

American Express Centurion Bank v Lopez
2018 NY Slip Op 32613(U)
October 12, 2018
Supreme Court, New York County
Docket Number: 159355/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

AMERICAN EXPRESS CENTURION BANK, Plaintiff, - v - LUIS LOPEZ, Defendant. INDEX NO. 159355/2016 MOTION DATE 10/11/2018 MOTION SEQ. NO. 002

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is ordered that the motion is granted without opposition.

By order dated April 16, 2018 and entered the following day, this Court granted summary judgment in favor of plaintiff American Express Centurion Bank and as against defendant Luis Lopez in the amount of \$32,173.14, plus costs and disbursements as taxed by the Clerk of the Court, based on defendant's breach of a credit agreement. Doc. 19. Plaintiff now moves, in effect, pursuant to CPLR 3025 (b), to amend the caption to substitute American Express National Bank as plaintiff and for the entry of judgment in favor of the newly substituted plaintiff. The motion, which is unopposed, is granted.

Pursuant to CPLR 3025(b), a party may amend its pleading at any time by leave of court, and leave shall be freely given upon such terms as may be just. It is within the court's discretion whether to permit a party to amend its complaint. See Peach Parking Corp. v 345 W. 40th Street, LLC, 43 AD3d 82 (1st Dept 2007). On a motion for leave to amend, a plaintiff need not establish

the merit of its proposed new allegations (*see Lucindo v Mancuso*, 49 AD3d 220, 227 [1st Dept 2008]), but must show that the proffered amendment is not palpably insufficient and not clearly devoid of merit. *See MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010); *Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 (1st Dept 2007).

Here, plaintiff's counsel submits proof that plaintiff American Express Centurion Bank and American Express Bank, FSB consolidated under a single national bank charter. American Express Centurion Bank changed its status from a state bank to a federal bank, American Express National Bank, and American Express Bank, FSB merged into the new federal entity. Thus, plaintiff has established that American Express National Bank is the proper plaintiff herein. The lack of any prejudice to defendant which could arise from the substitution of American Express National Bank as plaintiff is evident from the fact that his attorney was served with the instant motion and failed to oppose the same. See CPLR 3025 (b).

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff American Express Centurion Bank to amend the caption to substitute American Express National Bank as plaintiff is granted; and it is further

ORDERED that the caption shall hereinafter read as follows:

AMERICAN EXPRESS NATIONAL BANK,

Plaintiff,

-against-

LUIS A. LOPEZ,

Defendant.

And it is further,

ORDERED that the order of this Court dated April 16, 2018 and entered April 17, 2018 shall otherwise remain in full force and effect; and it is further

ORDERED that newly substituted plaintiff, American Express National Bank, shall have judgment against defendant Luis Lopez in the amount of \$32,173.14, plus costs and disbursements as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that this constitutes the decision and order of the court.

10/12/2018

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE