

Ramos v City of New York
2022 NY Slip Op 33105(U)
September 12, 2022
Supreme Court, New York County
Docket Number: Index No. 160624/2020
Judge: Leslie A. Stroth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH

PART

52

Justice

-----X

LIZZETTE RAMOS,

Plaintiff,

- v -

CITY OF NEW YORK, NYC CORP.,

Defendant.

-----X

NYC CORP.

Plaintiff,

-against-

PEE DEE STEAK INC., YOUNG FISH 110 MARKET, INC.

Defendant.

-----X

INDEX NO. 160624/2020MOTION DATE 06/07/2022MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595006/2022

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for

AMEND CAPTION/PLEADINGS

This personal injury action arises from an alleged trip and fall accident on August 18, 2020, on a sidewalk in front of 2006 Third Avenue, New York, New York, which abuts property purportedly owned by defendant NYC Corp. (NYC). NYC commenced a third-party action against commercial tenants in its building.

Third-party defendant "Pee Dee Steak Inc." did not interpose an answer. Further investigation by NYC revealed the correct corporate name of "Pee Dee Steak Inc." is "2006 Pee Dee Steak Inc." NYC, as third-party plaintiff, now moves to amend the caption to correct the name of the first named third-party defendant from "Pee Dee Steak Inc" to "2006 Pee Dee Steak Inc."

DYC argues that no prejudice will be suffered by any party hereto if this request is granted, because no preliminary conference has yet been held, and no depositions have been conducted.

The Court notes that DYC previously filed an amended third-party complaint which changed the name of "Pee Dee Steak Inc." to "2006 Pee Dee Steak Inc." (*See* NYSCEF doc. no. 34). Third-party defendant Young Fish 110 Market, Inc. (Fish) interposed a third-party answer to the amended third-party complaint. (*See* NYSCEF doc. no. 23), which includes cross-claims against "2006 Pee Dee Steak Inc." However, the Court subsequently rejected the amended third-party complaint, because a change of parties requires a court order. The instant motion ensued.

Third-party defendant Fish partially opposes the motion, to the extent that it attempts to streamline potential procedural issues here. Fish requests that the Court consider DYC's motion as one to re-file its amended third-party complaint, rather than for leave to amend the caption. Fish also requests that this Court allow its answer to the improperly filed amended third-party complaint to stand, without re-filing. As granting Fish's request may only further complicate the matter, the Court denies Fish's request. Given that the improperly filed third-party complaint was rejected, the Court deems Fish's attempted amended answer a nullity.

However, Fish does not oppose the ultimate relief requested, replacing "Pee Dee Steak Inc." with "2006 Pee Dee Steak Inc.," nor do any other parties oppose the motion. As leave to amend the pleadings shall be freely given, DYC's motion to amend the third-party complaint to include the correct entity is granted. *See* CPLR 3025. Fish must re-file its responsive papers to the amended-third party complaint following service of same, as is the normal course and as permitted by the herein order.

Accordingly, it is

ORDERED that the third-party plaintiff's motion for leave to amend the third-party complaint is granted; and it is further

ORDERED that the amended third-party 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 third-party complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties 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-----

LIZETTE RAMOS,

Plaintiff,

-against-

CITY OF NEW YORK and DYC CORP.,

Defendant(s).

X-----

DYC CORP.,

Plaintiff,

-against-

2006 PEE DEE STEAK INC. and YOUNG FISH 110
MARKET INC.,

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)).

This constitutes the decision and order of the Court.

9/12/2022
DATE

CHECK ONE:

☐

CASE DISPOSED

☒

GRANTED

☐

DENIED

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

☐

REFERENCE

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐


LESLIE A. STROTH, J.S.C.