

Buttar v Elite Limousine Plus, Inc.

2024 NY Slip Op 32502(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 651088/2019

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

Plaintiffs commenced this action in 2019, following Elite's purchase of almost all of FCS' assets in 2017 ("FCS-Elite Transaction"). In July 2023, Elite filed for Chapter 11 bankruptcy in the Eastern District of New York (*id.*). Plaintiff now moves to sever the claims pending against the non-debtor parties, FCS Defendants and Chaudhary.

First, it is peculiar that Elite, purportedly through its attorney's Tuch & Cohen, has opposed this motion. Elite is currently in Bankruptcy. Yet, there is no indication that Tuch & Cohen had permission from the bankruptcy trustee or the bankruptcy court to use assets on opposing a motion here.

Moreover, the test for whether or not to sever has to do with whether this case would somehow affect the bankrupt estate. Neither FCS nor Elite has addressed this issue in any material way. Elite makes some vague argument that the "Step B" claim that Chaudhary aided and abetted FSA violations must first be preceded by a "Step A" determination that Elite violated the FSA. The court does not understand why this is or should be the case. Elite does not explain it. Nor can the court fathom a decent explanation. As Elite will not be participating in the trial, there can be no collateral estoppel effect against it.

Meanwhile, the non bankrupt defendants can be found liable without Elite, because Elite is NOT an indispensable party. New York Franchise Sales Act, Gen. Bus. L § 691(3) provides for joint and several liability against a control person. The statute states:

"A person who directly or indirectly controls a person liable under this article, a partner in a firm so liable, a principal executive officer or director of a corporation so liable, a person occupying a similar status or performing similar functions, and an employee of a person so liable, who materially aids in the act of transaction constituting the violation, is also liable jointly and severally with and to the same extent as the controlled person, partnership, corporation or employer"

(New York Franchise Sales Act, Gen. Bus. L § 691(3)).

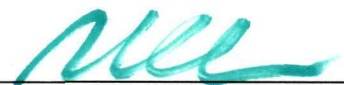
Thus, Chaudhary, as well as FCS, could be found liable with or without Elite. Moreover, in general all the defendants would be subject to joint and several liability. This mitigates in favor of severance.

Both Elite and FCS argue that severance should be denied because it could consume excessive judicial resources and have potential overlapping issues of fact. However, courts have consistently held that bankruptcy stays do not apply to nonbankrupt defendants, and severance is only denied when it could affect the bankrupt's estate, not the case itself. *See Golden v. Moskowitz*, 194 AD2d 385, 385 (1st Dept 1993) (holding that "Appellate courts in this State have repeatedly held that a bankruptcy stay does not prevent a plaintiff from proceeding on causes of action against nonbankrupt defendants, which do not involve the bankrupt's property"). *See also Empire Erectors and Elec. Co., Inc. v. Unlimited Locations LLC* 102 AD3d 419 (1st Dept 2013) (holding "automatic stay triggered by debtor's bankruptcy filing did not apply to creditor's action against guarantors of agreement executed by debtor, absent showing by guarantors that continuation of the action would have an adverse economic effect on the debtor's estate").

Pursuant to CPLR § 603, the Court may order a severance of claims to avoid confusion, delay, or prejudice. Despite the bankruptcy action having been ongoing for nearly a year, Elite has made virtually no progress. Elite has not even made a formal proposed plan for reorganization. There being no end in sight for recovery in the bankruptcy case, it would prejudice plaintiff to deny severance. This action was first commenced in 2019 and discovery has closed. It is more than time to get on with the case against the non-bankrupt defendants. Accordingly, it is

ORDERED that plaintiffs' motion for an order severing the claims against Elite and continuing the claims against defendants First Corporate Sedans, Inc., Guy Ben Zion, Amir Ben Zion, and Safquat Chaudhary is granted.

The clerk is directed to sever the claims against Elite which will remain stayed, but lift the stay as to the remaining defendants.

<u>7/12/2024</u> DATE	 MELISSA A. CRANE, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT