

**14 So. Williamsport Holdings LLC v Cohen Fashion
Optical Store No. 281, LLC**

2021 NY Slip Op 32551(U)

December 1, 2021

Supreme Court, New York County

Docket Number: Index No. 652959/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. LOUIS NOCK</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>14 SO. WILLIAMSPORT HOLDINGS LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>COHEN FASHION OPTICAL STORE NO. 281, LLC,</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>PART 38M</p> <p>INDEX NO. <u>652959/2021</u></p> <p>MOTION DATE <u>07/15/2021, 09/07/2021</u></p> <p>MOTION SEQ. NO. <u>001 002</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17

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

Upon the foregoing documents, plaintiff's motions for summary judgment and for leave to file and serve an amended summons and complaint are consolidated for decision and the motion for summary judgment is denied and the motion to amend is granted, in accord with the following memorandum decision.

In this action for breach of a commercial lease agreement, plaintiff 14 So. Williamsport Holdings LLC ("Plaintiff") moves for summary judgment against defendant Cohen Fashion Optical Store No. 281, LLC ("Cohen Store") (motion sequence 001) and concurrently moves to amend the complaint to add a new defendant, Cohen Fashion Optical, LLC ("Cohen Parent"), the parent company of Cohen Store, and to add a cause of action for piercing the corporate veil (motion sequence 002). Turning first to the motion to amend, leave to amend a pleading "should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit" (*Y.A. v Conair Corp.*, 154 AD3d

611, 612 [2017]). The proposed amendment to add Cohen Store is not palpably insufficient where Plaintiff alleges, *inter alia*, that Cohen Parent failed to observe corporate formalities and paid rent under the Lease. Therefore, the motion to amend is granted.

Consequently, the motion for summary judgment is denied. “When an amended complaint has been served, it supersedes the original complaint and becomes the only complaint in the case” (*R & G Brenner Income Tax Consultants v Gilmartin*, 166 AD3d 685, 688 [2d Dept 2018]). As such, it is procedurally improper to grant summary judgment at this time because the original complaint is a nullity. Therefore, the motion for summary judgment is denied without prejudice, as decreed hereinbelow.

Accordingly, it is

ORDERED that the plaintiff’s motion for leave to amend the complaint (motion sequence 002) is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

-----X
14 SO. WILLIAMSPORT HOLDINGS LLC

Plaintiff,

- v -

COHEN FASHION OPTICAL STORE NO. 281, LLC
and COHEN FASHION OPTICAL, LLC,

Defendants.
-----X

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 (www.nycourts.gov/supctmanh)); and it is further

ORDERED that the motion for summary judgment (motion sequence 001) is denied without prejudice and Plaintiff has leave to file a second motion for summary judgment as permitted under the CPLR after service of the amended complaint is complete and issue is joined.

Louis L. Nock

<u>12/1/2021</u> DATE		<u>LOUIS NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<input checked="" 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