

**260-261 Madison Ave. LLC v WeWork 261 Madison
LLC**

2022 NY Slip Op 34235(U)

December 14, 2022

Supreme Court, New York County

Docket Number: Index No. 654806/2021

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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260-261 MADISON AVENUE LLC,

INDEX NO. 654806/2021

Plaintiff,

MOTION DATE 12/09/2022

- v -

WEWORK 261 MADISON LLC, ADAM NEUMANN

MOTION SEQ. NO. 001

Defendants.

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 93, 96, 97, 98, 99, 100, 101, 102, 103, 105

were read on this motion to AMEND CAPTION/PLEADINGS.

Plaintiff 260-261 Madison Avenue LLC (“Plaintiff” or “Landlord”) seeks leave to amend the summons and complaint (NYSCEF 1-2 [“Compl.”]) to name additional defendants and to add allegations to pierce the corporate veil of Defendant WeWork 261 Madison LLC (“WeWork Tenant”) to hold its parent entities liable for its alleged breach of the lease (*see* NYSCEF 34 [Proposed Amended Complaint (“PAC”)]). For the following reasons, Plaintiff’s motion is **granted**.

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]). 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]). A party opposing leave to amend “must overcome a heavy presumption of validity in favor of [permitting amendment].” (*CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 65 [1st Dept 2010]).

“Courts may pierce the corporate veil where the two entities ‘operated as a single economic entity such that it would be inequitable for [a] [c]ourt to uphold a legal distinction between them’” (*Tap Holdings, LLC v Orix Fin. Corp.*, 109 AD3d 167, 175 [1st Dept 2013]; see also *Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018] [piercing the corporate veil requires “complete domination of the corporation in respect to the transaction attacked” and “that such domination was used” inequitably against plaintiff, resulting in the harm] [internal quotation marks omitted]). While there is no fixed formula in determining whether entities “exercised complete dominion” with respect to one another, “deliberately undercapitalizing a company to keep it judgment proof while operating the business through another alter-ego company is a textbook example of when veil piercing is appropriate” (*Pensmore Invs., LLC v Gruppo, Levey & Co.*, 2017 NY Slip Op 30661(U) at *19 [Sup Ct, NY County 2017]).

Here, in addition to the current defendants, WeWork 261 Madison LLC (“WeWork Tenant”) and Adam Neumann, Plaintiff seeks to add WeWork Inc., WW Holdco LLC, The We Company MC LLC, The We Company Management Holdings L.P., WeWork Companies LLC, We Work Management LLC, and WW BuildCo LLC (collectively “WeWork Parent” and, with WeWork Tenant, “WeWork”) as defendants (PAC ¶¶ 7-14).

Plaintiff alleges that WeWork Parent abused the corporate form by exploiting its domination and control of WeWork Tenant to further its own interests, while deliberately

undercapitalizing WeWork Tenant and rendering it incapable of satisfying its obligations unless WeWork decided to pay those obligations directly.

Specifically, Plaintiff alleges that at the direction of WeWork Parent, each of the WeWork entities use each other's funds and assets for their own purposes and for the benefit of WeWork Parent, and do not treat each other as independent profit centers. Plaintiff further alleges that the WeWork entities do not have independent business discretion and are dominated and controlled by WeWork Parent, freely commingle funds among each other, do not deal with each other at arm's length, pay the debts and guarantee the obligations of each other, and interchangeably use each other's property as if it were their own. Moreover, it alleges that the WeWork entities share office space; personnel; and employees (PAC ¶ 15). Plaintiff further alleges that WeWork Parent deployed a strategy of directing corporate shell entities to default on contractual obligations to landlords, by creating shell entities, including WeWork Tenant, to take on obligations, such as commercial leases, reaping the benefits of those obligations, and then inducing the shell entities to breach when it suited WeWork Parent, leaving only judgment-proof shell entities that WeWork Parent kept deliberately undercapitalized (PAC ¶¶ 29-30).

Defendants have failed to show prejudice or surprise, or that the proposed amendments are palpably insufficient or patently devoid of merit. Although Defendants argue that Plaintiff was aware that WeWork Tenant was a "special purpose entity" (SPE), this does not conclusively preclude piercing of the corporate veil if the circumstances otherwise warrant that result. This issue and the remaining contentions made by Defendants are matters for discovery, not summary rejection of the claims, particularly as much of the information with respect to the proposed defendants is in their control (*Ledy v Wilson*, 38 AD3d 214, 215 [1st Dept 2007] [noting that plaintiff alleged a "fact-laden claim to pierce the corporate veil [that] is particularly unsuited for

resolution on summary judgment”]; *Labgold v Soma Hudson Blue, LLC*, 2011 NY Slip Op 32179[U], *6 [Sup Ct, NY County 2011] [“The theory of piercing the corporate veil involves a fact intensive inquiry that is not well suited for determination prior to discovery”]).

Accordingly, it is

ORDERED that the motion by Plaintiff for leave to file its proposed Amended Complaint is **GRANTED**; it is further

ORDERED that Plaintiff shall file the amended complaint on NYSCEF within 5 business days of the date of this Order; it is further

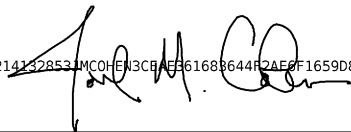
ORDERED that a supplemental summons and amended complaint, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that Defendants shall serve an answer or otherwise respond to the Amended Complaint within 30 days from the date of said filing (in the case of existing Defendants) or being served with the supplemental summons and amended complaint (in the case of newly added Defendants); it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, along with an amended caption, who are directed to mark the court’s records to reflect the parties being added pursuant hereto; it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)

This constitutes the Decision and Order of the Court.

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12/14/2022
DATE

JOEL M. COHEN, J.S.C.

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