

Kapitus Servicing, Inc. v TE Sign & Ship, LLC

2024 NY Slip Op 32209(U)

June 26, 2024

Supreme Court, New York County

Docket Number: Index No. 650031/2023

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** **38M**

Justice

-----X

KAPITUS SERVICING, INC.,

Plaintiff,

- v -

TE SIGN AND SHIP, LLC,

Defendant.

-----X

INDEX NO. 650031/2023

MOTION DATE 03/05/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19

were read on this motion for DEFAULT JUDGMENT.

Upon the foregoing documents, it is ORDERED that so much of plaintiff’s motion for leave to amend the complaint to join Pamela Melia d/b/a Signs and More Co. as a defendant and to assert additional causes of action against all defendants is granted, without opposition, for the reasons set forth in the moving papers (NYSCEF Doc. Nos. 6, 7, 17) and the exhibits attached thereto, in which the court concurs. “Leave [to amend] shall be freely given upon such terms as may be just” (CPLR 3025[b]). Absent undue delay, prejudice, or surprise, and provided the proposed amendment arises from the same transactions and occurrences as the original complaint, the motion should be granted” (*Fellner v Morimoto*, 52 AD3d 352, 353 [1st Dept 2008]). Here, defendant TE Sign and Ship, LLC d/b/a TE Sign and Ship, by failing to oppose the motion, made no showing of prejudice, surprise, or undue delay. Furthermore, the proposed amendment arises from the same transactions and occurrences as the original complaint – namely, the original defendant TE Sign and Ship, LLC’s contractual obligations to plaintiff under the Revenue Based Factoring Agreements (the “Agreements”).

Relatedly, CPLR 203 allows a claim asserted against a defendant in an amended complaint to relate back to claims previously asserted against a co-defendant where the defendants are united in interest (*see also, Buran v Coupal*, 87 NY2d 173 [1995]). Both defendants are united in interest in this action, given that plaintiff alleges that the proposed new co-defendant Pamela Melia d/b/a Signs and More Co. – as a successor company to the original defendant – was established to avoid the contractual obligations of TE Sign and Ship, LLC to plaintiff. Additionally, the claims relating to successor liability against the original and proposed new defendants arise from the same transaction or occurrence: the Agreements. A successor company, as plaintiff alleges Pamela Melia d/b/a Signs and More Co. to be, cannot claim it was not put on notice of the transactions or occurrences to be proved by the amended complaint, because, by their terms, the Agreements expressly bind TE Sign and Ship, LLC’s successors and assigns (exhibit A to the summons and complaint, NYSCEF Doc. No. 2 § 4.5 [“Binding Effect”]). Based on the foregoing, this court exercises its discretion to allow the proposed amendment (*see Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 412 [2014]); and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers (NYSCEF Doc. No. 15), shall be served, in accordance with the Civil Practice Law and Rules, upon the parties in this action within 30 days after the date of filing hereof; and it is further

ORDERED that the action shall bear the following caption:

-----X
 KAPITUS SERVICING, INC., f/k/a COLONIAL FUNDING
 NETWORK, INC., as servicer and agent for PRINCE
 FINANCIAL,

Plaintiff,

- v -

TE SIGN AND SHIP, LLC, d/b/a TE SIGN AND SHIP and
 PAMELA MELIA, d/b/a SIGNS AND MORE CO.,

Defendants.
 -----X

and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the party being added pursuant hereto; and 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); and it is further

ORDERED that so much of the motion as seeks entry of a default judgment against defendant TE Sign and Ship, LLC d/b/a TE Sign and Ship for failure to appear and answer the original complaint is dismissed as moot. If defendants fail to appear following service of the amended complaint, plaintiff may renew the motion for default judgment.

This will constitute the decision and order of the court.



<u>6/26/2024</u>				<u>LOUIS L. NOCK, J.S.C.</u>	
	DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
			DENIED		<input type="checkbox"/>
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