

San-Dar Assoc. v Amar

2024 NY Slip Op 34423(U)

December 5, 2024

Supreme Court, New York County

Docket Number: Index No. 655193/2023

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02M

Justice

-----X

SAN-DAR ASSOCIATES,

Plaintiff,

- v -

YAACOV AMAR, RAQUEL BEHAR, STONE QUARRY
COMMONS LLC, 51 APLEGATE PARTNERS LLC, FIRST
CHOICE INVESTMENT LLC, Y&Y CAPITAL LLC, HOUSING
SOLUTIONS LLC, MANHATTAN SEPHARDIC
CONGREGATION, Y&Y CAPITAL GROUP LLC

Defendant.

-----X

INDEX NO. 655193/2023

MOTION DATE 07/28/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 55, 56, 57, 58, 59, 60, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

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

Plaintiff moves for an order pursuant to CPLR 3025(b) to file a Second Amended Complaint; add Yacov Smouha, The Ofarim Group Inc. aka Ofarim Group Inc., and Amar Shreveport LLC as defendants pursuant to CPLR 1002(b) and 1003; remove Manhattan Sephardic Congregation as a defendant pursuant to CPLR 1003; and to modify the caption as provided in the Second Amended Complaint. Defendants oppose the motion.

This action seeks to recover purported fraudulent transfers made by nonparty Corporate Habitat NY, LLC (“CHNY”) made to or for the benefits of the defendants, pursuant to Article 10 of the Debtor and Creditor Law (“DCL”). Plaintiff is a judgment creditor of CHNY. Plaintiff seeks to amend the Complaint to add additional defendants it alleges received or otherwise benefited from payments from the alleged transfer of CHNY’s assets. In opposition, defendants argue that the proposed Second Amended Complaint is palpably deficient because the proposed additional defendants did not receive funds from CHNY and the proposed pleading asserts

claims that are time-barred by the three-year statute of limitations of Section 508(b) of the Limited Liability Law, as certain of the allegedly fraudulent transfers were distributions to members of CHNY.

Leave to amend pleadings under CPLR 3025(b) should be freely given unless doing so would result in surprise or prejudice to the nonmoving party (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). Leave to amend a complaint will be denied when the proposed pleading fails to state a cause of action, is palpably insufficient as a matter of law, or is devoid of merit (*Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011], quoting *MBIA Ins. Corp v Greystone & Co., Inc*, 74 AD3d 499, 500 [1st Dept 2010]). The party seeking leave to amend need not establish the merit of proposed allegations (*Perrotti* at 498). CPLR 1002(b) provides for joinder of additional defendants for claims “arising out of the same transaction, occurrence, or series of transactions or occurrences” where there are common questions of law or fact. CPLR 1003 provides, in relevant part, that “Parties may be dropped by the court, on motion of any party . . . at any stage of the action and upon such terms as may be just.”

In this action, the proposed amendment seeks to add additional defendants subject to its fraudulent transfer claim. It cannot be said that this amendment would be a surprise or prejudicial to defendants as it adequately pleads a cause of action under Article 10 of the DCL with respect to the proposed additional defendants. Defendants’ argument that the additional claim is barred by the statute of limitations in Section 508(b) of the Limited Liability Law is unavailing, as the only claim asserted here is for relief pursuant to Article 10 of the DCL, which has a four-year statute of limitations (*see* DCL § 278). The Court therefore finds that plaintiff is entitled to amend its complaint and to add Yacov Smouha, The Ofarim Group Inc. aka Ofarim

Group Inc., and Amar Shreveport LLC as additional defendants, as the DCL claim against them arises out of the same series of transactions. The Court also grants the branch of the motion seeking to remove Manhattan Sephardic Congregation as a defendant pursuant to CPLR 1003.

Accordingly, it is hereby:

ORDERED that plaintiff's motion for leave to amend the complaint is granted; and it is further

ORDERED that Manhattan Sephardic Congregation is removed as a defendant in this action; and it is further

ORDERED that the second amended complaint in the proposed form annexed to the moving papers shall be deemed served upon the existing defendants upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that plaintiff shall serve said summons and supplemental and second amended complaint together with a copy of this order with notice of entry upon Yacov Smouha, The Ofarim Group Inc. aka Ofarim Group Inc., and Amar Shreveport LLC within twenty days from the date of entry of this order; and it is further

ORDERED that the County Clerk is directed to amend the caption of this action to the following:

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

-----X
SAN-DAR ASSOCIATES,

Plaintiff,

- v -

Index No. 655193/2023

YAACOV AMAR, RAQUEL BEHAR, STONE QUARRY
COMMONS LLC, 51 APPLGATE PARTNERS LLC, FIRST
CHOICE INVESTMENT LLC, Y&Y CAPITAL LLC, HOUSING
SOLUTIONS LLC, Y&Y CAPITAL GROUP LLC, YACOV
SMOuha, THE OFARIM GROUP INC. aka OFARIM
GROUP INC., AMAR SHREVEPORT LLC

Defendant.
-----X

and it is further

ORDERED that counsel for plaintiff 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 parties being added pursuant hereto.

A status conference shall be held on March 11, 2025 at 9:30 a.m. at 60 Centre Street, Room 212.

This constitutes the decision and order of the Court.

12/5/2024

DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE