

NYP Holdings, Inc. v Paul Evans LLC

2020 NY Slip Op 33423(U)

October 19, 2020

Supreme Court, New York County

Docket Number: 158839/2018

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

-----X

NYP HOLDINGS, INC.,

Plaintiff,

- v -

PAUL EVANS LLC,

Defendant.

-----X

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 48, 49, 50, 51

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, and after oral argument this day, it is ORDERED that plaintiff's motion for leave to amend the complaint is granted for the reasons stated below, and per the record.

Procedural History

Plaintiff commenced this action by summons and complaint, initially, against two defendants: Paul Evans LLC – a limited liability company – and its managing member, Evan Fript. The action asserts claims for breach of contract, account stated, and services rendered but not paid for in relation to the purchase of advertising space in *The New York Post*. By order dated March 7, 2019 (NYSCEF Doc. No. 17), this court granted defendants' motion to dismiss the claims against Mr. Fript (motion seq. no. 001) on the theory that insufficient allegations were alleged to sustain a cause of action against Mr. Fript based on piercing the veil of the limited liability company. However, that order expressly preserved plaintiff's right to move this court for leave to amend Mr. Fript back into the case after document discovery commenced.

During the course of the above-referenced discovery, plaintiff had made a motion to compel the production of documents (motion seq. no. 002). This court granted that motion by order dated February 20, 2020 (NYSCEF Doc No. 37), with the express recital that such grant “facilitates the purpose of this court’s order dated March 7, 2019 (NYSCEF Doc. No. 17).” That order also stated that “[t]he documents will be produced prior to the March 19, 2020, conference.” (NYSCEF Doc. No. 37 at 1-2.) Although defendant filed a notice of appeal from that February 20th order (NYSCEF Doc. No. 47), it never procured a stay of same.

Disposition of this Motion

“Leave shall be freely given” to amend a pleading (CPLR 3025 [b]). Moreover, “the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015]; *see also, Cafe Lughnasa Inc. v A&R Kalimian LLC*, 176 AD3d 523 [1st Dept 2019] [same]).

Plaintiff’s instant motion is properly accompanied by a proposed amended complaint (NYSCEF Doc. No. 44) (*see*, CPLR 3025 [b]) which furnishes detail not found in the original complaint bearing on its desired cause of action against Mr. Fript on the theory of piercing the veil of the limited liability company (*see, id.*, ¶¶ 13, 48-56). As noted in the proposed amended complaint, and on this motion, those allegations had the benefit of some deposition practice in October 2019 conducted subsequent to this court’s above-mentioned order of March of that year. Based on that, this court finds credible plaintiff’s counsel’s assertion that a good faith basis now exists, and has been articulated in pleading form, to allow – at least, at the pleading stage, subject to proof – the proposed cause of action against Mr. Fript. Needless to say, this is not a factual finding; but the recognition of a threshold showing. It is simply the exercise of judicial

discretion to freely allow the requested amendment of the complaint, subject to proof at later stages of the case.

Speaking of proof: it came to light during oral argument today that the document discovery ordered in this court’s February 20th order (NYSCEF Doc. No. 37), bearing a deadline of March 19th, has not been furnished by defendant or, at least, fully furnished. That order was not stayed by this court or the Appellate Division. This court’s exercise of discretion in granting this motion to amend is premised, in part, on the notion that it would not be equitable, or in good conscience, to prejudice plaintiff by denying its motion to amend based on any purported lack of proof that was requested by plaintiff but still not furnished by the defendant pursuant to this court’s order to do so.

Accordingly, it is

ORDERED that plaintiff’s motion for leave to serve and file its proposed amended complaint (NYSCEF Doc. No. 44) is granted; and it is further

ORDERED that said amended complaint is hereby deemed served and filed; and it is further

ORDERED that the caption of this case shall henceforth read:

“-----X
NYP HOLDINGS, INC., :
 Plaintiff, :
 -against- :
PAUL EVANS LLC and :
EVAN FRIPT, :
 Defendants. :
-----X”; and it is further

ORDERED that defendants shall answer, or move against, the amended complaint no later than 20 days from the date hereof.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock

<u>10/19/2020</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE