

Bedessee v Bedessee

2023 NY Slip Op 32333(U)

July 10, 2023

Supreme Court, Kings County

Docket Number: Index No. 507184/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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NAWSHAD BEDESSEE,

Plaintiffs,

Decision and order

- against -

Index No. 507184/2022

VERMAN BEDESSEE, RAYMAN BEDESSEE,
INVOR BEDESSEE, BEDESSEE IMPORTS INC.,
ANDREW BEDESSEE CORP., BEDESSEE HOLDINGS
INC., BEDESSEE EAST-WEST INDIAN FOOD, INC.
D/B/A BEDESSEE SPORTING GOODS, and
OTHER XYZ CORPORATIONS 1-10,
the true names of which are unknown
to the Plaintiff,

Defendant,

July 10, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2 & #3

The plaintiff has moved pursuant to CPLR §3025 seeking to amend the complaint. The plaintiff has also moved seeking essentially to compel the production of discovery. The defendants have opposed the motions. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, the plaintiff and the defendants are all brothers and all assumed control of their father's businesses upon his death in 2017. The complaint alleges, among other improprieties, that defendant, Verman Bedessee the managing member of the business, is diverting business assets to his other wholly owned businesses and to pay personal expenses. The complaint further alleges the defendant utilizes employees of the entities to work for his own wholly owned companies thereby ruining the financial stability of the

defendant entities. The complaint alleges causes of action for a declaratory judgement, an accounting, breach of fiduciary duty, constructive trust, conversion, corporate waste and unjust enrichment.

The plaintiff has now moved seeking to amend the complaint to add Invor Bedessee as a plaintiff and to remove him as a defendant. The remaining defendants oppose the motion on the grounds the amendment seeks to involve a Canadian corporation which is the subject of a Canadian lawsuit. Therefore, the amendment is improper.

Conclusions of Law

It is well settled that a request to amend a pleading shall be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been presented and whether any prejudice will result (Cohen v. Ho, 38

AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

The basis for the opposition is the fact the amended complaint seeks a declaration regarding Invor's ownership interests in Bedessee Imports Ltd. However, the defendants assert "Bedessee Imports, Ltd. is not a party to this action, or a proposed party in the amended complaint. As Invor Bedessee's affidavit acknowledges, Bedessee Imports, Ltd. is a company in Canada, and likely will be the subject of litigation in Canada" (see, Affirmation in Opposition, ¶5 [NYSCEF Doc. No. 134]).

First, Mr. Invor Bedessee states that he "intends" to commence an action in Canada regarding Bedessee Imports Ltd., rendering any resolution in Canada mere speculation at this time (see, Affirmation of Invor Bedessee, ¶6 [NYSCEF Doc. No. 120]). More importantly, the defendants do not explain why the court lacks jurisdiction to adjudicate ownership claims on these foreign entities. The lawsuit concerns the individual defendants in their capacity as individuals. The court may be able to adjudicate such claims of ownership. Furthermore, the original complaint sought the same ownership determinations concerning the plaintiff Nawshad and no such opposition was ever filed arguing the court maintained no jurisdiction to hear the merits of those claims (see, Verified Complaint, ¶¶66, 70 [NYSCEF Doc. No. 1]).

While discovery will narrow the issues and determine whether the claims have merit and likewise, whether the court maintains jurisdiction, however, at this point the claims have merit.


Consequently, the motion seeking to amend the complaint is granted.

Concerning the motion seeking discovery, the defendants have adequately responded to all of the plaintiff's discovery requests including the production of ESI. Consequently, the motion seeking to compel the production of any discovery is denied as moot.

So ordered.

ENTER:

DATED: July 10, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC