

Lin Sing Assoc., Inc. v Xue Yuan Deng

2024 NY Slip Op 30701(U)

March 6, 2024

Supreme Court, New York County

Docket Number: Index No. 153733/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER **PART** **02M**

Justice

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LIN SING ASSOCIATION, INC,

Plaintiff,

INDEX NO. 153733/2022

MOTION DATE 12/05/2023

MOTION SEQ. NO. 002

- v -

XUE YUAN DENG, MAU LAM HO,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44

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

In this action alleging fraud, breach of contract and fiduciary duty, and tortious interference, Defendants Xue Yuan Deng and Mau Lam Ho (“Defendants”) move pursuant to CPLR § 1001 to amend the caption to add Hon Poon Leung a/k/a Kenny Leung (“Leung”) as an Additional Counterclaim Defendant in the action. Plaintiff Lin Sing Association, Inc. (“Lin Sing”) opposes the motion.

This action is one of several arising from an ongoing dispute among Lin Sing’s members or former members, which includes a contested election of Leung as its President. Defendants seek to add Leung as an additional counterclaim defendant and assert counterclaims against him and Lin Sing. They argue that Leung is a necessary party to the action “as he is the current putative president of Lin Sing and thus directs all actions taken by the Association.” They further contend he has committed tortious acts in his capacity as President that only benefit him. They therefore maintain that he must be added “to ensure that complete relief can be afforded.” Their Verified Answer with Counterclaims (NYSCEF Doc. No. 42) asserts counterclaims for defamation, abuse of process, legal fees against both Lin Sing and Leung.

In opposition, Lin Sing argues that pursuant to CPLR § 3019 the addition of a counterclaim defendant is proper only when the counterclaims asserted are against both the plaintiff and the non-party that the defendant seeks to add. It maintains that although Defendants' pleading includes both Lin Sing and Leung in the counterclaims, the claims themselves are not appropriately brought against them both. Specifically, Lin Sing argues that the facts alleged pertaining to Defendants' defamation claim only relate to statements made by Leung, and that there are no claims specifically against Lin Sing. With respect to the abuse of process and legal fee claims, Lin Sing maintains Defendants' claims relate to prior litigation brought by Lin Sing, and therefore the claims cannot be asserted against Leung. Therefore, Lin Sing argues Leung cannot be added as an additional counterclaim defendant.

CPLR § 3019(a) provides that a counterclaim may be asserted against "a plaintiff and other persons alleged to be liable." Accordingly, "a defendant may properly bring a nonparty into a proceeding through a counterclaim, as long as the counterclaim is asserted against both a named plaintiff and an unnamed third party who the already-named defendant claims is liable" (*Linzer v Bal*, 184 Misc 2d 132, 135 [Civ Ct, New York County 2000] [Acosta, J.]).

As set forth in their Verified Answer with Counterclaims, Defendants are alleging that Leung defamed them in his capacity as President of Lin Sing, a role they do not believe he properly holds, and that the litigation from which the abuse of process and counsel fee counterclaims stem was brought by Lin Sing while Leung was serving as President. Therefore, for the purposes of a motion to amend the caption to add an additional counterclaim defendant, the contention that the defamation claim can only be brought against Leung and the abuse of process and fee claims can only be brought against Lin Sing is unavailing. Accordingly, the Court finds that the counterclaims are properly brought against both Lin Sing and Leung.

For the reasons set forth herein, it is hereby:

ORDERED that Defendants’ motion to amend the caption to add Hon Poon Leung a/k/a Kenny Leung as an Additional Counterclaim Defendant is granted; and it is further

ORDERED that the Verified Answer with Counterclaims in the form annexed to the motion papers shall be deemed served upon service of a copy of this Order with Notice of Entry upon all parties who have appeared in the action; and it is further

ORDERED that the Summons and Verified Answer with Counterclaims in the form annexed to the motion papers shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party within 30 days after service of a copy of this Order with Notice of Entry; and it is further

ORDERED that the action shall bear the following caption:

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

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LIN SING ASSOCIATION, INC.,

Plaintiff,

- against -

XUE YUAN DENG, MAU LAM HO,

Defendants.

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XUE YUAN DENG, MAU LAM HO,

Defendants,

- against -

HON POON LEUNG A/K/A KENNY LEUNG,

Additional Counterclaim Defendant.

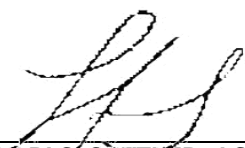
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and it is further

ORDERED that Defendants' counsel shall serve a copy of this Order with Notice of Entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the party being added pursuant hereto.

This constitutes the Decision and Order of the Court.

3/6/2024
DATE


LORI S. SATTLER, 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