

My Ad Network, Inc. v Cogo Tech., Inc.

2018 NY Slip Op 32680(U)

October 17, 2018

Supreme Court, New York County

Docket Number: 653076/2018

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
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 45
Justice
INDEX NO. 653076/2018
MY AD NETWORK, INC., Plaintiff, MOTION DATE 09/04/2018, 10/02/2018
- v - MOTION SEQ. NO. 002 003
COGO TECHNOLOGIES, INC., Defendant. DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14 were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 21, 22, 23, 24 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents:

Plaintiff, My Ad Network, Inc. commenced this action against Defendant Cogo Technologies, Inc. for breach of a technology license agreement. The instant motions seek a default judgment against Defendant (motion sequence 002) and leave to substitute the parties in this action in order to permit the case to proceed without the involvement of counsel (motion sequence 003). For the following reasons, Plaintiff's motion for a default judgment is DENIED and Plaintiff's motion to amend is GRANTED.

My Ad Network, Inc., a corporation, purports to proceed pro se in this action through its Chief Executive Officer, Brian Nash. This is prohibited by CPLR §321(a), which requires that all corporations be represented by an attorney in prosecuting or defending against an action. See People ex rel. Spitzer v Park Ave. Plastic Surgery, P.C., 48 A.D.3d 367, 367 (1st Dep't 2008) (corporation is required, under most circumstances, to appear by counsel). This should come as

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no surprise to Plaintiff, as this Court (through its Principal Law Clerk) has informed the parties *multiple* times that a corporation must be represented by counsel in this case.

Plaintiff appears to be inching towards curing this infirmity. It purports to have assigned its rights under the applicable contract to Mr. Nash, and now seeks to substitute Mr. Nash as the plaintiff in its stead. As an individual, Mr. Nash would be able to proceed *pro se*. To avoid burdening the parties and the Court with duplicative pleading and motion practice to move the pieces to their proper respective places, the Court shall use the discretion provided to it under CPLR §2001 to permit a “mistake, omission, defect or irregularity” to be corrected upon such terms that shall be just, so long as a substantial right of a party is not prejudiced.

Here, permitting Plaintiff to amend the caption to reflect the assignment of claims will advance the litigation efficiently without prejudicing either party. Moreover, Plaintiff’s proposed addition of Cogo Networks, Inc., as an additional defendant, which Plaintiff represents is under common ownership with Defendant Cogo Technologies, Inc., will be permitted as an amendment of the Complaint under CPLR § 3025. Plaintiff is directed to file an Amended Complaint to conform the allegations to identify the proper parties, consistent with the amended caption.

Plaintiff’s motion for a default judgment is denied. Having proceeded improperly as a *pro se* litigant, Plaintiff is in no position to take advantage of Defendant’s apparent failure to respond to the Complaint.¹

¹ In its “Motion for Substitution of Parties Post RJJ” (NYSCEF 22), Plaintiff makes reference to a motion to dismiss purportedly filed by Defendant on September 14, 2018. That document, which might obviate a default judgment in any event, was not filed on NYSCEF or otherwise received by the Court.

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Therefore, it is:

ORDERED Plaintiff's Motion for a Default Judgment is DENIED (Motion Sequence 002); it is further

ORDERED Plaintiff's Motion to Amend the Caption is GRANTED; it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Brian Nash

Index No: 653076/2018

-Plaintiff-

Cogo Technologies and Cogo Networks, LLC

-Defendants-

ORDERED that Mr. Nash shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), within 5 days, 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 at the address (www.nycourts.gov/suptctmanh)); it is further

ORDERED Mr. Nash is to file this Order with Notice of Entry, on Defendant Cogo Technologies, Inc., within 5 days from the date of this Order; it is further

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ORDERED Mr. Nash shall file an Amended Summons and Amended Complaint to conform to the Amended Caption within 30 days from the date of this Order; it is further

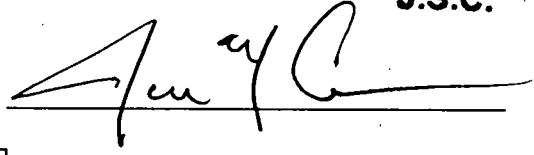
ORDERED Mr. Nash shall serve both Defendants with the Amended Summons and Amended Complaint pursuant to CPLR §311 or BCL §306 within 10 days from the filing of the Amended Complaint; it is further

ORDERED Defendants are to file an Answer, or other responsive pleadings, through counsel, within 30 days after being served; and it is further

ORDERED all parties are to appear for a Preliminary Conference on January 8, 2019 at 10:00 a.m.

This constitutes the Decision and Order of the Court.

HON. JOEL M. COHEN
J.S.C.



10/17/2018
DATE

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