

Quinche v Borden Review LLC
2020 NY Slip Op 33147(U)
September 24, 2020
Supreme Court, Kings County
Docket Number: 516668/2019
Judge: Debra Silber
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

X

LUIS WILSON QUINCHE,

Plaintiff,

DECISION/ORDER

-against-

Index No. 516668/2019

Motion Seq. No. 1

Date Submitted: 9/17/2020

THE BORDEN REVIEW LLC,

Defendant.

X

THE BORDEN REVIEW LLC,

Third-Party Plaintiff,

-against-

EPIGRAPH, LLC,

Third-Party Defendant.

X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion to amend his pleadings

Papers	NYSCEF Doc.
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>16-20</u>
Affirmation in Opposition and Exhibits Annexed.....	<u> </u>
Reply Affirmation.....	<u> </u>

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

In this personal injury action, plaintiff moves in MS #1 to amend his complaint to add, as a direct defendant, third-party defendant Epigraph, LLC, pursuant to CPLR §§ 3025, 1001, and 1002. Epigraph LLC has appeared in this matter and has answered the third-party complaint. There is no opposition to this motion. The motion is granted.

Plaintiff filed a summons and complaint on July 30, 2019 against defendant for

his injuries in a work-related accident. Defendant answered on August 30, 2019 (NYSCEF # 2). On October 2, 2019, defendant filed a third-party complaint against Epigraph, LLC (NYSCEF # 6). The court notes that on March 22, 2020, the Chief Administrative Judge of the Courts issued Administrative Order (AO) 78/20, which directed that, due to the COVID-19 pandemic, no papers were to be accepted for filing by the county and court clerks, except for essential matters. The Chief Administrative Judge subsequently issued an Administrative Order which reopened the NYSCEF system in New York City to existing non-essential matters on May 4, 2020. On May 13, 2020, Epigraph answered (NYSCEF # 15). Plaintiff filed the instant motion on July 20, 2020 (NYSCEF # 16).

Plaintiff's proposed amended complaint (NYSCEF #20) simply applies the same causes of action asserted against defendant to the third-party defendant, by changing the caption to add Epigraph, LLC and to change the word "defendant" to "defendants" in the complaint. There is no red-lined copy provided, but it does not seem that there are any other changes (compare NYSCEF # 1 with NYSCEF # 20).

A motion pursuant to CPLR 3025(b) to amend or supplement the pleading is typically "freely given upon such terms as may be just, such as including a grant of costs or a continuance, and shall be "accompanied by the proposed amended or supplemented pleading clearly showing the changes or additions." Leave to amend is often granted in the absence of prejudice or unfair surprise resulting from delay, unless the proposed amendment is plainly lacking in merit (see *Davis v South Nassau Communities Hospital*, 26 NY3d 563, 580, 26 N.Y.S.3d 231, 46 N.E.3d 614 [2015]).

As there is no opposition to the motion, and no indication of any possible prejudice or surprise, the motion is granted.

Accordingly, it is ORDERED that the plaintiff's motion to amend his complaint to add Epigraph, LLC as a direct defendant pursuant to CPLR 3025 is granted; it is further ORDERED that plaintiff submit via NYSCEF a Supplement Summons and Amended Complaint that reflects this Decision and Order within ten (10) days, and that such revised amended complaint be deemed served upon Epigraph, LLC at that time; it is further

ORDERED that the clerk of the court is directed to amend the caption as follows:

_____X

LUIS WILSON QUINCHE,
Plaintiff,
-against-

THE BORDEN REVIEW LLC and EPIGRAPH, LLC,
Defendants.
 _____X

THE BORDEN REVIEW LLC,
Third-Party Plaintiff,
-against-

EPIGRAPH, LLC,
Third-Party Defendant.
 _____X

It is further, ORDERED that Epigraph, LLC shall serve an answer or otherwise move within twenty (20) days after the Supplement Summons and Amended Complaint is uploaded to NYSCEF; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon the other parties within ten (10) days.

This constitutes the Decision and Order of the court.

Dated: September 24, 2020

ENTER:



Hon. Debra Silber, J.S.C.