Carloha, Inc. v DC Nice Car, Inc.
2024 NY Slip Op 34176(U)
November 25, 2024
Supreme Court, Kings County
Docket Number: Index No. 500605/2022
Judge: Leon Ruchelsman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

CARLOHA, INC.,

Plaintiff, Decision and order

- against - Index No. 500605/2022

DC NICE CAR, INC., KONG QING LIN and CHUI MAN WONG,

Defendants, November 25, 2024

PRESENT: HON. LEON RUCHELSMAN Motion Seq. #2

The defendants have moved seeking to amend the answer pursuant to CPLR §3025 and to add Xiang Gao, Hai Bin Ni, Kai Chen, Jiangnan Zheng, Kong Yin Lin, Yang Zhang, and Kanggan Lin as defendants. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the verified complaint on March 15, 2018 an operating agreement was entered into between the plaintiff and defendant Lin whereby the plaintiff maintained a 45% interest in the company and Lin a 55% interest. The company owned and operated used car lots in New York City. The plaintiff alleges that while he received distributions through may 2020 they stopped thereafter and have not resumed since. The plaintiff alleges the defendants Lin and Wong opened a new and competing entity, defendant DC Nice Car Inc., utilizing the dealer license of the plaintiff without his consent. The plaintiff now seeks to amend the complaint to add a cause of action for civil conspiracy and to add the above named individuals, all shareholders of the

defendant. The defendants oppose the motion arguing it has no merit and that such amendments will result in prejudice.

Conclusions of Law

It is well settled that a request to amend a pleading shall be freely given unless the proposed amendment would unfairly prejudice or surprise the opposing party, or is palpably insufficient or patently devoid of merit (Adduci v. 1829 Park Place LLC, 176 AD3d 658, 107 NYS3d 690 [2d Dept., 2019]). The decision whether to grant such leave is within the court's sound discretion and such determination will not lightly be set aside (Ravnikar v. Skyline Credit-Ride Inc., 79 AD3d 1118, 913 NYS2d 339 [2d Dept., 2010]). Therefore, when exercising that discretion the court should consider whether the party seeking the amendment was aware of the facts upon which the request is based and whether a reasonable excuse for any delay has been presented and whether any prejudice will result (Cohen v. Ho, 38 AD3d 705, 833 NYS2d 542 [2d Dept., 2007]).

The plaintiff has not really presented any excuse why these amendments were not filed sooner. The plaintiff was fully aware of the corporate status of the defendant and the existence of all the shareholders.

In any event, considering the proposed cause of action, New York does not recognize an independent cause of action for

civil conspiracy (Plymouth Drug Wholesalers Inc., v. Kirschner, 239 AD2d 479, 658 NYS2d 64 [2d Dept., 1997]). However, where a civil conspiracy allegation is based upon other viable causes of action then the civil conspiracy is "deemed part of the remaining causes of action to which they are relevant" (Errant Gene Therapeutics, LLC v. Sloan-Kettering Institute for Cancer Research, 182 AD3d 506, 123 NYS3d 118 [1st Dept., 2020]). Thus, to plead a cause of action for civil conspiracy "the plaintiff must allege a cognizable tort, coupled with an agreement between the conspirators regarding the tort, and an overt action in furtherance of the agreement" (Faulkner v. City of Yonkers, 105 AD3d 899, 963 NYS2d 340 [1st Dept., 2013]). Thus, "the complaint must allege some factual basis for a finding of a conscious agreement among the defendants" (Weaver v. Schiavo, 2020 WL 496301 [S.D.N.Y. 2020]). The proposed complaint states in conclusory fashion that the "Defendants had a meeting of the minds and mutual understanding of their unlawful objective, as demonstrated by their coordinated actions while still employed by Plaintiff" (see, Verified Complaint, ¶86 [NYSCEF Doc. No. 32]) without providing any information about the nature of such "coordinated actions" (id). Indeed, while valid torts are noted, there is no explanation in the proposed complaint about the nature of any such conspiracy other than to note in conclusory fashion that a conspiracy took place. Therefore, the motion

seeking to amend the complaint regarding the claim of civil conspiracy is denied.

Turning to the motion to add the proposed defendants, it is well settled that it is improper to file a motion to amend after discovery has been substantially completed where no excuse for the late filing has been presented (Miranda v. Riverdale Manor Home for Adults, 142 AD3d 813, 37 NYS3d 258 [1st Dept., 2016]). The plaintiff asserts this motion has been filed "at the earliest possible opportunity after obtaining evidence that supports the inclusion of the proposed additional defendants" (Affirmation in Support, ¶16 [NYSCEF Doc. No. 29]). However, there is evidence the plaintiff was well aware of the corporate structure of defendant entity long before they filed this motion. As the court observed in Shi Mong Chen v. Hunan Manor Enterprise Inc., 437 F.Supp3d 361 [S.D.N.Y. 2020] "of equal significance, these proposed new defendants are not before the Court and reopening the case to add them would certainly risk a re-do of the entire discovery process inasmuch as each new defendant would be entitled to obtain discovery from the plaintiffs and potentially from co-defendants" (id). Thus, "the prejudice calculus changes when the motion to amend is made following the conclusion of discovery and the amendment would require the re-opening of discovery" (United States ex rel. Raffington v. Bon Secours Health System Inc., 567 F.Supp3d 429 [S.D.N.Y. 2021]).

In this case, the request has been made after the conclusion of virtually all discovery. The prejudice to the defendant is readily apparent. Consequently, the motion seeking to amend the pleadings is denied.

So ordered.

ENTER:

DATED: November 25, 2024
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC