

Kaplan Rice LLP v Oxbridge Capital Mgt., LLC

2015 NY Slip Op 32337(U)

December 11, 2015

Supreme Court, New York County

Docket Number: 653986/2014

Judge: Eileen A. Rakower

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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: PART 15

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KAPLAN RICE LLP,

Plaintiff,

- v -

OXBRIDGE CAPITAL MANAGEMENT, LLC,

Defendants.

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OXBRIDGE CAPITAL MANAGEMENT, LLC,

Third-Party Plaintiff,

- v -

MICHELLE RICE,

Third-Party Defendant.

-----X
HON. EILEEN A. RAKOWER, J.S.C.

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**DECISION
and ORDER**

Mot. Seq. #003

Plaintiff, Kaplan Rice LLP (“KR LLP” or “Plaintiff”), brings this action to recover unpaid legal fees for work allegedly performed on behalf of defendant/third-party plaintiff, Oxbridge Capital Management, LLC (“Oxbridge” or “Defendant/Third-Party Plaintiff”).

Plaintiff commenced this action on December 31, 2014, by summons and complaint. Oxbridge filed a Verified Answer and Third-Party Complaint on January 26, 2015. Plaintiff previously moved for summary judgment in favor of Plaintiff and against Oxbridge. Oxbridge opposed Plaintiff’s motion for summary judgment and cross-moved for summary judgment dismissing Plaintiff’s complaint. Plaintiff opposed. Oral argument was heard on Plaintiff’s and Oxbridge’s cross-motions for summary judgment on June 18, 2015. After oral argument and for the reasons stated on the record therein, the motions for summary judgment were denied as premature.

Plaintiff now moves for an Order, pursuant to CPLR §§ 3025(b) and 1003, granting Plaintiff leave to amend its complaint to include the dissolved law firm of Arkin Kaplan Rice LLP (“AKR”) as an additional plaintiff, to add the law firm of the law firm Arkin Solbakken LLP (“AS”) as an additional defendant, and to add additional allegations and causes of action against AS and Oxbridge. In support, Plaintiff submits: the affidavit of Joseph A. Matteo; a copy of the transcript of the oral argument heard on June 18, 2015; and, a copy of the Amended Verified Complaint in the proposed form¹.

Oxbridge opposes. Oral argument was heard on December 1, 2015.

CPLR § 3025 permits a party to amend or supplement its pleading “by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.” (CPLR § 3025[b]). Such “leave shall be freely given upon such terms as may be just including the granting of costs and continuances.” (CPLR § 3025[b]; *Konrad v. 136 East 64th Street Corp.*, 246 A.D.2d 324, 325 [1st Dep’t 1998]). Pursuant CPLR § 1003, parties may be added at any stage of the action by leave of court. (CPLR § 1003). In addition, CPLR § 2001 authorizes the court, at any stage of an action, “to permit a mistake . . . to be corrected, upon such terms as may be just”. (CPLR § 2001).

With respect to Plaintiff’s motion to add the dissolved law firm of AKR as an additional plaintiff in this action, “the law is clear that a partnership is not terminated upon dissolution, but rather continues for the purpose of winding up until such affairs are completed.” (*Lai v. Gartlan*, 46 A.D.3d 237, 245 [1st Dep’t 2007], *citing*, N.Y. P’ship L. § 61, *Scholastic, Inc. v. Harris*, 259 F.3d 73, 84-85 [2d Cir. 2001]). A partnership’s dissolution does not necessarily render the partnership “unamenable” to legal action, so long as the action concerns matters within the winding up of partnership affairs. (*111-115 Broadway Ltd. Pshp. v. Minter & Gay*, 1998 N.Y. App. Div. LEXIS 12467, *2 [1st Dep’t 1998]). Subject to certain exceptions set forth under New York’s Partnership Law, “after dissolution a partner can bind the partnership”. (N.Y. P’ship L. § 66[1]).

Here, the parties do not dispute that AKR is a dissolved partnership which can sue or be sued. Plaintiff’s proposed Corrected Amended Verified Complaint alleges,

¹ By letter dated August 4, 2015, Plaintiff notified the Court of an error contained in the proposed Amended Verified Complaint, and submitted a Corrected Amended Verified Complaint in the proposed form. Accordingly, Plaintiff’s motion for leave to amend the complaint will be considered with respect to the Corrected Amended Verified Complaint annexed to Plaintiff’s August 4, 2015 letter in the proposed form.

“Plaintiff AKR is a New York limited liability partnership in dissolution that was formerly engaged in the practice of law. It appears in this action through Howard J. Kaplan and Michelle A. Rice, who are partners in dissolution in AKR.” (Corrected Am. Compl. ¶ 4). Accordingly, in light of CPLR § 3025(b)’s directive that leave to amend be “freely given”, Plaintiff is permitted to amend the complaint to add AKR as an additional plaintiff in this action.

The remaining arguments in opposition to Plaintiff’s motion for leave to amend the complaint have been considered and are unavailing. Accordingly, Plaintiff is permitted to amend the complaint to add additional parties, allegations, and causes of action and Plaintiff’s Corrected Verified Amended Complaint submitted in the proposed form is accepted.

Wherefore, it is hereby,

ORDERED that Plaintiff’s motion is granted; and it is further

ORDERED that the amended caption shall appear as follows:

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KAPLAN RICE LLP and ARKIN KAPLAN RICE LLP

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Plaintiffs,

- v -

OXBRIDGE CAPITAL MANAGEMENT, LLC and
ARKIN SOLBAKKEN LLP,

Defendants.

-----X
OXBRIDGE CAPITAL MANAGEMENT, LLC,

Third-Party Plaintiff,

- v -

MICHELLE RICE,

Third-Party Defendant.

-----X

and it is further

ORDERED that Plaintiff shall serve a copy of this decision upon the Clerk, who is directed to amend the caption accordingly; and it is further

ORDERED that the amended summons and corrected amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this Order with a notice of entry thereof.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: December 11, 2015

DEC 11 2015



EILEEN A. RAKOWER, J.S.C