

<b>Medina v HS Floors Inc</b>
2022 NY Slip Op 32627(U)
August 3, 2022
Supreme Court, New York County
Docket Number: Index No. 158220/2020
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE BLUTH PART 14**

*Justice*

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CARLOS MEDINA, LUIS LOPEZ, LUIS SORIEL, individually and on behalf of all other persons similarly situated who were employed by HS FLOORS INC and NACHMEN FISCH and any other entities affiliated with, controlling or controlled, by HS FLOORS INC and NACHMEN FISCH individually,

Plaintiffs,

INDEX NO. 158220/2020

MOTION DATE N/A

MOTION SEQ. NO. 003

HS FLOORS INC, NACHMEN FISCH, and any other entities affiliated with, controlling, or controlled by HS FLOORS INC and NACHMEN FISCH individually,

Defendants.

**DECISION + ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 74, 75, 77

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

The motion by defendants for leave to serve an amended answer with a third-party complaint is granted in part.

**Background**

In this class action, plaintiffs contend that defendants employed the named plaintiffs and the putative class members to work at various job sites. Plaintiffs argue that defendants failed to properly pay them or ensure that they received their earned wages. Plaintiffs insist they were not paid the basic minimum wage or the applicable overtime pay when eligible.

Defendants move for leave to amend their answer to add a third-party complaint to implead X24 Flooring and Sabria Suriel. They claim that X24 was the entity that actually hired the plaintiffs, assigned the work locations, and supervised the employees that might form the

class of plaintiffs. They argue that Sabria Suriel is the principal of X24 and should be viewed as a joint employer of plaintiffs and class members.

In opposition, plaintiffs contend that defendants waited nearly two years into this litigation to seek leave to amend the answer to implead the proposed third-party defendants. They argue that the claims alleged by defendants (for indemnification and contribution) can be litigated in a separate trial and so the Court should deny the motion.

### **Discussion**

“On a motion for leave to amend, [movant] need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500, 901 NYS2d 522 (Mem) [1st Dept 2010] [citation omitted]). Plaintiffs do not contest the nature or sufficiency of the allegations asserted by defendants in their proposed amended pleading. Instead, they claim the delay in seeking this relief should compel the Court to deny the motion. The Court finds that plaintiffs did not meet their burden and grants defendants’ motion.

“While over two years had passed since defendant served its original answer, discovery was still ongoing” (*Bd. of Managers of Porter House Condominium v Delshah 60 Ninth LLC*, 206 AD3d 423, 423, 167 NYS3d 781(Mem) [1st Dept 2022] [granting leave to amend by defendant]). Mere delay is not sufficient to demonstrate prejudice that could compel this Court to deny the motion (*id.*). Under these circumstances, where the motion to amend was made less than two years after the filing of defendants’ initial answer, defendants’ delay is not a reason to deny the motion.

However, the Court declines to issue any stay concerning discovery in this case.

Accordingly, it is hereby

ORDERED that the motion by defendants is granted to the extent they sought leave to serve an amended answer and third-party complaint and denied to the extent they sought a stay of discovery; and it is further

ORDERED that the proposed amended answer and third-party complaint in the proposed form annexed to the moving papers as NYSCEF Doc. No. 68 shall be served, within thirty days after service of a copy of this order with notice of entry, upon the new parties in this action by personal service in accordance with the CPLR and upon the other parties who have already appeared via NYSCEF; and it is further

ORDERED that defendants shall e-file the proposed amended answer as a separate document (now it is only an exhibit) on NYSCEF within 7 days; and it is further

ORDERED that this action shall bear the following caption:

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 14**

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**CARLOS MEDINA, LUIS LOPEZ, LUIS SORIEL,**  
**individually and on behalf of all other persons similarly**  
**situated who were employed by HS FLOORS INC and**  
**NACHMEN FISCH and any other entities affiliated with,**  
**controlling or controlled, by HS FLOORS INC and**  
**NACHMEN FISCH individually,**

**Plaintiffs,**

**-against-**

**HS FLOORS INC, NACHMEN FISCH, and any other entities**  
**affiliated with, controlling, or controlled by HS FLOORS INC**  
**and NACHMEN FISCH individually,**  
**Defendants.**

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**HS FLOORS INC, NACHMEN FISCH, and any other entities**  
**affiliated with, controlling, or controlled by HS FLOORS INC**  
**and NACHMEN FISCH individually,**  
**Third-Party Plaintiffs**

**-against-**

**X24 FLOORING, INC. and SABRIA SURIEL,**

**Third-Party Defendants**


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and it is further

ORDERED that counsel for defendants shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and 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 a conference is already scheduled for November 10, 2022 at 10 a.m. (*see* NYSCEF Doc. No. 64 [directing that the parties e-file a discovery update by November 3, 2022 or the conference would be adjourned]).

<u>8/3/2022</u> DATE			 ARLENE BLUTH, J.S.C.
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"/> 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