

JOHN E. LEVESQUE,)	
)	
Plaintiff,)	
v.)	
)	ORDER GRANTING PLAINTIFF’S
ROBERT N. STEVENS, JR., and DAVE’S)	MOTION TO AMEND COMPLAINT and
WORLD, INC.,)	DENYING DAVE’S WORLD’S MOTION
)	TO DISMISS COUNTS VII and IX
Defendants.)	
)	

On or about February 10, 2020, Plaintiff John E. Levesque (“Levesque”) brought a multi-count Complaint against the Defendants. Two of the many counts were pled against Defendant Dave’s World, Inc. (“Dave’s World”): Count VII, Tortious Interference; and Count IX, Promissory Estoppel. In response, Dave’s World brought a Motion to Dismiss both counts, pursuant to M.R. Civ. P. 12(b)(1) and 12(b)(6). Dave’s World argued that the claims in both counts belong to R&J Electric, LLC (“R&J”), a dissolved Maine limited liability company, and thus Levesque lacked standing to bring the claims. Dave’s World also argued that the two counts failed to state a claim upon which relief could be granted.

In response to Dave’s World’s Motion to Dismiss, Levesque filed a Motion to Amend Complaint, attaching a proposed First Amended Complaint. The First Amended Complaint alleges that R&J assigned its claims to Levesque, thereby addressing the standing issue. The First Amended Complaint also identifies the alleged fraudulent misrepresentation upon which the tortious interference claim is based, and substitutes in its entirety a breach of contract claim for the promissory estoppel claim. Levesque argues the First Amended Complaint thus rectifies all of the deficiencies cited in the Motion to Dismiss.

Dave's World opposes Levesque's Motion to Amend Complaint on the grounds that the Motion is futile. Specifically, Dave's World asserts that the assignment allegation is implausible, based on the First Amended Complaint's inconsistencies regarding R&J's status, wind up and dissolution. However, on a Motion to Dismiss, it is not for the Court to assess the plausibility of the allegation that R&J assigned its claims to Levesque. *See Nadeau v. Frydrych*, 2014 ME 154, ¶ 8, 108 A.3d 1254 (on a Motion to Dismiss, the Court does not assess credibility or provability of allegations contained in the Complaint). Dave's World does not otherwise address the manner in which the First Amended Complaint addresses the failure to state a claim issues, or the new breach of contract claim. Accordingly, Levesque's Motion to Amend Complaint is Granted, and Dave's World's Motion to Dismiss is Denied.

The Clerk is instructed to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

So Ordered.

Dated: September 21, 2020

_____/s_____
Michael A. Duddy
Judge, Business and Consumer Court

JOHN E. LEVESQUE,

v.

ROBERT N. STEVENS, JR.,
and DAVE'S WORLD, INC.,

Party Name:

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