 116 [1st Dept 2017] [citation omitted]).

As an initial matter, the Court grants the branch of the motion that seeks to add 305 Fitness, Inc. as a defendant, as plaintiff alleged a cognizable claim that this entity was the guarantor for the subject lease.

However, the Court denies the motion as it relates to Ms. Kurzban because the proposed new causes of action are palpably insufficient and do not state cognizable claims against Ms. Kurzban. As Kurzban correctly points out, plaintiff did not identify any transfers or any proof that the Tenant is completely devoid of assets. Instead, plaintiff offers conclusory assertions that its new claims are appropriate because it is owed rent and the Tenant voluntarily dissolved. Plaintiff did not offer any basis for its claim that Ms. Kurzban received assets from the Tenant

without any consideration. No specifics are provided at all concerning any of these alleged transfers.

Certainly, plaintiff is correct that the Tenant has exclusive control over the relevant financial documents concerning its dissolution. But that does not justify permitting an amendment to add an individual defendant in a case where, as noted in a previous decision, that individual was not a signatory to the lease at issue. In other words, at this stage of the litigation (especially before the Tenant has been found liable and has not paid what it owes), the Court is unable to permit the inclusion of a defendant who is not a party to the agreement.

The Court observes that typically, in situations where Debtor Creditor Law claims are alleged, a plaintiff can point to certain transfers. This often occurs after a plaintiff has obtained a judgment and has obtained financial records that show that the defendant is insolvent, is unable to satisfy a judgment, and transferred its assets. Here, plaintiff did not yet offer a sufficient reason for including Ms. Kurzban, except for the fact that she signed the lease and the guaranty on behalf of the corporate entities. Plaintiff's allegation, based solely on information and belief, that Ms. Kurzban received the Tenant's assets after dissolution, is too conclusory and vague to sustain a cognizable cause of action against her without more information.

Accordingly, it is hereby

ORDERED that plaintiff's motion to amend is granted only to the extent that it seeks to add defendant 305 Fitness, Inc. and denied with respect to the remaining relief requested, and plaintiff shall upload a proposed amended complaint that conforms with this decision on or before July 28, 2023; and it is further

ORDERED that the caption shall be amended to add 305 Fitness, Inc. and to remove Sadie Kurzban and it is further

ORDERED that the caption of the remaining action will be:

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

----- X  
**200 CPS RETAIL HOLDINGS LLC,**  
**Plaintiff,**

**-against-**


**305 FITNESS STUDIO 58TH ST LLC and  
305 FITNESS, INC.**  
**Defendants.**  
----- X

; and it is further

ORDERED that within 21 days from entry of this order, counsel for the movant shall serve a copy of this decision and order with notice of entry upon the Clerk of the Trial Support Office (Room 158) and the County Clerk (Room 141B) **via e-filing**; 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/suptmanh)].

See NYSCEF Doc. No. 48 for details about the next conference.

<u>7/5/2023</u> DATE					 ARLENE P. BLUTH, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	