

**Plasencia v Shoprite Supermarkets, Inc.**

2012 NY Slip Op 31978(U)

July 25, 2012

Supreme Court, Richmond County

Docket Number: 102146/11

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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DAISY PLASENCIA and ALBERTO PLASENCIA,

DCM PART 6

Plaintiffs,

Present:

- against -

HON. PHILIP G. MINARDO

DECISION AND ORDER

SHOPRITE SUPERMARKETS, INC., SHOPRITE  
AND SHOPRITE AT FOREST & RICHMOND AVENUES,

Index No. 102146/11

Defendants.

Motion Nos. 982-001  
1039-002  
1372-003

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The following papers numbered 1 to 9 were fully submitted on  
the 31<sup>st</sup> day of May, 2012.

Papers  
Numbered

Notice of Motion for Summary Judgment by Defendant  
Shoprite Supermarkets, Inc., with Supporting  
Papers, Exhibits and Affidavit  
(dated March 26, 2012).....1

Notice of Motion by Plaintiffs to Extend Time to  
Serve, with Supporting Papers  
and Exhibits  
(dated April 3, 2012).....2

Affirmation in Opposition by Plaintiffs, with Exhibits  
(dated April 12, 2012).....3

Affirmation in Opposition by Defendant Shoprite  
Supermarkets, Inc., with Exhibits  
(dated April 13, 2012).....4

Reply Affirmation by Defendant Shoprite Supermarkets Inc.  
(dated April 25, 2012).....5

Cross Motion by Plaintiffs to Amend the Summons and  
Complaint by Naming Additional Parties  
(dated May 3, 2012).....6

Papers  
Numbered

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Reply Affirmation by Plaintiffs (dated May 3, 2012).....	7
Affirmation in Opposition by Defendant Shoprite Supermarkets, Inc. (dated May 24, 2012).....	8
Reply Affirmation by Plaintiffs, with Exhibit (dated May 29, 2012).....	9

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Upon the foregoing papers, the motion (No. 982) by Shoprite Supermarkets Inc. for, *inter alia*, dismissal of the complaint as against it pursuant to CPLR 3211(a)(7) is denied with leave to renew; plaintiffs' cross motions (Nos. 1039 and 1372, respectively) for (1) an order extending the time to serve the proper parties and (2) permission to file an amended summons and complaint are granted as a matter of discretion in the interest of justice, except as to that branch thereof as seeks to preclude defendants' assertion of affirmative defenses, if any, which is denied.

In this personal injury action based upon a slip-and-fall alleged to have occurred at the Shoprite Supermarket located at 985 Richmond Avenue on Staten Island, defendant Shoprite Supermarket Inc. moves, *e.g.*, for dismissal of the complaint pursuant to CPLR 3211(a)(7) based on an affidavit by David Figurelli, a principal of Shoprite Supermarkets Inc., in which he avers that this defendant is a wholly owned subsidiary of Wakefern Food Corp. and did not own, operate, maintain or otherwise have any interest in the subject premises. According to this single piece of evidence, the

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premises where the incident is alleged to have occurred is an independently owned store merely operated under the trade name "Shoprite". In opposition, plaintiffs have submitted two Exhibits (see Plaintiffs' Affirmation in Opposition, Exhs "B" and "C") which, when viewed together in the light most favorable to them, can be deemed to raise a triable issue of fact concerning the moving defendant's ownership and/or control of the premises in question. In any event, since the details of defendants' relationship *inter se* presently lies exclusively within their knowledge, the motion is denied with leave to renew following the completion of discovery (CPLR 3211[d], see CPLR 3212[f]; Castillo v County of Suffolk, 307 AD2d 305).

With regard to plaintiffs' cross motions, this Court is mindful of the fact that plaintiffs' counsel could have exercised greater diligence in attempting to identify and serve all of the proper parties. Moreover, it is incontrovertible that plaintiffs' motion for an extension of the time within which to make service upon these parties has been less than prompt. Nevertheless, there are factors in this case, such as the extent of the injuries alleged and the multiple surgeries claimed to be necessary for their remediation, which support an extension in the interest of justice (see Sutter v Reyes, 60 AD3d 448). Moreover, the opposing defendant, Shoprite Supermarkets, Inc., has failed to demonstrate

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that it would be prejudiced if the extension was granted (*id.*). In this regard, said defendant has failed to demonstrate any manner in which plaintiffs' delay in either regard has resulted in the loss of some special right, caused a prejudicial change in its position, or required it to incur significant additional expense (*id.* at 449; see Murray v City of New York, 51 AD3d 502, 503). To the contrary, the moving defendant disclaims any interest in the subject premises which, if true, would absolve it of any liability to plaintiffs. Neither has this defendant demonstrated prejudice or other infirmity respecting plaintiffs' request for leave to serve an amended summons and complaint (see CPLR 3025[b]). However, so much of plaintiffs' cross motions as seek to preclude defendants from raising affirmative defenses in their answers to the amended complaint must be denied (see CPLR 3025[b], [d]).

Accordingly, it is

**ORDERED** that the motion, *inter alia*, to dismiss the complaint against defendant Shoprite Supermarkets, Inc. is denied with leave to renew following the completion of discovery; and it is further

**ORDERED** that plaintiffs' motion for leave to serve an amended summons and complaint is granted; and it is further

**ORDERED** that plaintiffs' further motion for an extension of the time within which make service is granted; and it is further

**ORDERED** that plaintiffs' time to make service of their amended summons and complaint is extended for 20 days after the service

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upon them of a copy of this Decision and Order, with notice of entry; and it is further

**ORDERED** that defendants' time to answer is extended until 20 days after such service upon each; and it is further

**ORDERED** that the balance of the relief requested by plaintiffs is denied.

E N T E R,

/s/ Philip G. Minardo  
J.S.C.

Dated: July 25, 2012  
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