

373-381 PAS Assoc., LLC v Ocean Mgt. Corp.

2022 NY Slip Op 32993(U)

September 6, 2022

Supreme Court, New York County

Docket Number: Index No. 158331/2021

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

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373-381 PAS ASSOCIATES, LLC,

Plaintiff,

- v -

OCEAN MANAGEMENT CORP., MAJID KAHEN,

Defendant.

INDEX NO. 158331/2021

MOTION DATE 01/14/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

-----X
HON. MARY V. ROSADO:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for

AMEND CAPTION/PLEADINGS

Oral Argument took place on June 15, 2022 with Joshua Kopelowitz and Hanna Reisinger appearing on behalf of Plaintiff 373-381 PAS Associates, LLC (“Plaintiff”) and Zachary Kuperman appearing on behalf of proposed defendants Foxwood Realty, LLC (“Foxwood”) and Alphabet Plaza, LLC (“Alphabet”). Upon oral argument and the foregoing documents, it is decided and ordered as follows.

I. Factual and Procedural Background

Plaintiff filed its Complaint on September 9, 2021 (NYSCEF Doc. 1). In the Complaint, Plaintiff alleges it owns the building located at 381 Park Avenue South, New York, New York (the “Building”) (*id.* at ¶ 4). Defendant Ocean Management Corp. (“Ocean”) allegedly is the tenant of suite 621 in the Building per a lease agreement dated April 7, 2017 which expired on May 31, 2022 (the “Lease”). It is alleged that Defendant Majid Kahen (“Guarantor”) guaranteed the Lease pursuant to a written guaranty (*id.* at ¶¶ 11-12). Plaintiff alleged that Ocean failed to pay rent pursuant to the terms of the Lease since September 30, 2021, and Guarantor has not paid for any

of Tenant's default (*see generally* NYSCEF Doc. 1). On November 8, 2021, a stipulation of discontinuance was entered into between Plaintiff and attorney for Ocean and Guarantor which discontinued the action against Guarantor without prejudice (NYSCEF Doc. 5). To date, Ocean has not filed any responsive pleading to Plaintiff's Complaint.

On January 6, 2022, Plaintiff moved to amend the Complaint (NYSCEF Doc. 6). Plaintiff seeks to amend the Complaint to assert new causes of action and adding new defendants Foxwood and Alphabet (NYSCEF Doc. 7 at ¶ 7). Plaintiff alleges in the proposed Amended Complaint that Foxwood and Alphabet are the alter egos of Ocean and seeks to pierce the corporate veil to hold Foxwood and Alphabet liable for Ocean's default (NYSCEF Doc. 10).

Mr. Zachary Kuperman, who also represents Defendants Ocean and Guarantor, filed opposition papers to Plaintiff's motion on behalf of non-parties Foxwood and Alphabet even though Foxwood and Alphabet did not seek leave to intervene (NYSCEF Doc. 21). Defendant Ocean, which still has not filed any responsive pleading despite being represented by Mr. Kuperman, has filed no opposition to Plaintiff's motion.

Plaintiff argues in reply that pursuant to CPLR 1013, Foxwood and Alphabet are non-parties who may not appear to oppose this motion without the Court's permission to intervene (NYSCEF Doc. 24).¹ Plaintiffs further argue that Plaintiffs are not required to demonstrate their pleadings are meritorious at this stage, but only that its pleadings are not palpably insufficient.

¹ Although Foxwood and Alphabet submitted a memorandum of law, as non-parties who never moved for leave to intervene, the Court will not entertain their opposition. To allow a non-party to simply file a notice of appearance to launch an opposition to a motion in an action would render CPLR §§ 1012 and 1013 void in many situations. Moreover, Foxwood and Alphabet have not cited to any on-point and binding legal authority in support of their position. Given the lack of legal authority supporting Foxwood and Alphabet's intervention argument, and the express provisions of CPLR §§ 1012 and 1013, the Court rejects Foxwood and Alphabet's improper opposition papers.

II. Discussion

A. Amend Pleadings Standard

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. V National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Delay alone is not sufficient to deny leave to amend (*Johnson v Montefiore Medical Center*, 203 AD3d 462 [1st Dept 2022]).

B. Plaintiff is granted leave to Amend their Complaint

Plaintiff is granted leave to serve its proposed amended Complaint. The proposed amended Complaint will not prejudice any party or proposed party as there has not yet been any discovery exchanged, let alone a responsive pleading filed. Moreover, Plaintiff does not need to establish the merit of its proposed allegations, but only show that they are not clearly devoid of merit (*Fairpoint Cos., LLC v Vella*, 134 AD3d 645 [1st Dept 2015]). To state a veil piercing claim, a plaintiff must show that (1) the owner of a corporation exercised complete domination of the corporation involved in an unjust transaction, and (2) the corporation was used to commit a fraud or wrong against a plaintiff resulting in plaintiff's injury (*id.*). Here, it is alleged, upon information and belief, that Ocean exercised complete control and dominance of Foxwood and Alphabet and that Foxwood and Alphabet were used as an instrumentality to evade rent payments. The Court finds these allegations are not clearly devoid of merit or palpably insufficient. As leave to amend is freely given, there has not been substantial delay, no party will be prejudiced, and the pleadings are not clearly devoid of merit, Plaintiff's motion for leave to amend its pleadings is granted.

Accordingly, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a preliminary conference via Microsoft Teams on Wednesday, October 26, 2022, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

9/6/2022
DATE

Mary V Rosado
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: