SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ADAM SILVERA** **PART** **01**

Justice

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INBAR GROUP, INC.,

Plaintiff,

- v -

ST. MARK'S WORLD, INC.,ST. MARK'S WORLD ACQUISITION LLC,MICHAEL MORGAN, FLEX EMPLOYEE SERVICES, LLC,SCOTT HARTMAN,

Defendant.

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INDEX NO. 653565/2016

MOTION DATE 11/25/2024, 12/19/2024

MOTION SEQ. NO. 017 018

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 017) 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459

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

The following e-filed documents, listed by NYSCEF document number (Motion 018) 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, after oral arguments, and for the reasons set forth below, this Court (i) denies in its entirety the motion by defendant St. Mark's World, Inc. ("SMWI") seeking (a) to add Mr. Jay Inbar as a necessary party and (b) to amend its answer to add counterclaims against Mr. Inbar (Mot. Seq. No. 018) and (ii) denies in its entirety the motion by Dr. Michael Morgan seeking (a) to amend his answer to add counterclaims against defendants St. Mark's World Acquisition LLC ("SMWA"), Flex Employee Services, LLC ("FES"), and Mr. Scott Hartman (collectively, "Flex Defendants"); (b) to strike SMWA and FES's counterclaim for indemnification; and (c) for the Court to appoint experts (Mot. Seq. No. 017).

I. Adding Mr. Inbar as a Party

This Court denies the portion of SMWI's motion seeking to add Mr. Inbar as a necessary party.

CPLR § 1001 governs the addition of necessary parties. It provides that one "who ought to be [a party] if complete relief is to be accorded … shall be made" a party. *Id.* § 1001(a). Such party "may be added at any stage of the action by leave of court." *Id.* § 1003.

Here, SMWI moves to add Mr. Inbar as a necessary party due to Mr. Inbar's alleged breach of fiduciary duties and putative "participati[on] in the scheme to steal [SMWI]." *See* Memorandum of Law in Support of Defendant St. Mark's World, Inc.'s Motion to Join Necessary Party and File Amended Answer and Counterclaim ("Motion 018") at 10-14. Put differently, SMWI moves to add Mr. Inbar as a joint tortfeasor, along with Inbar Group, Inc. But an alleged joint tortfeasor is not a necessary party. *See* Vincent C. Alexander, Practice Commentaries, McKinney's Cons Law of NY, CPLR § 1001:1, citing *Hecht v City of New York*, 60 NY2d 57, 62-63 (1983). As such, Mr. Inbar is not a necessary party.[1]

Thus, the portion of SMWI's motion seeking to add Mr. Inbar as a necessary party must be denied.

II. Amending Answer

a. SMWI

This Court denies the portion of SMWI's motion seeking to amend its answer to add counterclaims against Mr. Inbar. The issue is moot, given the Court's denial of the portion of SMWI's motion seeking to join Mr. Inbar as a party. *See supra* § I; *cf. J.L. v Roman Catholic Archdiocese of N.Y.*, 222 AD3d 483, 484 (1st Dep't 2023).

b. Dr. Morgan

This Court denies the portion of Dr. Morgan's motion seeking to amend his answer to

[1] Also, Mr. Inbar's addition would not further the goal of CPLR § 1001(a) to add parties needed to afford "complete relief." That is because SMWI's claims, which relate to events predating 2016, *see* Motion 018 at 4-9, would be barred by the statute of limitations, irrespective of whether the three- or six-year statute of limitation applies, *compare* CPLR § 213(1) *with* § 214(4).

add counterclaims against Flex Defendants.

"A party may amend [a] pleading," including an answer, "at any time by leave of court," which "shall be freely given upon such terms as may be just." CPLR § 3025(b). "Any motion to amend ... shall be accompanied by the proposed amended ... pleading clearly showing the changes ... to be made." *Id.* Even if the movant follows the procedural dictates of CPLR § 3025(b), a court may deny the motion to amend if (i) the motion is delayed and the movant has no "'reasonable excuse for the delay,'" *Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 24 (1st Dep't 2003), quoting *Jablonski v County of Erie*, 286 AD2d 927, 928 (4th Dep't 2001), and (ii) the respondent can show "prejudice or surprise resulting directly from the delay," *McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp.*, 59 NY2d 755, 757 (1983). A court has "'considerable latitude'" to allow or to deny amendment based on the relevant facts of the case. *See Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 (2014), quoting *Matter of Von Bulow*, 63 NY2d 221, 224 (1984).

Here, nearly nine years after this case began, *see* NYSCEF Doc. No. 1 (Summons and Verified Complaint), and four years after the filing of the note of issue, *see* NYSCEF Doc. No. 262, Dr. Morgan seeks to amend his answer to add a claim against Flex Defendants for purportedly breaching a nearly seven-year-old settlement. *See* Defendant Michael Morgan Memorandum of Law in Support of Motion for Leave to Amend His Answer to Bring Counter Crossclaims for Breach of Contract Against Defendants St. Mark S [sic] World Acquisition LLC, Flex Employee Services, LLC and Scott Hartman, [sic] ("Motion 017") at 5; *id.*, Exh. A (Stipulation of Settlement). But Dr. Morgan failed to append the proposed amended pleading to his motion. That alone is sufficient to deny Dr. Morgan's motion, pursuant to CPLR § 3025(b). Moreover, the actions giving rise to Flex Defendants' alleged breach occurred years ago, and Dr.

Morgan was aware of such actions then. *See* Motion 017 at 8-9; Defendant Morgan Affidavit of Support ¶¶ 10-24, 28-31. Despite his awareness, Dr. Morgan did not raise the issue until now—as trial was to be scheduled (and indeed would have been scheduled but for the issues raised herein).

Under these circumstances, to allow Dr. Morgan's amendment would prejudice Flex Defendants. *See Tribeca Space Managers, Inc. v Tribeca Mews Ltd.*, 200 AD3d 626, 626 (1st Dep't 2021) (upholding a finding of prejudice and a denial of leave to amend when over four years had passed since the action began, over three years had passed since the note of issue was filed, and the proposed claims could have been brought earlier). And Dr. Morgan has provided no excuse—let alone "a reasonable" one—for his "extended delay" in seeking the instant relief. *Heller*, 303 AD2d at 24, quoting *Jablonski*, 286 AD2d at 928.

Thus, the portion of Dr. Morgan's motion seeking to amend his answer to add counterclaims against Flex Defendants must be denied.

III. Striking Counterclaim

This Court denies the portion of Dr. Morgan's motion, pursuant to CPLR § 3126, seeking to strike SMWA and FES's counterclaim for indemnification.

CPLR § 3126 gives a court the authority to strike a party's pleading for willful failure to provide discovery, especially when the party's behavior is "deliberate, contumacious, … in bad faith," and without "reasonable excuse." *Crooke v Bonofacio*, 147 AD3d 510, 510 (1st Dep't 2017).

Here, Dr. Morgan moves to strike SMWA and FES's answer pursuant to CPLR § 3126. *See* Motion 017 at 19. Yet Dr. Morgan does not detail what discovery SMWA and FES have not provided, as required under § 3126. Instead, Dr. Morgan seeks to strike SMWA and FES's

answer for putative noncompliance with the stipulation of settlement. But this is beyond the ambit of § 3126. And, of note. the Honorable David B. Cohen previously allowed SMWA and FES to amend their answer, by motion, to add the indemnification counterclaim, which was unopposed. *See* Mot. Seq. No. 013, Decision + Order on Motion, dated Oct. 12, 2023 (NYSCEF Doc. No. 394). Dr. Morgan has not detailed facts that persuade this Court to strike SMWA and FES's amended answer. Indeed, Dr. Morgan's arguments as to SMWA and FES's noncompliance with the stipulation of settlement focus on actions by SMWA and FES predating Judge Cohen's order. *See supra* § II.b.

Thus, the portion of Dr. Morgan's motion seeking to strike SMWA and FES's counterclaim for indemnification must be denied.

IV. Appointing Experts

This Court denies the portion of Dr. Morgan's motion asking this Court to appoint a forensic auditor and a licensed business appraiser.

A court has significant discretion to grant or deny a party's request for the court to appoint an expert, *see People v Coleman*, 45 AD3d 432, 433 (1st Dep't 2007). especially when the expert's appointment is "not necessary" to resolve the case, *see Matter of Noah Jeremiah J.*, 81 AD3d 37, 41 (1st Dep't 2010). A party's "vague and speculative reasons" for appointment are insufficient. *Coleman*, 45 AD3d at 433.

Here, appointment of a forensic auditor and a licensed business appraiser to value SMWI is unnecessary. *See Matter of Noah Jeremiah J.*, 81 AD3d at 41. The issue has been, and is being, litigated in several fora. *See* Defendants St. Mark's World Acquisition, LLC and Flex Employee Services, LLC Memorandum of Law in Opposition to Defendant Michael Morgan's Motion for Leave to Amend His Answer to Bring a "Counter Crossclaim for Breach of Contract"

at 5-6, citing *Morgan v St. Mark's World Acquisition. LLC*, Sup Ct, NY County, Masley, J., index No. 651186/2021, *Morgan v St. Mark's World Acquisition. LLC*, Sup Ct, NY County, Masley, J., index No. 653179/2020, *St. Mark's World Acquisition. LLC v Morgan*, Sup Ct, NY County, Bannon, J., index No. 655925/2018, *and Morgan v Hartman*, US Dist Ct, SD NY, 22 Civ 03367, Taylor Swain, J. Dr. Morgan's "vague and speculative reasons" as to why the experts should be appointed are insufficient to justify appointment in this case. *See Coleman*, 45 AD3d at 433; Motion 017 at 17-18.

Accordingly, it is

ORDERED that Dr. Morgan's motion (Mot. Seq. No. 017) is denied in its entirety; and it is further

ORDERED that SMWI's motion (Mot. Seq. No. 018) is denied in its entirety; and it is further

ORDERED that all parties must appear in Room 300 of 60 Centre Street, New York, NY 10007, on June 2, 2025, at 9:30 a.m., for a Part 40 in-person conference to schedule a trial of this action; and it is further

ORDERED that, within 30 days of entry, Flex Defendants shall serve a copy of this Decision/Order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

4/7/2025
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE