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<b>Melcher v Greenberg Traurig LLP</b>
2014 NY Slip Op 51296(U)
Decided on August 19, 2014
Supreme Court, New York County
Sherwood, J.
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Decided on August 19, 2014

Supreme Court, New York County

<p><b>James L. Melcher, Plaintiff,</b></p> <p><b>against</b></p> <p><b>Greenberg Traurig LLP and LESLIE D. CORWIN, Defendants.</b></p>
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650188/2007

O. Peter Sherwood, J.

Plaintiff Melcher initiated this action for attorney misconduct pursuant to the New York Judiciary Law §487 in 2007. Now, Melcher, 74, moves to substitute a limited liability company, LJBD Recovery LLC (LJBD) for himself as plaintiff in this action pursuant to CPLR 1018. Plaintiff has assigned his interests in this litigation to LJBD, which he created, and of which he is sole owner and manager. Plaintiff who states that "I am currently in good health", claims the substitution will avoid delay in prosecuting the case in the event of his death, and argues that as such an assignment is not prohibited pursuant to General Obligations Law § 13-101, it is permissible. Defendants argue that the proposed assignment is unnecessary and prejudicial, as Melcher, as a non-party, would be less accessible for discovery, and because the assignment could act to insulate Melcher from decisions of the court. Defendants also argue that the substitution "contravenes clear and long-settled public policy against champerty" (Opp., NYSECF Doc. No. 155 at 4). Defendants do not

argue that the substitution would violate the champerty statutes codified in Judiciary Law §§ 488–489. Whether or not to allow a substitution pursuant to CPLR 1018 is within the discretion of this court. ([NationsCredit Home Equity Services v Anderson, 16 AD3d 563](#) [2nd Div 2005]). In the [\*2] event of the assignment of an interest in litigation, pursuant to CPLR 1018, "the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action" ([GRP Loan, LLC v Taylor, 95 AD3d 1172, 1174](#) [2nd Dept 2012]).

The doctrine of champerty developed "to prevent or curtail the commercialization of or trading in litigation" (*Bluebird Partners v. First Fid. Bank*, 94 NY2d 726, 729 [2000]). The champerty statutes (Judiciary Law §§ 488–489) are intended to prevent the "strife, discord and harassment" that would be likely to ensue "from permitting attorneys and corporations to purchase claims for the purpose of bringing actions thereon" (*Fairchild Hiller Corp. v. McDonnell Douglas Corp.*, 28 NY2d 325, 329 [1971]). "However, in New York, the prohibition of champerty has always been limited in scope and largely directed toward preventing attorneys from filing suit merely as a vehicle for obtaining costs" ([Trust for the Certificate Holders of the Merrill Lynch Mortgage Investors, Inc. v Love Funding Corp.](#), 13 NY3d 190, 199 [2009] [internal quotations omitted]). When an assignment was made after litigation had already begun, courts have allowed a transfer of claims (*see Rosenkrantz v Berlin*, 65 Misc 2d 320 [Sup Ct, Nassau County 1971]), but prohibited the addition of new claims (*see Erlich v Rebco Ins. Exchange, Ltd.*, 225 AD2d 75, 77 [1st Dept 1996]). The proposed substitution, if allowed, would prejudice the defendants by shifting the risks of litigation to a shell entity, making plaintiff less accessible to discovery, and allowing Melcher, a non-party, to continue to direct the litigation through his alter ego and to collect and retain all of the relevant information and documents. The plaintiff's rationale for the substitution, to allow the litigation to continue seamlessly in the event of his death, ignores that he is the sole owner and manager of the proposed substitute plaintiff. Plaintiff provides no rationale for how litigation would continue more smoothly with the sole owner and manager of LJBD deceased, than it would with an administrator appointed for a deceased plaintiff (*see Moore v Washington*, 34 AD2d 903, 904 [1st Dept 1970]). Accordingly, the court declines the invitation to allow the substitution. Plaintiff's Motion to Substitute LJBD Recovery LLC is DENIED.

Dated: August 19, 2014

O. PETER SHERWOOD, J.S.C.

