

**Walking on Wood, Inc. v West Flooring & Design, Inc.**

2025 NY Slip Op 34740(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 654313/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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WALKING ON WOOD, INC.

Plaintiff,

- v -

WEST FLOORING & DESIGN, INC.,

Defendant.

-----X

INDEX NO. 654313/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

Plaintiff's motion for leave to file an amended complaint is denied.

**Background**

Plaintiff brought this case alleging two causes of action: breach of contract and conversion. Plaintiff claims that in September of 2020, defendant was hired to perform both management services and flooring installation services for various projects in New York and across the United States. There was allegedly a master agreement covering the parties' overall relationship, but each project was performed pursuant to separate agreements.

Plaintiff details that the parties worked together successfully for over two and a half years, but on July 21, 2023, plaintiff terminated defendant from its management duties. Although fired from the management duties, plaintiff claims that the parties still had active flooring installation projects which were governed by individual agreements. Plaintiff alleges that when it demanded performance by defendant to finish the projects, defendant refused. Additionally,

plaintiff claims that defendant was given various monetary deposits and flooring materials which were to be used on the outstanding flooring projects, that plaintiff demanded they be returned, and that defendant refused.

Here, plaintiff seeks to amend its complaint to add a third cause of action for tortious interference with a contract and to add defendant's owner Peter West to the complaint as an individual defendant. Plaintiff claims that it had a contract with a client, Jacqueline Schaffer, to purchase and install wood flooring in her house, and that defendant was contracted by plaintiff to perform the installation. Plaintiff says that after the subject dispute in this action occurred, Ms. Schaffer terminated plaintiff from the project. At the time, plaintiff believed defendant was also removed from the project. However, during the deposition of Peter West, he admitted that defendant assisted Ms. Schaffer in completing the installation after plaintiff was fired. Plaintiff therefore claims that defendant interfered with the contract between plaintiff and Ms. Schaffer for Mr. West's personal gain and that plaintiff lost profits as a result.

Defendant opposes the motion and claims that the proposed amendment is insufficient as a matter of law. Defendant argues that plaintiff did not sufficiently plead the elements of tortious interference and also argues that this motion should be denied because plaintiff did not submit an affidavit of someone with personal knowledge, nor is the proposed amended complaint verified by someone with personal knowledge of the events at issue.

Plaintiff replies and argues that the proposed amended complaint alleges the existence of a contract and that defendant did not dispute its existence. Plaintiff uploaded what it has labeled a contract at NYSCEF Doc. No. 29. The document appears to be an invoice addressed to Ms. Schaffer. It does not specifically mention defendant, but it does mention "Peter" – presumably Peter West. Plaintiff also attaches Mr. West's deposition transcript where, when asked whether

he was familiar with the Schaffer project answered, “I am” (NYSCEF Doc. No. 30 at 79). Mr. West then continued to answer questions about the Schaffer project for several pages of the deposition transcript. Plaintiff draws attention to the fact that it alleged that Mr. West interfered with the contract for his personal gain, claimed that he intentionally induced Ms. Schaffer to breach the contract, and that this caused plaintiff to lose profits.

Plaintiff admits that including only an affirmation by counsel is “not ideal” but says that the affirmation provides factual support for the claims, and that the focus should be on whether the proposed amendment states a viable cause of action.

Defendant wrote a letter at NYSCEF Doc. No. 31 asking the Court to disregard plaintiff’s reply; defendant argues that plaintiff did not have the right to file it pursuant to CPLR 2214 (b), as the motion was made on 15-days’ notice without a demand.

## Discussion

As an initial matter, the Court will consider the reply. New York has a strong public policy favoring resolution of matters on the merits, and it would not serve the interests of judicial economy to disregard the reply papers.

Secondly, the Court will not deny the motion because plaintiff did not include a party affidavit or a complaint verified by someone with personal knowledge of the facts at issue. Defendant does not cite to any case that supports the contention that this motion should be denied for this reason. Defendant cites to one of this Court’s previous decisions that denied a motion to amend a complaint, *Yaucan v Times Sq. Hotel Owner, LLC*, 2024 (N.Y. Misc. LEXIS 63521 [Sup Ct, NY County June 25, 2024, No. 156271/2020]). However, as defendant itself points out in its opposition, the Court denied that motion because that plaintiff failed to comply

with CPLR 3016 (b). CPLR 3016 (b) requires that causes of action for fraud or mistake be pled with particularity. In the present case, plaintiff is not attempting to plead fraud or mistake – or any of the other causes of action listed in CPLR 3016 that trigger this heightened pleading standard. The instant motion is not denied on technicalities; it is denied on the merits.

The Law Does Not Permit the Addition of a Claim of Tortious Interference or the Addition of Peter West as a Party Defendant

“On a motion for leave to amend, [a] plaintiff need not establish the merit of its proposed new allegations but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010] [internal citations omitted]). Here, the Court finds that plaintiff’s proposed claims are clearly devoid of merit.

“It is well established that only a stranger to a contract, such as a third party, can be liable for tortious interference with a contract” (*Koret, Inc. v Christian Dior, S.A.*, 161 AD2d 156, 157 [1st Dept 1990] [internal citations omitted]). Furthermore, “[t]he decisions are clear that an officer or director of a corporation is not personally liable to one who has contracted with the corporation on the theory of inducing a breach of contract, merely due to the fact that, while acting for the corporation, he has made decisions and taken steps that resulted in the corporation's promise being broken” (*In re Brookside Mills*, 276 AD 357, 367 [1st Dept 1950]).

Nothing in the deposition testimony of Mr. West comes close to supporting a personal claim against him for tortious interference on the Schaffer job. According to Mr. West, Ms. Schaffer was having trouble with multiple contractors and for some reason trusted him (he guessed it was because of his age). On page 89 of his deposition transcript, Mr. West testified: “West Flooring was fired and did not receive any more money on that job. Period. The job was

finished by a foreign contractor in California. Question: So the -- got it. So West Flooring essentially just introduced the sub to Schaffer, and that sub completed the work? Answer: 100 percent, yeah” (NYSCEF Doc. No. 30).

If there was any tortious interference, and this Court is not indicating that the evidence in that deposition supports that conclusion, then it was West Flooring, not Mr. West personally. West Flooring is already a party to this case and if plaintiff claims lost profits on the Schaffer job as part of its damages, then plaintiff will have to prove West Flooring caused those damages.


A corporation always acts through people – that does not mean the person is personally liable. Just because an officer or employee happens to personally gain if the company does better – or stays in business – does not make that person liable for the company’s actions. Even if plaintiff could produce proof that Mr. West acted to help his corporation, and thereby he, as an officer, would make more money, that is still not enough to hold him personally liable. If Ms. Schaffer testified that Mr. West approached her and offered to do the job if she gave him cash, or if she showed that she wrote the checks to him personally, then that would be a different story. But here, all plaintiff has is that West Flooring helped calm Ms. Schaffer down and reassured her with her new, local flooring guy.

In summary, without more, plaintiff has not shown any merit to a personal claim against Mr. West. And plaintiff already has a claim against West Flooring for breach of contract. If plaintiff is successful in proving that defendant breached the Schaffer contract and reaped the financial benefits of the contract while cutting plaintiff out of the deal, then plaintiff can recover its damages based on the breach of contract theory. In other words, it would be another element of damages.

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to amend is denied.

See NYSCEF Doc. No. 34 concerning the next conference.

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|-----------------------|---|--|--|
| 12/10/2025            |   |  |  |
| DATE                  |   |  | ARLENE P. BLUTH, J.S.C.  |
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED              | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION                          |
|                       | <input type="checkbox"/> GRANTED                    |  | <input type="checkbox"/> GRANTED IN PART   |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER               |  | <input type="checkbox"/> OTHER   |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN |  | <input type="checkbox"/> FIDUCIARY APPOINTMENT                                     |
|                       |   |  | <input type="checkbox"/> REFERENCE   |