

Ramaz Sch. v Pung San Constr. Corp.

2017 NY Slip Op 31984(U)

September 18, 2017

Supreme Court, New York County

Docket Number: 161763/2013

Judge: Debra A. James

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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: DEBRA A. JAMES
Justice

PART 59

RAMAZ SCHOOL AND CONGREGATION KEHILATH
JESHURAN,

Plaintiff,

Index No.: 161763/2013
Motion Date: 07/08/14
Motion Seq. No.: 004

- v -

PUNG SAN CONSTRUCTION CORP., C.Q.
ELECTRICAL CONTRACTING CORP., AND MAXTECH
ELECTRICAL INC.,

Defendants.

PUNG SAN CONSTRUCTION CORP.,

Third-Party Plaintiff,

Index No.: 595092/2014

- v -

VVA, LLC and AMHI CORP.,

Third-Party Defendants.

The following papers, numbered 1 to 4 were read on this motion to amend answer and third party complaint.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

<u>PAPERS NUMBERED</u>	
	1
	2, 3
	4

Cross-Motion: Yes No

ORDER

Upon the foregoing papers, it is

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

ORDERED that the defendant Pung San Construction Corp.'s (Pung San) motion for leave to amend its answer to assert additional counterclaims against plaintiff Ramaz School and Congregation Kehilath Jeshuran (Ramaz and Congregation) is granted only with respect to the first counterclaim for breach of contract against Ramaz and Congregation, and paragraphs 81, 88, 92, 94, 96, and 107 of the proposed amended answer, and it is further

ORDERED that to the extent that Pung San seeks to amend its answer and third party complaint to assert the second counterclaims/claims for unfair competition against Ramaz and Congregation and VVA, respectively, and to amend the third party complaint to allege tortious interference with contract against VVA, such motion is denied; and it is further

ORDERED that the third party complaint and answer are deemed so amended, upon service of a copy of this order with notice of entry; and it is further

ORDERED that plaintiff/defendants and third party defendants are directed to serve amended replies/answers to the amended counterclaims and third party complaint, respectively, within 20 days after service of a copy of this order with notice of entry.

DECISION

Neither the proposed amended second counterclaim against

Ramaz and Congregation nor the proposed second cause of action of the third party complaint against VVA states a meritorious claim of unfair competition, as each fails to allege either a confidential relationship between movant and/or Ramaz and Congregation and/or VVA or any agreement to refrain from the alleged competition. Nor does the affidavit of merits of the principal of movant make any such claims. See V. Ponte and Sons, Inc. v American Fibers Intern., 222 AD2d 271(1st Dept 1995).

Nor, in its proposed first cause of action for tortious interference with contract against VVA, does Pung San allege that "but for" VVA's action, Ramaz and Congregation would have continued its contract, but Pung San alleges only that VVA, as agent for Ramaz and Congregation, encouraged its discontinuance. See Ferrandino & Sons, Inc. v Wheaton Builders, LLC, 82 AD3d 1035, 1026 (1st Dept 2011).

However, the court disagrees with Ramaz and Congregation that the proposed counterclaim of breach of contract was dilatorily made or lacks merit. Leave to amend pleadings is liberally granted and two years has never been held to be a long delay. See Cherebin v Empress Ambulance Service, Inc., 43 AD3d 304 (1st Dept 2007). Likewise, given that discovery has not yet been completed and that the breach of contract claim relates back to Ramaz and Congregation's complaint for breach of contract

against Pung San, Ramaz and Congregation have not shown prejudice in their ability to defend.

This is the decision and order of the court.

Dated: September 18, 2017

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.