Morton Vil. Realty Co., Inc. v Salon Nouveau N. LLC
2025 NY Slip Op 35559(U)
January 6, 2025
Supreme Court, Nassau County
Docket Number: Index No. 613741/2022
Judge: Sharon M.J. Gianelli

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU – Commercial Division Part 7
Present: Hon. Sharon M.J. Gianelli

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MORTON VILLAGE REALTY CO., INC.,

Plaintiff,

-against-

SALON NOUVEAU NORTH LLC a/k/a NOUVEAU NORTH, LLC, SALON NOUVEAU PLAINVIEW INC., 3 LESTER PLACE, LLC, CRYSTAL PHILIPOU a/k/a CRYSTAL SANTANDREA,

Defendants.

X

Index No.: 613741/2022

Motion Seq. 001

Decision and Order

Papers submitted:

Notice of Motion, Memorandum of Law, Affirmation and Exhibits in Support X
Memorandum of Law, Affirmation and Exhibit in Opposition X
Memorandum of Law in Reply X

Plaintiff moves for an Order pursuant to CPLR 3025(b) for leave to amend the Verified Complaint dated October 11, 2022, with respect to certain claims against Defendants Salon Nouveau North LLC a/k/a Nouveau North, LLC, Salon Nouveau Plainview Inc., 3 Lester Place, LLC and Crystal Philipou a/k/a Crystal Santandrea and to add an additional defendant, Salon Long Island Corp., to this action to conform to the proof adduced during discovery and to otherwise correct and clarify certain allegations; to amend the caption to add Salon Long Island Corp. as a named defendant; to extend the filing deadline of the Note of Issue during the pendency of this motion; and for sanctions against Defendants in the form of costs and reasonable attorneys' fees incurred by Plaintiff in the making of the instant motion pursuant to NYCRR 130-1.1.

Factual Summary

On February 1, 2012, Plaintiff, as landlord, and Salon Nouveau North LLC ("Salon Nouveau I"), as tenant, entered into a commercial lease agreement for the premises known as Store #4-A located at 1008-1012 Old Country Road, Plainview, New York 11803 ("Premises"). Pursuant to the lease agreement, tenant was to use the Premises as a beauty parlor/hair salon and make rental payments in monthly installments for the lease term. Salon Nouveau I failed to pay rent pursuant to the lease agreement. Accordingly, Plaintiff commenced an action in the Supreme Court of New York, County of Nassau entitled *Morton Village Realty Co., Inc. v. Solon Nouveau North LLC a/k/a Nouveau North LLC, et al*, Index Number 611761/2020 ("the Proceeding"). On December 23, 2021, the Court rendered a Decision and Order (Voutsinas, J.) in connection with the Proceeding, granting summary judgment in favor of Plaintiff and against Defendants Salon Nouveau I and Neil Wolfson as to liability and following an inquest on damages, a money judgment was entered on September 20, 2022 in favor of Plaintiff in the principal amount of $295,731.59.

On October 12, 2022, Plaintiff commenced the instant action by filing a Summons and Verified Complaint alleging that Defendant Salon Nouveau I fraudulently transferred assets from Salon Nouveau I to Salon Nouveau Plainview, Inc. ("Salon Nouveau II") during the pendency of the Proceeding in an attempt to render Salon Nouveau I judgment proof. Specifically, Plaintiff alleges that by September 20, 2022, Salon Nouveau I had already transferred its assets, employees, goodwill, and reputation to Salon Nouveau II for no consideration.

Plaintiff claims to have uncovered new information during the discovery process that now warrants an amendment to the complaint in this action. During the deposition of Defendant Crystal Philipou a/k/a Crystal Santandrea, ("Santandrea"), held on February 12, 2024, Plaintiff allegedly became aware of the existence of Salon Long Island Corp. ("Salon Nouveau III"), a new corporate entity owned by Defendant Santandrea. Plaintiff alleges that Salon Nouveau I, Salon Nouveau II, and Salon Nouveau III are essentially indistinguishable from one another, using the same phone numbers and social media pages and overlapping between employees. Moreover, Plaintiff alleges that Salon Nouveau III's document productions on April 14, 2024, May 13, 2024, and July 17, 2024, revealed that during the pendency of the prior action, Defendant Santandrea used her dominion and control of Salon Nouveau II to fraudulently transfer over $347,000.00 to her personal account and to Salon Nouveau III in order to render Salon Nouveau II judgment proof.

Now, Plaintiff seeks to amend its Verified Complaint to add Salon Nouveau III as an additional defendant to this action and to amend the claims against the named Defendants. Defendants oppose the motion.

Law/Analysis

"Applications for leave to amend pleadings under CPLR 3025(b) should be freely granted unless the proposed amendment (1) would unfairly prejudice or surprise the opposing party, or (2) is palpably insufficient or patently devoid of merit" (*Venables v. Rovegno*, 95 AD3d 876, 878 [2d Dept. 2021]). "In determining a motion for leave to amend a pleading, a court shall not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt" (*JP Morgan Chase Bank, N.A. v. Campbell*, 189 AD3d 1014, 1015 [2d Dept. 2020]).

The burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion (*U.S. Bank N.A. v. Singer*, 192 AD3d 1182, 1185 [2d Dept. 2021]). The determination to permit or deny an amendment is committed to the sound discretion of the trial court (*see* CPLR 3025[b]; *Great Homes Group, LLC v. GMAC Mtge., LLC*, 180 AD3d 1013 [2d Dept. 2020]). "Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine" (*HSBC v. Picarelli*, 110 AD3d 1031 [2d Dept. 2013]; *see also Kimso Apts., LLC v. Gandhi*, 24 NY3d 403, 413-414). There is no showing of prejudice where the facts and circumstances pertaining to the proposed amendment were fully explored during discovery (*See Norwood v. City of New York*, 203 A.D.2d 147).

Furthermore, parties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared (*see* CPLR 3001; *Myung Hwa Jang v. Mang*, 164 AD3d 803 [2d Dept. 2018]). "When a party seeks not only to amend the pleadings, but also to assert claims against persons sought to be joined as additional parties in the action (CPLR 1003), the court may also consider the prejudice to the other defendants and the extent of the delay in moving to add the new parties and the reasons therefore (*Haughton v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 305 AD2d 214 [1st Dept. 2013]; *Konrad v. 136 East 64th Street Corp.*, 246 AD2d 324 [1st Dept 1998]).

Here, Defendants fail to demonstrate that they would suffer significant prejudice or surprise resulting directly from the delay in seeking leave to amend the Verified Complaint. Furthermore, Defendants fail to show that proposed amended claims against named Defendants and Salon Nouveau III are "palpably insufficient or patently devoid of merit" (*U.S. Bank N.A. v. Singer*, 192 AD3d 1182 at 1185).

CPLR 2004 allows a court to "extend the time fixed by any statute, rule or order for doing any act upon such terms as may be just and upon good cause shown" (*Ryskin v. Corniel*, 181 AD3d 742, 744 [2d Dept. 2020]). In considering a CPLR 2004 application to extend the time to file a note of issue, the court can consider the length of the delay in making the application, the reason for the delay and any prejudice to be caused to the opposing party (*Oliver v. Town of Hempstead*, 68 AD3d 1079 [2d Dept 2009]).

Here, the Court finds Plaintiff's delay in filing the instant motion one day prior to the Note of Issue deadline to be *de minimis*. Furthermore, Defendants fail to show that they would suffer any prejudice should the application to extend the Note of Issue deadline be granted.

The branch of Plaintiff's motion seeking sanctions is denied as Plaintiff fails to establish entitlement to such relief.

Accordingly,

It is

ORDERED, that Plaintiff's motion for an Order pursuant to CPLR § 3025(b), for leave to amend the Verified Complaint dated October 11, 2022, with respect to certain of the claims against Defendants and to add an additional defendant, Salon Long Island Corp to this action, is Granted; and

It is

ORDERED, that the caption is hereby amended as follows:

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MORTON VILLAGE REALTY CO., INC.,

Plaintiff,

-against-

SALON NOUVEAU NORTH LLC a/k/a NOUVEAU NORTH, LLC, SALON NOUVEAU PLAINVIEW INC., 3 LESTER PLACE, LLC, CRYSTAL PHILIPOU a/k/a CRYSTAL SANTANDREA, and SALON LONG ISLAND CORP.,

Defendants.

---X

; and

It is

ORDERED, that Plaintiff shall file and serve a clean copy of the proposed Amended Summons and Amended Verified Complaint, submitted in redlined form as "Exhibit 17" to Plaintiff's Affirmation in Support (NYSCEF Doc. No. 42), within seven (7) days of the date of entry of this Decision and Order, with Notice of Entry; and

It is

ORDERED, that Defendants shall have thirty (30) days from the date of service of the Amended Summons and Amended Verified Complaint, to interpose an answer; and

It is

ORDERED, that the filing deadline of the Note of Issue is extended to a date to be approved by this Court; and

It is

ORDERED, that the parties shall appear for a Conference before this Court on March 11, 2025 at 10:00 a.m.

Any application not specifically ruled upon herein is denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
January 6, 2025

Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED
Jan 06 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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