

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FLOODBREAK, LLC,
Plaintiff,

v.

ART METAL INDUSTRIES, LLC,
and KEVIN F. BIEBEL,
Defendants.

No. 3:18-cv-503 (SRU)

CONFERENCE MEMORANDUM AND ORDER

On January 3, 2022, I held a status conference on the record with Monte Frank, Edmond Bannon, and Michael Autuoro, attorneys for plaintiff FloodBreak LLC; Douglas Skalka and Sarah Burger, attorneys for defendant Kevin Biebel; and Tom Moyher, attorney for interested non-party Diego Trust, LLC. The purpose of the call was to address the impact of the omicron surge of the COVID-19 pandemic on the forthcoming trial, as well as plaintiff FloodBreak's pending motion to amend its complaint.

First, I advised the parties' of my intent to continue the trial, which is currently scheduled for jury selection on Friday, January 7, 2022 and to begin on Tuesday, January 11, 2022, due to the risk to public safety of spiking COVID-19 positivity rates in Connecticut. Pursuant to the Court's COVID-19 General Order re: Jury Selections and Trials, the trial is postponed until further order of the Court. *See D. Conn. Gen. Order re: Jury Selections & Trials, available at https://ctd.uscourts.gov/sites/default/files/22-1_COVID-19-Order-Re-Jury-Selections-Trials.pdf.* I hold in abeyance all pretrial deadlines associated with the joint trial memorandum.

Second, I addressed FloodBreak's pending motion to amend its complaint and join non-party Diego Trust, LLC as a party defendant. Doc. No. 339. I articulated that I was open to

adding Diego as a party but looking for a substantive legal basis for its joinder. I gave both sides an opportunity to be heard. Attorneys Frank and Bannon indicated that the amended complaint alleged direct infringement by Biebel and Diego as alter egos of AMI. Further, they argued that the allegations regarding AMI's undercapitalization and fraudulent transfers cured deficiencies identified in my earlier denial of Defendants' motion for summary judgment with respect to Biebel's alter ego liability. *See* Docs. No. 142 (motion), 236 (order). Attorney Burger countered that alter-ego liability is not a separate cause of action standing alone, and she disputed FoodBreak's factual allegations. I granted the parties' request for full briefing on the motion to amend, setting the default reply and response deadlines set forth by the Local Rules.

Third, I explained that I intended to defer my ruling on FloodBreak's motion to modify the prejudgment remedy until after I rule on its motion to amend the complaint. As set forth in my order to show cause, my ability to grant FloodBreak's sought modification is contingent on Diego's participation as a party defendant. Doc. No. 334. If I ultimately rule to join Diego as a party, I will not immediately grant the prejudgment remedy modification. Rather, I will first provide Diego due process.

Finally, FloodBreak reminded me of its pending motion for default judgment. I indicated that I would keep it in mind.

So ordered.

Dated at Bridgeport, Connecticut, this 5th day of January 2022.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge