

**Leane v Mishcon De Reya LLP**

2024 NY Slip Op 32999(U)

August 20, 2024

Supreme Court, New York County

Docket Number: Index No. 654614/2020

Judge: Robert R. Reed

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 NEW YORK: COMMERCIAL DIVISION PART 43

-----X

DEIRDRE LEANE, IPNAV, LLC,  Plaintiff,  - v -  MISHCON DE REYA LLP, MISHCON DE REYA NEW YORK LLP, KING & WOOD MALLESONS LLP, ROBERT WHITMAN, MARK RASKIN  Defendant.	INDEX NO. <u>654614/2020</u>  11/20/2020, 01/08/2021, 01/22/2021, 02/19/2021, 07/29/2024  MOTION DATE  001, 002, MOTION SEQ. NO. <u>003, 004, 005</u>
--	--

**DECISION + ORDER ON  
MOTION**

-----X

**HON. ROBERT R. REED:**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, 37

were read on this motion for STAY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 76, 80, 81, 82

were read on this motion for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 72, 73, 74, 75, 79

were read on this motion for STAY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78

were read on this motion for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 005) 88, 89, 90, 91, 92

were read on this motion for LEAVE TO FILE

In this malpractice and breach of fiduciary duty action, plaintiffs Deirdre Leane and IPNAV, LLC allege that defendants induced them to terminate a patent agreement and later failed to abide by certain promises to restore plaintiffs' rights to recover on their patent interests.

In the original complaint, plaintiffs filed six causes of action: a claim against the Michon defendants for malpractice and negligence (Count I), a claim for breach of fiduciary duty against all defendants (Count II), a breach of contract claim against all defendants (Count III), a claim for aiding and abetting breach of fiduciary duty against defendants Raskin, Whitman and KWM (Count IV), a claim for aiding and abetting breach of contract under Texas law against defendants Raskin, Whitman and KWM (Count V), and a claim for “fraud or negligent misrepresentation” against defendants Whitman and MdR (Count VI).

In motion sequence 001, defendants King & Wood Mallesons LLP and Mark Raskin seek to stay the action, or, in the alternative, dismiss the claims against them (NYSCEF doc. no.12). In motion sequence 002, defendant Mischon de Reya LLP seeks to dismiss the complaint based on lack of personal jurisdiction and failure to state a cause of action pursuant to CPLR 3211 (NYSCEF doc. no. 39). Defendant Robert Whitman, in motion sequence 003 (NYSCEF doc. no. 47), filed a motion to stay the case or in the alternative, dismiss the complaint against him, and in motion sequence 004 defendant Mischon de Reya New York LLP moves to dismiss the complaint by joining Whitman and Raskin’s arguments in support of dismissal in sequences 001 and 003 (NYSCEF doc. no. 78).

Now, in motion sequence 005, plaintiff moves, by “Notice of Consent Motion,” to file an amended complaint (NSYCEF doc. no. 88). In their motion, plaintiffs seek leave to amend the complaint to: (1) add claims against defendant Mishcon de Reya LLP, (2) add a negligence claim against Whitman and the Mishcon de Reya defendants, (3) amend the complaint with additional facts that arose from the arbitration between plaintiffs and nonparty Chanbond LLC and other litigations, and (4) to amend the complaint with additional facts to address alleged pleading deficiencies that are the subject of defendants motions to dismiss. The motion is

unopposed, and the parties conferred and consent to the amendment of the complaint (NYSCEF doc. no. 89).

A party seeking leave to amend under CPLR 3025, may do so “at any time by leave of court’ [and] that leave ‘shall be freely given upon such terms as may be just.’” Plaintiffs seeking leave to amend their pleadings should be given the “widest possible latitude” (*Murray v City of New York*, 43 NY2d 400, 405 [1977]). Courts permit such amendments unless the defendants can demonstrate prejudice and surprise (*Spiegel v Gingrich*, 74 AD3d 425, 426 [1st Dept 2010]). Plaintiffs need not establish the merit of its proposed new allegations but must simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit (*MBIA Ins. Corp. v Greystone & Co.*, 74 AD3d 499, 500 [1st Dept 2010]).

The instant motion was accompanied by plaintiff’s proposed amended complaint and an affirmation of counsel (NYSCEF doc. no. 90). Plaintiffs here met their prima facie burden. Once a basis for the amendment has been established, the inquiry ends, unless prejudice or surprise results directly from the filing (*Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 [1st Dept 2007]). Here, there can be no undue prejudice or surprise to defendants as they consented to the amendment (NYSCEF doc. no. 92). Given the liberal standard to amend and the absence of undue prejudice to defendants, this court finds that plaintiffs’ request for leave to amend the complaint should be granted.

Additionally, this court finds that the allegations of the complaint are substantively altered by the filing of the amended complaint. In their motions to dismiss, defendants argued that the resolution of the Delaware and Texas actions was necessary prior to resolution of this matter. Given that those actions are now resolved, some of defendants’ arguments in support of

their motions to dismiss are now moot. It is this court's view that the allegations of plaintiffs' complaint are more properly addressed in briefing on the amended complaint.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for leave to amend the complaint is granted, and a clean, non-redlined amended complaint shall be filed no later than seven (7) business days from the date of this order, and the amended complaint shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that defendants shall serve an answer to the amended complaint or otherwise respond thereto within 30 days from the date of said service; and it is further

ORDERED that defendants' motions to dismiss the original complaint (motion seq. nos. 001, 002, 003 and 004) are denied as moot without prejudice; and it is further

ORDERED that the virtual preliminary conference held on August 15, 2024 is adjourned to January 14, 2025 at 10:00 a.m.

08/20/2024  
DATE

  
ROBERT R. REED, 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