

D&V Realty LLC v Klyukin

2025 NY Slip Op 32539(U)

June 27, 2025

Supreme Court, New York County

Docket Number: Index No. 656782/2022

Judge: Joel M. Cohen

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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 03M

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D & V REALTY LLC, DERIVATIVELY ON BEHALF OF
THE MEMBERS OF 192 8TH AVENUE REALTY GROUP
LLC, EAST 3 MEMBERS HOLDING LLC, DERIVATIVELY
ON BEHALF OF THE MEMBERS OF 238-240 E3
STREET REALTY LLC, GDD REALTY LLC,
DERIVATIVELY ON BEHALF OF THE MEMBERS OF 128
WEST 26TH STREET DEVELOPMENT LLC, CIP1 LLC,
AND D & V REALTY LLC,

Plaintiffs,

- v -

MIKHAIL VASILYEVICH KLYUKIN, RI 128 26TH STREET,
LLC, RI 192 8TH AVENUE, LLC, RI 238-240 EAST 3RD
STREET, LLC, ORANGE REAL ESTATE DEVELOPMENT
LLC, AND AHIMSA NY, LLC, INSPIRON MANAGEMENT,
INC.,

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 554, 555, 556, 557,
558, 561, 563, 582, 583, 584, 585, 586, 610, 628

were read on this motion to

AMEND PLEADINGS

Plaintiffs D & V Realty, LLC, individually and derivatively on behalf of the members of
192 8th Avenue Realty Group LLC (“8th Avenue Realty”), East 3 Members Holding, LLC (“East
3 Members”), derivatively on behalf of the members of 238-240 E3 Street Realty, LLC (“E3
Street Realty”); GDD Realty, LLC, derivatively on behalf of the members of 128 West 26 Street
Development, LLC (“West 26 Street Development”); CIP1, LLC (“CIP1”) (collectively
“Plaintiffs”) brought this motion for leave to file a second amended complaint two days after
Defendants moved for summary judgment. Upon the foregoing documents, and for the following
reasons, Plaintiffs’ motion is **granted in part**.

CPLR 3025(b) provides that “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court.” “Motions for leave to amend should be freely granted, absent prejudice or surprise ... unless the proposed amendment is palpably insufficient or patently devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010] [citations omitted]). A motion to amend should be denied where the pleading would not survive a motion to dismiss (*Scott v Bell Atl. Corp.*, 282 AD2d 180, 185 [1st Dept 2001], *affd as mod sub nom. Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314 [2002]; *Olam Corp. v Thayer*, 2021 WL 408232 [Sup Ct, NY County 2021]).

Courts have held that prejudice “arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position” (*Valdes v Marbrose Realty*, 289 AD2d 28, 29 [1st Dept 2001]; *Anoun v City of New York*, 85 AD3d 694, 694 [1st Dept 2011]). When there has been an extended delay in seeking leave to amend, the movant must demonstrate a reasonable excuse for the delay (*Volpe v Good Samaritan Hosp.*, 213 AD2d 398, 398-99 [2d Dept 1995]).

Plaintiffs argue that the proposed second amended complaint (NYSCEF 558 [“SAC”]) merely “update[s] and expand[s]” their claims for breach of contract and breach of fiduciary duty. In fact, however, the SAC adds pages of new allegations that substantially change the theory of these breaches. Plaintiffs now claim that the replacement of D&V and CIP1 with entities controlled by Klyukin has made it illegal for the development companies (West 26 Street Development, E3 Street Realty, and 8th Avenue Realty) to carry on their operations, which has caused the properties to fall into disrepair (SAC ¶¶ 100-104, 127-27). But Plaintiffs plead that 8th Avenue Realty and E3 Street Realty are themselves OFAC-blocked entities, meaning that

regardless of their manager, those entities are legally barred from selling units in the properties or using their blocked funds to maintain them. Thus the proposed amendments based on changes to E3 Street Realty and 8th Avenue Realty's managers are palpably insufficient and clearly devoid of merit. By Plaintiffs' own pleadings, it is the identity of the majority member that is causing the damage alleged—the remedy for which would be dissolution and/or dissociation. Regarding West 26 Street Development, which is not itself a blocked entity, the relevant Plaintiffs have already sought these remedies in a special proceeding based on the same allegations, which was dismissed on May 16, 2025 (NYSCEF 73-75 in Index Number 152079/2025).

Further, granting amendment under these circumstances would be prejudicial to Defendants. While Plaintiffs argue that there should be no prejudice while discovery is still open, this case is near the end of discovery and there is a fully submitted motion for summary judgment pending. The Court previously granted only a modest extension of time “to finish up...depositions” of certain Defendants, which have been difficult to coordinate due to visa issues, sanctions, and the like—with any further discovery requests requiring leave of Court (NYSCEF 584 [March 14, 2025 Hearing Transcript] at 57:9-15). Plaintiffs also assert that there would be limited prejudice because the OFAC sanctions issue should come as no surprise, as it has been discussed throughout the case. However, this argument undercuts Plaintiffs' justification for the delay in bringing these claims: Plaintiffs have been aware of the sanctions issue for more than three years (NYSCEF 585). The delay here is not reasonable or justified.

There is, however, one aspect of Plaintiffs' proposed amendment that is neither futile nor unduly delayed (as the underlying facts occurred recently), and would not require a great deal of extra discovery, if any: the claims based on withholding condominium sale proceeds from

members of West 26th Street Development. Accordingly, Plaintiffs are granted leave to amend the complaint to add claims on that basis only.

Therefore, it is

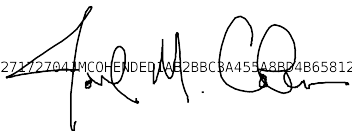
ORDERED that Plaintiffs’ motion for leave to amend their complaint is **GRANTED IN PART** as described above; it is further

ORDERED that Plaintiffs may file an amended complaint consistent with this decision and order within 14 days of the date of this order; it is further

ORDERED that Defendants shall answer the second amended complaint within 14 days thereafter; and it is further

ORDERED that, unless otherwise agreed by the parties, the pending motion for summary judgment (Motion Sequence 20) shall proceed as a motion for partial summary judgment as applied to the existing claims in the first amended complaint.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

6/27/2025
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED