STATE OF MAINE

Cumberland, ss.

BUSINESS AND CONSUMER COURT

AMH-CKM-1-30-15

FRANCIS I. BLAIR

Plaintiff

v.

Docket No. BCD-CV-14-48

BERNHARD & PRIESTLEY ARCHITECTURE, INC.

Defendant

ORDER ON PLAINTIFF'S MOTION TO AMEND COMPLAINT TO ADD PARTY DEFENDANTS

Plaintiff Francis Blair has filed a Motion to Amend Complaint to Add Party Defendants, seeking to add Richard Bernhard and John Priestley, two principals of the Defendant corporation, as Defendants in the case. The Motion is opposed. The court elects to decide the Motion without oral argument. *See* M.R. Civ. P. 7(b)(7).

The Motion is triggered by the dissolution of the Defendant corporation as of September 23, 2014. The Objection to the Motion is threefold. First, the Motion to Amend was filed after the October 1, 2014 deadline previously set for joinder of parties and amendment of pleadings. Second, the Defendant corporation was suspended and reinstated. Third, the Plaintiff cannot hold the proposed individual Defendants liable without piercing the corporate veil.

The timeliness objection has a basis in the October 1, 2014 deadline for joinder and amendment, but the previously set deadline meant that motions filed after the deadline could be denied solely because they were untimely, unless the late filing were justified. Here, the dissolution of the Defendant corporation became known to the Plaintiff in November 2014, well after the deadline for joinder. Plaintiff has presented justification for not being held to the October 1, 2014 deadline.

The second Objection—that the corporation is in the process of being reinstated—may well be accurate but it is not sufficient. The deposition transcript filed with the Motion to Amend suggests that the Defendant corporation was dissolved, not just suspended as the Objection indicates. A corporation suspended by the Maine Secretary of State for a filing violation can be reinstated, but it is less clear that a dissolved corporation can be un-dissolved and reconstituted.

The third Objection is valid as to some of the Plaintiff's claims but not others. Specifically, because individual officers and employees of a corporation can be held personally liable for their own tortious acts and for unfair trade practices arising from fraud or misrepresentation, *see Advanced Const. Corp. v. Pilecki*, 2006 ME 84, ¶ 13, 901 A.2d 189; *see also*

Mariello v. Giguere, 667 A.2d 588, 590-91 (Me. 1995), Counts II (misrepresentation); III (negligence), V (fraudulent misrepresentation), VI (unfair trade practice) and VII (punitive damages) of the proposed Amended Complaint can be asserted against Messrs. Bernhard and Priestley without piercing the corporate veil. Counts I (breach of contract) and IV (unjust enrichment) do require piercing the corporate veil in order to impose personal liability. The proposed Amended Complaint does contain veil-piercing allegations at paragraph 7, but in the court's view, the allegations need to be significantly more specific if the Plaintiff proposes to proceed under Counts I and IV as to the individuals.

Accordingly, it is ORDERED:

1. Plaintiff's Motion to Amend to Add Additional Defendants is granted as to Counts II, III, V, VI and VII of the Amended Complaint, and denied without prejudice as to Counts I and IV.

2. Plaintiff may, at his option, file an Amended Complaint naming Richard Bernhard and John Priestley as Defendants will respect to the five counts as to which the Motion is granted, or may renew his Motion as to Counts I and IV with specific allegations as to the acts or omissions of the individual Defendants that justify imposing personal liability as to Counts I and IV.

3. The Amended Complaint or the renewed Motion to Amend as to Counts I and IV shall be filed within 20 days of this Order.

Pursuant to M.R. Civ. P. 79(a), the clerk is hereby directed to incorporate this order by reference in the docket.

Dated January 30, 2015

A. M. Horton
Justice, Business and Consumer Court

Entered on the Docket: 2/2/15
Copies sent via Mail __ Electronically ✓

Francis I. Blair v. Bernhard & Priestley Architecture, Inc.
BCD-CV-14-48

Francis I. Blair.
Plaintiff

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