

Maslough v Key Food Stores Co-op., Inc.
2020 NY Slip Op 34437(U)
October 2, 2020
Supreme Court, Queens County
Docket Number: 700776/2019
Judge: Maurice E. Muir
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Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

FILED

**10/5/2020
10:42 AM**

Present: HONORABLE MAURICE E. MUIR
Justice

**COUNTY CLERK
QUEENS COUNTY**

MONA MASLOUGH,

IAS Part - 42

Plaintiff,

Index No.: 700776/2019

-against-

Motion Date: 10/1/20

KEY FOOD STORES CO-OPERATIVE, INC., d/b/a
FOOD UNIVERSE MARKETPLACE, KEY FOOD
MARKET, INC. d/b/a FOOD UNIVERSE
MARKETPLACE and ALLIED JACKSON
HEIGHTS, LLC,

Cal. No. 5

Motion Seq. No. 2

Defendants.

The following electronically filed documents read on this motion by Mona Maslough (“Ms. Maslough” or “plaintiff”) seeking an order for the following relief: a) amending the Summons and Complaint; b) allowing the Supplemental Summons and Amended Complaint to be served on the attorneys for the answering defendants; c) compelling the defendants to interpose an answer to the Supplemental Summons and Amended Complaint within 30 days; and d) compelling defendants to provide a response to outstanding post deposition discovery demands, dated September 30, 2019, pursuant to CPLR § 3042.

Notice of Motion - Affirmation- Exhibits-Service..... Papers
Numbered
EF 35 - 40

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover for damages for personal injuries allegedly sustained by the plaintiff. Specifically, the plaintiff alleges that on March 20, 2018, she sustained serious injuries on the sidewalk/curb in front of the premises located 75-55 31st Avenue, in the County of Queens, city and state of New York (“subject premises”). As a result, on January 14, 2019, the plaintiff commenced the instant action against Key Food Stores Co-operative, Inc. d/b/a Food Universe Marketplace (“Key Food”), Key Food Market, Inc. d/b/a Food Universe Marketplace

("Food Universe") and Allied Jackson Heights, LLC ("Allied") (collectively, the "defendants"). On or about April 5, 2019, issue was joined wherein, Key Foods interposed an Answer; and on April 22, 2020 Allied interposed an answer. Furthermore, October 18, 2019, the court issued a preliminary conference order ("PCO"); and a compliance conference was scheduled for March 16, 2020. However, due to COVID-19, the court has to reschedule said compliance conference. Notwithstanding the same, on July 20, 2020, the plaintiff wrote a letter to defense counsel, which stated, in relevant part, the following:

Please be advised that the authorization to Mount Sinai Hospital of Queens, 25-10 30th Avenue, Astoria, New York 11102 must be corrected, as it has both a limiting date and "unrestricted records" checked off. Please provide a corrected, unrestricted as to date, HIPAA-compliant authorization for Mount Sinai Hospital of Queens.

Further, and as per our e-mail on July 15, 2020, the authorization you provided for Emblem Health was rejected. Please provide an unrestricted, HIPAA-compliant authorization.

Now, plaintiff seeks to add Key Foods CS 3, LLC ("Key Foods CS") and Muss Development, LLC ("Muss Development") as co-defendants in the instant action and to compel discovery, pursuant to CPLR § 3042. The plaintiff argues that during discovery, it learned that Key Food CS 3 is the tenant and Muss Development has an ownership interest in the subject premises. As such, plaintiff seeks leave to amend the caption of the Summons and Complaint and the body of the Complaint to add them as party defendants in this action.

It is well settled law that in the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted "unless the proposed amendment is palpably insufficient or patently devoid of merit" (CPLR § 3025(b); *Myung Hwa Jang v. Mang*, 164 AD3d 803 [2d Dept 2018]; *Capezzano Constr. Corp. v. Weinberger*, 150 AD3d 811 [2d Dept 2017]; *Jablonski v. Jakaitis*, 85 AD3d 969 [2d Dept 2011]; *Rhoda v. Avery*, 155 AD3d 737, 738 [2d Dept 2017].) Moreover, pursuant to CPLR § 1003, "[p]arties may be added at any stage of the action by leave of court" (*see Emigrant Savings Bank v. Walters*, 155 AD3d 829 [2d Dept 2017]; *Jaramillo v. Asconcio*, 151 AD3d 947 [2d Dept 2017]). Here none of the parties have demonstrated that they will be either prejudiced or surprised if the plaintiff is permitted to amend the instant summons and complaint and to add Key Foods CS 3 and Muss Development in the instant action. (*see CPLR § 1003; Public Administrator of Kings County v. McBride*, 15 AD3d 558 [2d Dept 2005]).

Furthermore, it is well settled that a trial court is vested with broad discretion to supervise the discovery process, and its determination in that respect will not be disturbed in the absence of demonstrated abuse (*United Airlines v. Ogden New York Servs.*, 305 AD2d 239 [1st Dept 2003]; *Cho v. 401-403 57th St. Realty Corp.*, 300 AD2d 174 [1st Dept 2002]; *Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker*, 1 AD3d 223 [1st Dept 2003]). Furthermore, the Appellate Division, Second Department, has determined that a parties' failure to provide the court with the required affirmation of a good faith effort to resolve the discovery dispute could by itself support

denial of its motion (*Bronstein v. Charm City Housing, LLC*, 175 AD3d 454 [2d Dept 2019]; *Roye v. Gelberg*, 172 AD3d 1260 [2d Dept 2019]; *Cashbamba v. 1056 Bedford LLC*, 172 AD3d 415 [1st Dept 2019]). Here, the letter submitted by the movant on its motion relating to disclosure is insufficient to show that counsel conferred with the defendant’s attorney in a good faith effort to resolve those issues raised by the motion. The affirmation required by the court rule must indicate “the time, place and nature of the consultation and the issues discussed and any resolution, or shall indicate good cause why no such conferral with counsel for opposing parties was held. (see 22 NYCRR § 202.7[c].) Upon the failure to satisfy this requirement, denial of the motion is warranted. (*Bronstein v. Charm City Housing, LLC*, 175 AD3d 454 [2d Dept 2019]; *Roye v. Gelberg*, 172 AD3d 1260 [2d Dept 2019]; *Cashbamba v. 1056 Bedford LLC*, 172 AD3d 415 [1st Dept 2019]; *Murphy v. County of Suffolk*, 115 AD3d 820 [2d Dept 2014]; *Deutsch v. Grunwald*, 110 AD3d 949 [2d Dept 2013]; *Ponce v. Miao Ling Liu*, 123 AD3d 787 [2d Dept 2014]).

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for leave to serve a supplemental summons and amended complaint, pursuant to CPLR § 3025, and to add defendants, pursuant to CPLR § 1003, is granted; and it is further,

ORDERED that the Clerk of the Court is directed to amend the caption of the case as of the date of this Decision and Order to read as follows:

MONA MASLOUGH,

Plaintiff,

Index No.: 700776/2019

-against-

KEY FOOD STORES CO-OPERATIVE, INC., d/b/a
FOOD UNIVERSE MARKETPLACE, KEY FOOD
MARKET, INC. d/b/a FOOD UNIVERSE
MARKETPLACE, ALLIED JACKSON
HEIGHTS, LLC, KEY FOOD CS 3, LLC and
MUSS DEVELOPMENT, LLC,

Defendants.

; and it is further.

ORDERED that the plaintiff shall file with the clerk of this court with the supplemental summons and amended complaint in the form annexed to the plaintiff’s motion as Exhibit “C”, on or before November 30, 2020; and it is further,

ORDERED that plaintiff shall serve the supplemental summons and amended complaint upon the attorneys for the answering defendants; and it is further,

ORDERED that plaintiff shall serve the supplemental summons and amended complaint upon Key Foods CS 3, LLC and Muss Development, LLC, pursuant to CPLR; and it is further, ORDERED that plaintiff motion pursuant to CPLR § 3042 is denied; and it is further, ORDERED that all other relief requested in the motion, which has not been specifically addressed above is denied; and it is further,

ORDERED that the plaintiff shall serve a copy of this Order with Notice of Entry on all parties on or before November 30, 2020.

The foregoing constitutes the Decision and Order of the court.

Date: October 2, 2020
Long Island City, NY


MAURICE E. MUIR, J.S.C.

FILED

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10:42 AM**

**COUNTY CLERK
QUEENS COUNTY**