

<b>Mariners Pac Ventures, LLC v Khanam</b>
2022 NY Slip Op 31754(U)
May 27, 2022
Supreme Court, New York County
Docket Number: Index No. 850002/2020
Judge: Francis A. Kahn III
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. FRANCIS KAHN, III PART 32

Justice

X

INDEX NO. 850002/2020

MARINERS PAC VENTURES, LLC,

MOTION DATE \_\_\_\_\_

Plaintiff,

MOTION SEQ. NO. 001 002

- v -

KHADIZA KHANAM, MOHAMMAD KHAN, CHRIS KARANASOS, MNP, INC, JEFFERSON & SONS, LLC, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK CITY DEPARTMENT OF FINANCE, 179-181 ESSEX, LLC, CRIMINAL COURT OF THE CITY OF NEW YORK (NEW YORK), AMERICAN EXPRESS BANK, FSB, FIVES 160TH LLC, DIVISION OF LIENS AND RECOVERY, OLIPHANT FINANCIAL LLC, PEOPLE OF THE STATE OF NEW YORK, NEW YORK SUPREME COURT, UNITED STATES OF AMERICA (SOUTHERN DISTRICT), UNITED GENERAL TITLE INSURANCE CO, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY TRANSIT ADJUDICATION BUREAU, NEW YORK COUNTY CLERK'S OFFICE, JOHN DOE AND JANE DOE SAID NAMES BEING FICTITIOUS, IT BEING THE INTENTION OF PLAINTIFF TO DESIGNATE ANY AND ALL OCCUPANTS OF PREMISES BEING FORECLOSED HEREIN,

**DECISION + ORDER ON MOTION**

Defendant.

X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

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

Upon the foregoing documents, motions are determined as follows:

Plaintiff commenced this action to foreclose on a mortgage encumbering real property located at 408 East 120<sup>th</sup> Street, New York, New York. Defendant Khadiza Khanam ("Khanam") answered and pled thirty affirmative defenses as well as two counterclaims. Defendant Jefferson & Sons, LLC ("Jefferson") answered separately, but via the same attorney as Khanam, and raised twenty-eight affirmative defenses and two counterclaims. Defendant Christoforos Karanasos a/k/a Chris Karanasos ("Karanasos") answered, *pro se*, and pled twenty-seven affirmative defenses and, seemingly, two counterclaims.

Defendant Karanasos and MNP, Inc. (“MNP”) moved (Motion Seq No 1) pursuant to CPLR §3025[b] to permit Karanasos amend his answer and for an order granting MNP leave to file a late answer. Defendant Jefferson opposed the motion. Thereafter, Defendants Karanasos and MNP moved (Motion Seq No 2) again for the same relief. Defendant Jefferson also opposed the second motion.

Defendants’ first motion (Motion Seq No 1) is denied as moot as it was withdrawn by the movant (NYSCEF Doc No 91).

As to Defendants’ second motion (Motion Seq No 2), they seek to retain all matters in Karanasos’ original *pro se* answer by reference, to add MNP as a Defendant and to plead four crossclaims against Jefferson, to wit rescission of contract, breach of contract, unjust enrichment and fraudulent transfer.

“Under CPLR 3012 (d), a trial court has the discretionary power to extend the time to plead, or to compel acceptance of an untimely pleading ‘upon such terms as may be just,’” (*Emigrant Bank v Rosabianca*, 156 AD3d 468, 472 [1<sup>st</sup> Dept 2017]). “To extend the time to answer the complaint and to compel the plaintiff to accept an untimely answer as timely, a defendant must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action” (*Bank of N.Y. Mellon v Tedesco*, 174 AD3d 490, 491 [2d Dept 2019]). When exercising its discretion in determining a motion under this section “a court should consider such relevant factors as the extent of the delay, prejudice or lack of prejudice to the opposing party as well as the strong public policy in favor of resolving cases on the merits (*Orwell Bldg. Corp. v Bessaha*, 5 AD3d 573, 574 [2d Dept 2004])[internal citations omitted].

In support of its motion to serve and file a late answer, MNP proffers the affidavit of Evangelos Pollatos (“Pollatos”), the Vice-President of MNP. Pollatos avers as an excuse that he was never served with the summons and complaint. He also asserts that the person designated by MNP with the New York State Secretary of State to receive service of process, Richard F. Gluszak, Esq., never notified him of the action and he has not had contact with Gluszak for 12 years.

It is established that defective service can constitute a reasonable excuse for a default in answering (*see eg Equicredit Corp. of Am. v Campbell*, 73 AD3d 1119 [2d Dept 2010]). “Ordinarily, the affidavit of a process server constitutes a prima facie showing of proper service, but when a defendant submits a sworn denial of receipt of service containing specific facts to refute the statements in the affidavit of the process server, the prima facie showing is rebutted and the plaintiff must establish personal jurisdiction by a preponderance of the evidence at a hearing” (*Wells Fargo Bank, NA v Spaulding*, 177 AD3d 817, 819 [2d Dept 2019] [citation and internal quotation marks omitted]; *see also NYCTL 1998-1 Trust v Rabinowitz*, 7 AD3d 459 [1<sup>st</sup> Dept 2004]).

The excuse offered by MNP constitutes nothing more than a conclusory denial of receipt of service of the summons and complaint which is insufficient to rebut the presumption of proper service that arose with the process servers’ affidavit (*see generally Bethpage Fed. Credit Union v Grant*, 178 AD3d 997, 997 [2d Dept 2019]; *see also Wells Fargo Bank, NA v Spaulding*, 177 AD3d 817, 819 [2d Dept 2019]; *NYCTL 1998-1 Trust v Rabinowitz*, 7 AD3d 459 [1<sup>st</sup> Dept 2004]). Moreover, MNP’s lack of contact with Gluszak for more than a decade is no excuse as it was required to keep a current address with the Secretary of State pursuant BCL §306[b][1] (*see Lawrence v Esplanade Gardens*, 213 AD2d

216 [1<sup>st</sup> Dept 1995]; *On Assignment v Medasorb Tech., LLC*, 50 AD3d 342 [1<sup>st</sup> Dept 2008]; *see also Galaxy Gen. Contr. Corp. v 2201 7th Ave. Realty LLC*, 95 AD3d 789 [1<sup>st</sup> Dept 2012]). Moreover, MNP delayed more than a year after its default in seeking this relief (*see Wells Fargo Bank, N.A. v Hernandez*, \_\_\_ AD3d \_\_\_, 2022 NY Slip Op 02576 [2d Dept 2022]; *Loaiza v Guzman*, 111 AD3d 608 [2d Dept 2013]; *Cambridge Factors v Steiner*, 197 AD2d 362 [1st Dept 1993]).

Leave to amend a pleading under CPLR 3025[b] is to be freely given “absent prejudice or surprise resulting directly from the delay” (*O’Halloran v Metropolitan Transp. Auth.*, 154 AD3d 83 [1st Dept 2017]; *Anoun v City of New York*, 85 AD3d 694 [1st Dept 2011]; *see also Fahey v County of Ontario*, 44 NY2d 934, 935 [1978]). All that need be shown is that “the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBlA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1<sup>st</sup> Dept 2010]). To justify denial of such a motion, the opposing party “must overcome a heavy presumption of validity in favor of [allowing amendment]” (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012], *citing Otis Elevator Co. v. 1166 Ave. of Americas Condominium*, 166 AD2d 307 [1<sup>st</sup> Dept 1990]).

Any proposed crossclaim on behalf of MNP is devoid of merit as that Defendant has defaulted in appearing. As to Karanasos, in support of the proposed rescission of contract and breach of contract crossclaims against Jefferson, he pleads that he entered a contract with Jefferson, that Jefferson would renovate the subject property and that the agreement required Karanasos to transfer the property to Jefferson. Karanasos claims Jefferson breached the agreement by failing to perform at all thereunder and seeks to rescind this agreement on the same basis.

What Karanasos omits from his proposed pleading is that the alleged renovation contract at issue is a “partnership agreement” between Jefferson and MNP, not Karanasos. This conclusion is plainly evident from the agreement which states that the “principal purpose” of the partnership was “to enter into a Real Estate joint venture in regard to a specific property known as 408 East 120<sup>th</sup> Street, Manhattan, NY 10035” whereby “MNP . . . contribute[d] the property to the partnership and Jefferson . . . contribute[d] the financial ability to perform the agreed upon construction and rehabilitation of the property”. Therefore, as pled, Karanasos states no claim for breach of contract or recession against Jefferson.

Karanasos’ proposed claim of unjust enrichment is based upon his transfer of title to the premises to Jefferson as part of the agreement between MNP and Jefferson. “[I]n order to adequately plead such a claim, the plaintiff must allege ‘that (1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered’” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012][internal citations omitted]). “It is an obligation the law creates in the absence of any agreement” (*Goldman v Metro. Life Ins. Co.*, 5 NY3d 561, 572 [2005]). Karanasos has sufficiently pled such a claim based upon his transfer of title to Jefferson in furtherance of the transaction between MNP and Jefferson. As noted supra, there was no agreement between Karanasos and Jefferson. In opposition, Jefferson failed to offer any argument against the viability of this cause of action. Jefferson’s claim of prejudice based upon the existence of their action (NY Cty Index No. 161776/2018) which includes a claim to quiet title to the property is unavailing as Karanasos is not a party to that action. As such, any claim as to his ownership interest in the property is not a subject of that action.

Karanasos’ projected claim based upon the Uniform Voidable Transactions Act under Article 10 of the Debtor and Creditor Law, seeks to void Jefferson’s transfer of the subject property to Defendant

Mortgagor Khanam by deed dated June 5, 2019. Here, the proposed crossclaim is patently insufficient on its face as Karanasos failed to plead all the essential elements of the claim, to wit his status as a "creditor" of Jefferson, the existence of a "debt" antecedent to the transfer, an allegation that the conveyance was made at a time of insolvency on the part of the transferors, or an intent to defraud (Debtor and Creditor Law §§ 270, 273, 276, 278 and 279).

Accordingly, it is

ORDERED that the motion by Christoforos Karanasos a/k/a Chris Karanasos and MNP, Inc. is denied, except that Karanasos may file and serve an amended answer including a crossclaim for unjust enrichment against Defendant Jefferson & Sons, LLC.

5/27/2022

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

*F. A. Kahn III*

HON. FRANCIS A. KAHN III

FRANCIS A. KAHN, III, J.S.C.

J.S.C.