New York Studios, Inc. v Steiner Digital Studios, LLC
2016 NY Slip Op 30713(U)
April 15, 2016
Supreme Court, New York County
Docket Number: 654351/2012
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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NEW YORK STUDIOS, INC. and EPONYMOUS ASSOCIATES, LLC,

Plaintiffs, Index No. 654351/2012

- against -

STEINER DIGITAL STUDIOS, LLC (s/h/a STEINER DIGITAL STUDIOS, INC.), DOUGLAS STEINER and DAVID STEINER,

Defendants.

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Hon. C. E. Ramos, J.S.C.:

In motion sequence number 001, defendants Douglas Steiner, and David Steiner (collectively, the "Steiners"), Steiner Digital Studios, LLC (together with the Steiners, the "Steiner Defendants") move pursuant to CPLR 3211 to dismiss the complaint of plaintiffs New York Studios, Inc. ("NYS") and Eponymous Associates, LLC ("Eponymous"). NYS cross-moves for leave to file an amended complaint.

Background

The facts set forth herein are taken from NYS's submissions, which the Court assumes to be true for the purposes of these motions.

NYS is a New York corporation that holds a ten percent membership interest in Eponymous, also based in New York (Complaint, ¶ 8). Douglas Steiner and David Steiner (the "Steiners") are shareholders, officers and directors of Steiner Digital Studios, LLC (SDS) and managers of Eponymous (*id.* at ¶¶

10, 11, 13, 14). SDS holds a ninety percent interest in Eponymous. (*id.* at ¶ 12).

On April 30, 1999, NYS and the Steiners founded Eponymous (Complaint, ¶ 17). The purpose of Eponymous was to pursue an opportunity created by NYS to develop a film and television studio site at the Brooklyn Navy Yard (Holt Aff., ¶ 13). NYS and SDS executed an operating agreement designating the Steiners as managers of Eponymous and delineating their responsibilities (the "Operating Agreement")(*id.* at ¶ 18).

Instead of conducting business as managers of Eponymous pursuant to the Operating Agreement, the Steiners instead formed or utilized separate companies that allegedly used the assets, contracts, and contractual rights of Eponymous to conduct business for themselves (*id.* at ¶ 26, 28, 31). These companies include Steiner Studios LLC, Steiner Lighting LLC, Steiner Equities Group LLC, Steiner Building NYC LLC, and Steiner Building Company LLC (collectively, the "Steiner Entities")(*id.* at ¶ 26). The Steiner Entities began operating in 2004 and continue to operate and rent sound stages, furnish post production services, the supply, rental and sale of grip equipment, and other business activities contemplated by the Eponymous Operating Agreement (*id.* at ¶¶ 32, 33).

NYS alleges that in 2004, the Steiners breached the Operating Agreement by usurping and diverting Eponymous's

business opportunities to the Steiner Entities (Holt Aff., ¶ 35). NYS also alleges that the Steiners intentionally caused Eponymous to execute loan transactions that benefitted the Steiners at the expense of Eponymous (*id.* at ¶ 64).

On December 12, 2012, NYS and Eponymous commenced this action by summons and complaint seeking damages for breaches of the Operating Agreement, breach of fiduciary duty, and fraud.

On July 9, 2015, during oral argument, this Court dismissed the fifth cause of action alleging breach of Article 8.2 of the Operating Agreement (Trans. July 9, 2015, 18:6-7). The Court reserved decision on the remaining causes of action and NYS's cross-motion for leave to amend (*id.* at 30:3-5).

Discussion

"Motions for leave to amend pleadings should be freely granted absent prejudice or surprise resulting therefrom" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). "On a motion for leave to amend, plaintiff need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit" (*id.* at 500).

NYS's amended complaint is not palpably insufficient or clearly devoid of merit. It alleges instances of usurpation of corporate opportunities that fall within the relevant statute of limitations. In contrast to the original complaint, the amended

complaint also clarifies the requested relief and asserts thirteen additional causes of action including specific performance, injunctive relief, and replevin.

Therefore, this Court grants NYS's leave to amend, deems the amended complaint served and will apply the Steiners' motion to dismiss to the amended complaint.

In deciding a motion to dismiss under CPLR § 3211(a)(1), the court must consider whether the documentary evidence "utterly refutes plaintiff's factual allegations and conclusively establishes a defense to the asserted claims as a matter of law" (*Amsterdam Hospitality Group, LLC v Marshall-Alan Associates, Inc.*, 120 AD3d 431, 433 [1st Dept 2014][internal citations and quotations omitted]). To constitute documentary evidence, the papers must be essentially undeniable and support the motion on their own (*id.* at 432).

In its first cause of action, NYS alleges that the Steiners have used and continue to use the assets of Eponymous to usurp corporate opportunities for the benefit of the Steiner Entities (Amended Complaint, ¶¶ 20-32).

The Steiner Defendants concede that the Steiner Entities are competing with Eponymous, but argue that Articles 2.5 and 5.9(b) of the Operating Agreement permits them to compete against Eponymous. Articles 2.5 and 5.9(b) of the Operating Agreement provide that:

[* 5]

> 2.5) Other businesses. Except as provided hereafter, this Agreement shall not prohibit any Member or Manager from conducting other businesses or activities unrelated to [Eponymous] without accounting to [Eponymous] or any other Member, whether or not such other businesses or activities, directly or indirectly, compete with the business of [Eponymous]. Except as provided hereafter, no Member or Manager shall be liable or accountable to [Eponymous] or any other Member for failure to disclose or make available to [Eponymous] any business opportunity that such a Member or Manager becomes aware of in its capacity as a Member or Manager or otherwise.
>
> 5.9[b]) Any manager or Member may engage in or possess an interest in other business ventures or properties of every nature and description, independently or with others notwithstanding that such business ventures or properties may be in competition with [Eponymous] or its Property, including, but not limited to, the ownership, financing, leasing, operation, management or development of property similar to the property now and from time to time held by [Eponymous]. Neither [Eponymous] nor any Member have any rights in and to such independent ventures or the income or profits derived therefrom (Holt Aff., Ex. C, §§ 2.5, 5.9).

Articles 2.5 and 5.9(b) of the Operating Agreement state in plain and unambiguous terms that the members and managers of Eponymous could pursue opportunities in direct competition with Eponymous, going so far as to state that no member or manager shall be liable or accountable to Eponymous or its members for failing to disclose any business opportunity to them.

NYS does not dispute that the plain terms of the Operating Agreement permit the Steiners to compete against Eponymous. Rather NYS alleges that the breach of the Operating Agreement arises from the Steiner Entities using the Eponymous assets to

directly compete with Eponymous through the Steiner Entities (Amended Complaint, ¶¶ 20-32).

Furthermore, Article 2.5 of Operating Agreement specifically provides that any Member of Manager is permitted to conduct "other businesses or activities unrelated to [Eponymous]," which would support NYS's contention that Article 2.5 of the Operating Agreement does not permit the Steiners to use Eponymous's assets for a competing venture (Holt Aff., Ex. C, § 2.5).

Accepting the allegations of the amended complaint as true for the purposes of this motion, the Court finds that NYS has sufficiently stated a cause of action for the usurpation of corporate assets, that is not wholly refuted by documentary evidence.

NYS's second cause of action for breach of the Operating Agreement is dismissed as time-barred.

Pursuant to CPLR 201, an action must be commenced within the time specified in the corresponding limitations period in order to survive an affirmative defense of untimeliness (CPLR 201, 3211 [a] [5]). Contract claims are subject to a six-year limitations period (CPLR 213 [2]).

NYS served its complaint over seven years after the alleged breach of the Operating Agreement occurred (Amended Complaint, ¶¶ 33-39). On October, 26, 2004, Kenneth B. Falk, counsel for NYS, requested by letter that the Steiners provide an accounting,

annual reports, or income statements of Eponymous as per Article 7.3 "by the end of November, 2004" (Steiner Aff., ¶ 37, Ex. L). On November 22, 2004, Douglas Steiner, by letter, promised to comply with Article 7.3 "before the end of this calendar year" (*id.* at Ex. L), which he ultimately failed to do.

Consequently, the Steiners allegedly breached Article 7.3 of the Operating Agreement on January 1, 2005 by failing to provide any financial information. Nonetheless, NYS did not serve the original complaint until December 12, 2012, despite being aware of the breach in 2005.

"[W]here the agreement, representations or conduct of a defendant have caused a plaintiff to delay suit on a known cause of action until the Statute of Limitations has run, the courts will apply the doctrine of estoppel to prevent an inequitable use by the defendant of the statute as a defense" (*Robinson v City of New York*, 24 AD2d 260, 263 [1st Dept 1965]). The burden of proof is on the plaintiff to show that "they relied on defendants' fraud, misrepresentation, and deception to their detriment" (*Zumpano v Quinn*, 6 NY3d 666, 683 [2006]).

NYS alleges that the Steiners prevented it from filing the complaint within the applicable limitations period through a combination of omissions and misrepresentations. However, NYS's allegations fail to establish that the Steiners prevented the

commencement of this action within the six-year limitations periods by inducing NYS to refrain from commencing the action.

Consequently, the tolling of the statute of limitations is not warranted. Therefore, the second cause of action is time-barred.

NYS's third, fourth, and sixth causes of action for breaches of Articles 7.4, 5.11, and 5.1 of the Operating Agreement, respectively, are all dismissed on the basis of documentary evidence. The causes of action each allege a breach of the Operating Agreement related to the duties of the Steiners, as managers of Eponymous.

However, Article 5.8 provides a complete defense and indemnifies the Steiners from personal liability for their conduct as managers of Eponymous. Article 5.8 of the Operating Agreement provides that "[t]he Managers shall have no personal liability to [Eponymous], any Member, or any third party, as a result of any act or omission of the Managers under this Agreement or in any manner relating to [Eponymous]" (Holt Aff., Ex. C). SDS is not a manager of Eponymous and thus, not the subject of Articles 5.1, 5.11, or 7.4 of the Operating Agreement.

The seventh cause of action for breach of fiduciary duty is duplicative of the first cause of action for usurpation of corporate opportunities and self-dealing because they both arise from the same alleged usurpations of corporate opportunities and

self-dealing, and seek the identical damages (Amended Complaint, ¶¶ 20-32, 57-62).

A claim should be dismissed as duplicative where it and another claim both arise from the same facts and seek the identical damages for each alleged breach (*see Netologic, Inc. v Goldman Sachs Grp., Inc.*, 110 AD3d 433, 434 [1st Dept 2013]).

Dismissal of the eighth cause of action for breach of fiduciary duty is proper because it seeks identical damages as the fifth cause of action for breach of contract (Amended Complaint, ¶¶ 53, 66).

The ninth cause of action is time-barred. There, NYS seeks specific performance with respect to certain contributions it made during the formation of Eponymous in 1999, over twelve years prior to the commencement of this action.

NYS's tenth cause of action for breach of fiduciary duty is dismissed because its allegations are pled in conclusory fashion and fail to indicate when the purported loan transactions occurred.

The eleventh cause of action for breach of fiduciary duty under the New York Limited Liability Company Act is duplicative of the sixth cause of action for breach of fiduciary duty because it seeks damages related to the Steiners's conduct as managers (*see* Amended Complaint, ¶¶ 54-56).

The thirteenth cause of action for breach of the covenant of good faith and fair dealing is duplicative of the second cause of action for breach of the Operating Agreement because "[a] cause of action to recover damages for breach of the implied covenant of good faith and fair dealing cannot be maintained where the alleged breach is intrinsically tied to the damages allegedly resulting from a breach of the contract" (*Deer Park Enterprises, LLC v Ail Sys., Inc.*, 57 AD3d 711, 712 [1st Dept 2008]).

The fourteenth cause of action for a injunction fails to adequately plead the "irreparable harm necessary for injunctive relief" (*Ovitz v Bloomberg L.P.*, 18 NY3d 753, 760 [2012]).

The fifteenth cause of action for unjust enrichment is duplicative of the breach of contract claims because "[a]n unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim" (*see Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012]).

The sixteenth cause of action for conversion alleging the same wrongful acts and damages as the second cause of action for breach of the Operating Agreement is also dismissed as duplicative (*see, e.g., Richbell Info. Servs., Inc. v Jupiter Partners, L.P.*, 309 AD2d 288, 306 [1st Dept 2003]).

Finally, the seventeenth cause of action for replevin is dismissed because NYS fails to allege the essential elements of a cause of action for replevin (*In re Peters*, 34 AD3d 29, 34 [2006]

["Demand upon, and refusal of, the person in possession of the chattel to return it being essential elements of a cause of action in replevin"]).

The first cause of action for breach of the Operating Agreement and the twelfth cause of action for an accounting survive the motion to dismiss, but are limited to conduct that occurred within the six year statute of limitations period.

Accordingly, it is hereby

ORDERED that the cross-motion of plaintiffs New York Studios, Inc. and Eponymous Associates, LLC for leave to file an amended complaint is granted; and

ORDERED that the motion of defendants Steiner Digital Studios, LLC, Douglas Steiner, and David Steiner to dismiss the amended complaint is granted in part, to the extent that the second through eleventh and thirteenth through seventeenth causes of action are hereby severed and dismissed, and it is further

ORDERED that the action shall continue as to the first and twelfth causes of action, and it is further

ORDERED that defendants shall serve an answer to the amended Complaint within 20 days of entry of this order with notice of entry, and it is further

ORDERED that the parties shall contact the Clerk of Part 53 to calendar this action for a preliminary conference following the service of the answer.

ORDERED that the parties shall contact the Clerk of Part 53 to calendar this action for a preliminary conference following the service of the answer.

DATED: April 15, 2016

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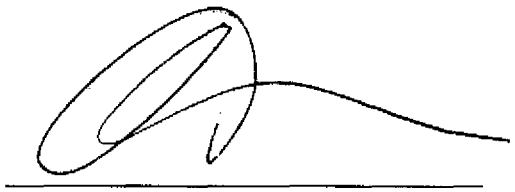

J.S.C.

HON. CHARLES E. RAMOS