

<b>Eumana v Gabbiano Luggage, Inc.</b>
2020 NY Slip Op 30356(U)
February 3, 2020
Supreme Court, New York County
Docket Number: 160321/2016
Judge: Paul A. Goetz
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. PAUL A. GOETZ PART IAS MOTION 47EFM**

*Justice*

-----X

EVA EUMANA,

Plaintiff,

- v -

GABBIANO LUGGAGE, INC., JYHDAR CHEN

Defendant.

-----X

INDEX NO. 160321/2016

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

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

In this personal injury action arising from a motor vehicle accident which occurred on October 5, 2016, plaintiff moves pursuant to CPLR 3025 to amend the complaint to add numerous additional corporate defendants which plaintiff alleges were thoroughly integrated, centrally operated, managed and maintained by the proposed new individual defendants she also seeks to add. Plaintiff acknowledges that the statute of limitations has expired on her claims against these proposed defendants but argues that the proposed amended pleading "relates back" to the original complaint and is thus timely.

In order for claims against one defendant to relate back to claims asserted against another defendant, plaintiff must show that "(1) both claims arose out of the same conduct, transaction or occurrence, (2) the new party is united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties,

the action would have been brought against [them] as well.” *Buran v. Coupal*, 87 N.Y.2d 173, 178 (1995) (internal quotations and citations omitted).

Here, the first factor has been met as plaintiff alleges that the proposed defendants are also liable for the motor vehicle accident. With respect to the second factor, plaintiff argues that the proposed corporate defendants are liable for the acts of defendant Gabbiano Luggage, Inc. because they were being operated as a joint enterprise to profit from the sale of luggage and were maintained as a single unit, thereby making all of the corporate defendants “united in interest.” In support, plaintiff submits the following evidence: (1) invoices following the date of the accident, which were recently produced by defendants, showing that “CY Luggage” maintained the vehicle after the date of the accident (Affirmation of Alexander P. Kelly dated October 31, 2019, Exh. H); (2) screenshots from the website of CY Luggage showing that it is still operating its business, listing defendant Gabbiano Luggage Inc. as an affiliate company, and listing the same address in New York as Gabbiano Luggage (Kelly. Aff., Exh. D); (3) the deposition testimony of Ching Wen Lin, who was deposed on behalf of defendant Gabbiano Luggage, Inc., in which Ms. Lin states that she is a member of both companies (Kelly Aff., Exh. C).

This is sufficient to show that proposed corporate defendants C.Y. Luggage Inc. and C.Y. International Group, Inc. are “united in interest” with defendant Gabbiano Luggage, Inc. *See Ramirez v. Elias-Tejada*, 168 A.D.3d 401, 403 (1<sup>st</sup> Dep’t 2019); *see also Cuello v. Patel*, 257 A.D.2d 499, 500 (1<sup>st</sup> Dep’t 1999) (“As a general matter, unity of interest will be found where there is a relationship between the parties giving rise to the vicarious liability of one for the conduct of the other.”). However, with respect to the remaining proposed defendants, plaintiff fails to submit any evidence to show that these defendants are “united in interest” with defendant Gabbiano and instead merely states its allegations are made upon information and belief. Finally,

the third factor of the analysis has been satisfied as defendants C.Y. Luggage Inc. and C.Y. International Group, Inc. should have been on notice of the lawsuit since they appear to operate from the same office in New York, share assets and have some of the same members, and plaintiff sufficiently showed that she would have sued these additional entities but for the confusion created by the various corporate forms. Accordingly, it is

ORDERED that plaintiff's motion is granted to the extent that plaintiff seeks to amend the complaint to add C.Y. Luggage Inc. and C.Y. International Group, Inc. as defendants in this action, and is otherwise denied; and it is further

ORDERED that plaintiff shall file an amended complaint, in conformance with the terms of this order, within ten days of entry of this order; and it is further

ORDERED that upon such filing, the amended complaint shall be deemed served upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and the amended complaint shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 20 days after such filing; and it is further

ORDERED that the action shall bear the following caption:

EVA EUMANA,

Plaintiff,

-against-

GABBIANO LUGGAGE, INC., JYHDAR CHEN, C.Y. LUGGAGE INC., and

C.Y. INTERNATIONAL GROUP, INC.,

Defendants.

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (ww.nycourts.gov/supctmanh)); and it is further

ORDERED that the parties shall appear for a conference on February 27, 2020 at 9:30 a.m.

2/3/20  
DATE

  
PAUL A. GOETZ, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE