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| DeLamora v Liberty Tr. Corp. |
| 2019 NY Slip Op 31744(U) |
| June 21, 2019 |
| Supreme Court, New York County |
| Docket Number: 155570/2018 |
| Judge: Adam Silvera |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 155570/2018

LORENA DELAMORA,

MOTION DATE 12/21/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

LIBERTY TRANSIT CORP. A/K/A LIBERTY LINES TRANSIT,
GOLDEN EYE CLAIMS

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, it is ORDERED that plaintiff's motion to amend the Answer and to dismiss plaintiff's complaint is granted.

This action stems from an accident in which plaintiff Lorena Delamora allegedly fell and was seriously injured while exiting defendant Liberty Lines Corp. a/k/a Liberty Lines Transit's ("Liberty Lines") bus on June 16, 2015, on South Broadway in the City of Yonkers in Westchester County, State of New York.

Pursuant to CPLR § 3025(b), "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." Leave to amend pleadings is generally freely granted, absent prejudice and surprise (*See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]; *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 [1st Dep't 2006]). To find prejudice, there must be some indication that the defendant has been hindered in the preparation of his case or prevented from taking some measure in support of his position (*See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 [1st Dep't 2000]).

Here, defendant moves for an order granting defendants leave to amend their answer to additionally assert the affirmative defense that the statute of limitation bars plaintiff's action. Defendant convincingly argues that plaintiff has not been prejudiced or hindered in preparation of this case. Defendant notes that plaintiff's attorney has been directly involved with plaintiff's claim since June 29, 2015, is associated with the dates of the events involving this litigation, and thus cannot be surprised by an assertion of a statute of limitations defense by defendants. Defendants' assertion is based upon facts which have been exchanged from the outset of this litigation. Defendants were not required to raise the statute of limitations as an affirmative defense and are not estopped from seeking dismissal of the Complaint on this ground (*Singleton v City of New York*, 55 AD3d 447 [1st Dep't 2008] [internal citations omitted]).

Defendants aver that pursuant to Local Laws, 1969, No. 8 of the County of Westchester, and Local Laws, 1970, No. 11 of the County of Westchester, a duty is imposed on the County to operate the County's transit system and as such indemnify defendant Liberty Lines and its drivers for any damages recovered against it under General Municipal Law ("GML") § 50-b. Thus, statutory requirements, including notice of claim and limitation provisions of the GML apply to actions filed against the operators of bus systems in Westchester County. GML § 50-I (1) states that an action against a municipality "shall be commenced within one year and ninety days after the happening of the event upon which the claim is based" (*Pierson v City of New York*, 56 NY2d 950, 954 [1982]).

Here, plaintiff filed its summons and complaint on June 13, 2018, nearly two years after the allotted time for plaintiff's claim which expired, pursuant to GML § 50-I (1), on September 16, 2016. The Court points to the Court of Appeals decision in *Pierson* which stated that "to permit a court to grant an extension after the Statute of Limitations has run would, in practical

effect, allow the court to grant an extension which exceeds the Statute of Limitations, thus rendering meaningless that portion of [the GML]" (*Pierson*, 56 NY2d at 955). The Court agrees with the Court of Appeals in that "[w]ith the expiration of the period of limitations come the bar to any claim" (*id.*).

Lastly, defendants aver that defendant Golden Eye Claims is not a proper party to this action. Golden Eye Claims is the official claims administrator for Liberty Lines and Westchester County. Defendants refer to plaintiff's Complaint and correctly note that said Complaint is devoid of any allegations against defendant Golden Eye. Pursuant to CPLR 3013 "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." Here, plaintiff has not asserted any transactions or occurrences carried out by defendant Golden Eye Claims which could be considered negligent and a substantial factor in causing plaintiff's alleged accident. Thus, the Court finds that plaintiff improperly named Goldene Eye Claims as a defendant, and has failed to sufficiently plead a cause of action against defendant Golden Eye.

In opposition plaintiff asserts that defendant Liberty Lines is not a municipal defendant and/or has not represented itself as a municipal authority throughout this litigation. Plaintiff points to defendants original answer which did not note that Liberty Lines was a municipal authority, the statement on Liberty Lines website which refers to Liberty Lines as a family business, the incident report of Liberty Lines which does not state it is a municipal entity, and a January 27, 2019 letter from defendant Golden Eye in which it does not state anywhere that Liberty Lines is a municipal entity (Aff in Op, Exh A & B). Thus, plaintiff claims that to amend defendants Answer now would prejudice plaintiff and warrants denial of the motion.

In reply, defendants disprove plaintiff's assertion that Liberty Lines is not a municipal entity. In support of their assertion that Liberty Lines is a municipal entity, defendants note that Liberty Lines website has a page dedicated to Bee-Line Transit system which links to the Westchestergov.com website. Further, Liberty Lines LinkedIn page notes that Liberty Lines bus service is provided in conjunction with Westchester County Department of Transportation. A simple internet search in the process of discovery would put plaintiff on notice that defendant Liberty Lines is in fact a municipal entity.

Accordingly, it is

ORDERED that defendants motion for an order granting defendants leave to amend their answer to additionally assert the affirmative defense that the statute of limitation bars plaintiff's action is granted; and it is further

ORDERED that defendants motion for an order to dismiss plaintiff's complaint as to all defendants is granted; and it is further

ORDERED that this action is dismissed, and the Clerk is directed to enter judgment in favor of defendants dismissing this action, together with costs and disbursements to defendants, as taxed by the Clerk upon presentation of a bill of costs; and it is further

ORDERED that within 30 days, defendants shall serve a copy of this Decision/Order upon plaintiff with notice of entry.

This constitutes the Decision/Order of the Court.

6/21/2019
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE