

NEW YORK SUPREME COURT - COUNTY OF BRONX  
**PART 32**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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**ALPHA I MARKETING CORP., KRASDALE  
FOODS, INC., KOOLTEMP FOODS LLC, and  
CONSOLIDATED SUPERMARKET SUPPLY,  
L.L.C.,**

Plaintiffs,

- against -

Index No. **29715/2020E**

Hon. **FIDEL E. GOMEZ**  
Justice

**NEWBANK,**

Defendant.

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The following papers numbered 1 to 3, read on this motion, noticed on 2/9/2022, and duly submitted as no. 1 on the Motion Calendar of 3/24/2022.

	<u>PAPERS NUMBERED</u>	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	
Notice of Cross-Motion - Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers-Order of Reference		
Memorandum of Law		

Defendant's motion is decided in accordance with the Decision and Order annexed hereto.

Dated: \_\_\_\_\_  
5 / 4 / 22

\_\_\_\_\_  
Hon. **FIDEL E. GOMEZ, A.J.S.C.**

1. CHECK ONE.....  CASE DISPOSED     NON-FINAL DISPOSITION
2. MOTION IS.....  GRANTED     DENIED     GRANTED IN PART     OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER     SUBMIT ORDER     DO NOT POST  
 FIDUCIARY APPOINTMENT     REFEREE APPOINTMENT  
 NEXT APPEARANCE DATE: \_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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**ALPHA I MARKETING CORP., KRASDALE  
FOODS, INC., KOOLTEMP FOODS LLC, and  
CONSOLIDATED SUPERMARKET SUPPLY,  
L.L.C.,**

Plaintiffs,

**DECISION AND ORDER**

- against -

Index No. **29715/2020E**

**NEWBANK,**

Defendant.

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Defendant Newbank (“Defendant”) moves pursuant to CPLR 3025(b) for leave to file and serve its first amended answer, defenses and counterclaims against Plaintiffs Alpha I Marketing Corp., Krasdale Foods, Inc., Kooltemp Foods, LLC, and Consolidated Supermarket Supply, LLC (“Plaintiffs”), and to file and serve a third-party summons and complaint against Terrinaz Enterprises, LLC, Brook Meat & Produce Corp., and Anibal Rodriguez (“Third-Party Defendants”). Plaintiffs oppose, arguing that the proposed amendments are without merit.

For the reasons which follow, Defendant’s motion for leave to file and serve its first amended answer, defenses and counterclaims is granted. Defendant’s motion for leave to file and serve its third-party summons and complaint is denied.

**BACKGROUND:**

On September 1, 2020, Plaintiffs commenced the instant action against Defendant by filing a summons and verified complaint,<sup>1</sup> alleging causes of action for breach of contract and fraud.

The complaint alleges that Brook’s Ave Food Advantage Corp. (“Brook’s Ave”) was the owner and operator of a supermarket located at 228 Brook Avenue, Bronx, NY (the “Premises”) (Compl. ¶ 13). The complaint also alleges that A&N Food Enterprises, Inc. (“A&N Food”) was the owner and operator of a supermarket located at 250 Cypress Avenue, Bronx, NY (Compl. ¶ 14).

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<sup>1</sup> The complaint is verified by counsel.

The complaint alleges that Plaintiffs and Defendant each provided loans and other advances to Brook's Ave and A&N Food (the "Debtors"), secured by the collateral and property owned by the Debtors (Compl. ¶ 15).

The complaint alleges that on October 31, 2017, the parties entered into an intercreditor agreement in connection with the obligations owed by A&N Food to the parties (Compl. ¶ 16). Plaintiff alleges that the agreement provided that in the event A&N Food defaulted on its obligations to either Plaintiffs or Defendant, any collateral or proceeds derived from the collateral received by either Plaintiffs or Defendant would be distributed between them (Compl. ¶ 17).

The complaint alleges that on October 31, 2017, the parties also entered into an intercreditor agreement in connection with the obligations owed by Brook's Ave to the parties (Compl. ¶ 18). Plaintiff alleges that the agreement provided that in the event Brook's Ave defaulted on its obligations to either Plaintiffs or Defendant, any collateral or proceeds derived from the collateral received by either Plaintiffs or Defendant would be distributed between them (Compl. ¶ 19).

The complaint alleges that by February 21, 2020, the Debtors had defaulted on their obligations to the parties (Compl. ¶ 20). Plaintiffs allege that on or around July 10, 2020, the parties learned that proceeds in the amount of \$225,000.00 would be available for distribution to the parties in connection with the Debtors' debt obligations. Plaintiffs allege that the intercreditor agreement provided that the parties would split the proceeds evenly (Compl. ¶ 24). However, Plaintiffs allege that in August 2020, they learned that a third-party payor had already distributed proceeds to Defendant on behalf of the Debtors to resolve the debts owed to Defendant (Compl. ¶ 25). Plaintiffs allege that the proceeds distributed by the third-party payor to Defendant was part of the Debtors' property and collateral, making such proceeds part of the property and collateral which are subject to Plaintiffs' security interest (Compl. ¶ 28). Plaintiffs allege that pursuant to the intercreditor agreements, Defendant was required to advise Plaintiffs that it had come into possession of proceeds from the third-party payor and to distribute the proceeds (Compl. ¶ 29, ¶ 30). Plaintiffs allege that Defendant breached the intercreditor agreement by failing to do so (Compl. ¶ 31). Plaintiffs allege that Defendant attempted to keep the fact that it had received proceeds from the Debtors' estate hidden from Plaintiffs (Compl. ¶ 32).

On September 30, 2020, Defendant filed its answer, defenses and counterclaims. In its counterclaims, Defendant alleges, in relevant part, that on July 29, 2020, Brook's Ave's loan and

A&N Food's loans were paid off by Medijo Realty, LLC. Defendant alleges that these payoffs were not made pursuant to a settlement agreement between the parties (Answer, ¶ 28, 33, 39).

Defendant also alleges that on December 15, 2015, Defendant extended a SBA loan to N&A Produce & Grocery Corp. ("N&A Produce") in the amount of \$1,860,000. Defendant alleges that this loan was guaranteed by Brook's Ave, among other guarantors. Defendant alleges that Brook's Ave collateralized its guarantee by signing a security agreement pledging all of its personal property to Defendant (Answer, ¶ 40, 41).

Defendant alleges that on December 15, 2015, it filed a UCC-1 Financing Statement with the New York Department of State, bearing file no. 201512156405849, against Brook's Ave, among other debtors. Defendant also alleges that on June 18, 2020, it filed a UCC-3 Continuation Statement, bearing file no. 202006186113503. (Answer, ¶ 42). Defendant alleges that its present expectation of recovery on this loan is based on Brook's Ave's collateralized guarantee of this loan because N&A Produce has filed for bankruptcy. Defendant alleges that its security interest has always been senior to Plaintiffs' security interests against Brook's Ave in the same collateral (Answer, ¶ 43).

On October 13, 2020, Plaintiffs filed their response to Defendant's counterclaims.

On January 18, 2022, Defendant filed the instant motion. The motion was marked fully submitted on March 24, 2022.

## DISCUSSION:

### Proposed Amended Counterclaims:

Defendant moves for leave to file and serve its first amended answer, defenses and counterclaims and a third-party complaint, arguing that it has only recently discovered new relevant facts from documents produced in response to a third-party subpoena issued upon Terrinaz Enterprises, LLC ("Terrinaz"). Defendant asserts that these documents were produced on December 1, 2021.

Defendant asserts that it holds security interest in Brook's Ave's personal property located at the Premises. Defendant argues that its security interest is senior to Plaintiffs' security interest, which also encumbers the same property.

Defendant argues that the subpoenaed documents revealed that in or around August 2020, after Brook's Ave abandoned its personal property and surrendered the Premises, Terrinaz, the owner of the Premises, sold and transferred all of the personal property collateral located at the

Premises to Anibal Rodriguez (“Ms. Rodriguez”) and Brook Meat & Produce Corp. (“Brook Meat”), the replacement tenant. Specifically, Defendant contends that Terrinaz, Ms. Rodriguez, and Brook Meat entered into a written agreement pursuant to which Ms. Rodriguez and Brook Meat agreed to pay the sum of \$225,000.00 to Terrinaz to purchase personal property and obtain terminations of security interests from Defendant and Plaintiff Alpha I Marketing Corp., whose liens encumber the personal property on the Premises (the “UCC Purchase Agreement”). Defendant asserts that it was not a party to the UCC Purchase Agreement.

Defendant asserts that on August 27, 2020, Ms. Rodriguez and Brook Meat paid \$225,000.00 to Terrinaz and purchased and obtained possession and control of all of the personal property on the Premises. Defendant argues that Terrinaz then paid \$112,500.00 to Plaintiff Alpha I Marketing Corp. in consideration for a termination of its security interests encumbering the personal property on the Premises. However, Defendant argues that it did not receive any funds from these transactions. Defendant argues that although it had agreed to enter into a stipulation of settlement with Plaintiffs to terminate its security interests in its personal property collateral on the Premises in exchange for payment of \$112,500.00, Plaintiffs never signed the stipulation. As such, Defendant argues that it was not made aware of and did not authorize the transfer and sale of the personal property collateral on the Premises.

Defendant argues that based on these newly discovered facts which establish that its personal property collateral was sold and transferred without its knowledge and authorization, it must amend its answer, defenses and counterclaims against Plaintiffs to add claims for declaratory judgment, conversion, accounting, and unjust enrichment, and file a third-party complaint alleging the same claims and a claim for replevin against Ms. Rodriguez and Brook Meat.

CPLR § 3025(b) provides that:

A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

Applications to amend pleadings are within the sound discretion of the court. Courts are given considerable latitude in exercising their discretion, and absent abuse of discretion as a matter

of law, such determination will not be disturbed on appeal (*Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014]).

Leave to amend should be granted in the absence of evidence of substantial prejudice or surprise or that the proposed amendments are palpably insufficient or patently devoid of merit (*JP Morgan Chase Bank, N.A. v Low Cost Bearings N.Y. Inc.*, 107 AD3d 643, 644 [1st Dept 2013]). The party seeking the amendment has the burden of showing that the proposed amendment is not palpably insufficient or patently devoid of merit (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]).

“Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side” (*Edenwald Contracting Co. Inc. v City of New York*, 60 NY2d 957, 959 [1983]). Absent prejudice, courts are free to permit amendment, even after trial. “Prejudice is more than the mere exposure of the [party] to greater liability. Rather, there must be some indication that the [party] has been hindered in the preparation of [the party’s] case or has been prevented from taking some measure in support of [its] position. The burden of establishing prejudice is on the party opposing the amendment” (*Kimso* at 411 [internal quotations omitted]).

Here, a review of the proposed first amended answer, defenses and counterclaims<sup>2</sup> reveals that Defendant seeks to replace its breach of contract/stipulation counterclaim with one for declaratory judgment, based on the same allegations as in the original answer, regarding, *inter alia*, Terrinaz’s proposal to pay \$225,000.00 to the parties in exchange for the waiver of their security interests in the collateral at the Premises. The proposed first amended answer, defense and counterclaims includes additional detail regarding Terrinaz, Ms. Rodriguez and Brook Meat’s execution of the UCC Purchase Agreement in or around August 2020, pursuant to which Ms. Rodriguez and Brook Meat agreed to pay the sum of \$225,000.00 to Terrinaz to purchase personal property and obtain terminations of security interests from Defendant and Plaintiff Alpha I Marketing Corp., whose liens encumber the personal property on the Premises (Proposed First Amended Answer, ¶ 45-50; Answer, ¶ 46-58); to rework its second counterclaim for conversion of proceeds by basing its allegations on the UCC Lien only, not on the stipulation of settlement,

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<sup>2</sup> The Court notes that Defendant filed a corrected copy of the proposed first amended answer, defenses and counterclaims on February 3, 2022 (NYSCEF Doc. No. 30). Plaintiffs acknowledged by stipulation dated February 3, 2022, that the proposed first amended answer, defenses and counterclaims filed with Defendant’s motion on January 18, 2022 (NYSCEF Doc. No. 25) has been replaced with the proposed first amended answer, defenses and counterclaims filed on February 3, 2022 (NYSCEF Doc. No. 30). The Court has considered the corrected copy in deciding this motion.

and alleging that it has been damaged in excess of \$225,000.00; to add a counterclaim for accounting based on the proceeds Plaintiffs received from Terrinaz; to rework its counterclaim for unjust enrichment so that it is no longer based on the stipulation of settlement; and to add a counterclaim for breach of contract based on the intercreditor agreement concerning Brook's Ave, alleging that if it is determined to have been in effect, that Plaintiffs must distribute to Defendant half of the proceeds they received.<sup>3</sup>

Defendant is not required to establish the merits of its proposed new allegations, but simply show that the proffered amendments are not palpably insufficient or clearly devoid of merit (*Cohen v Saks Incorporated*, 169 AD3d 515, 515 [1st Dept 2019]; *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]). Here, Defendant has demonstrated that its proposed amendments are not palpably insufficient or patently devoid of merit by providing documents evidencing the agreement between Terrinaz and Ms. Rodriguez, and Terrinaz's payment to Plaintiffs.

Defendant has also demonstrated that Plaintiffs will not be prejudiced by the proposed amendments, as the proposed amendments are based on the same allegations as in the original counterclaims. The only new allegations being made are that Terrinaz and Ms. Rodriguez went through with the payment pursuant to the UCC Purchase Agreement, and that Plaintiffs were actually paid by Terrinaz, but that they have not distributed half of the amounts they received to Defendant. Plaintiffs do not deny that they were paid by Terrinaz. In fact, counsel for Plaintiffs asserts that the proceeds that had been proposed to be distributed to Defendant remain in his escrow, pending resolution of the dispute between the parties (Affirmation in Opposition, ¶ 22). Defendant's original counterclaims alleged that *if* Plaintiffs had been paid by Terrinaz, Plaintiffs should distribute half of the amount received. Defendant's proposed amendments allege that *since* Plaintiffs have been paid, they should distribute half of the amounts received.

Plaintiffs' arguments in opposition are without merit. As a preliminary matter, Plaintiffs do not appear to be arguing that the counterclaims should not be amended. In their opposition, Plaintiffs argue that "Defendant's motion to amend pleadings so as to add the landlord and new tenant of 228 Brook Ave, Bronx, NY 10454, which are not parties to this dispute, to this action between Plaintiff and Defendant, should be denied as such claims are devoid of merit and is insufficient as a matter of law" (Affirmation in Opposition, p. 7). Plaintiffs also argue that "any

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<sup>3</sup> The Court notes that there are a number of other non-substantive edits throughout the proposed verified answer.

claims sought to be asserted against Terrinaz Enterprises, LLC, Brook Meat & Produce Corp., or its principal Anibal Rodriguez by Defendant are without merit, and Defendant's motion to amend should be denied" (Affirmation in Opposition, ¶ 56). There is no indication in the papers as to Plaintiffs' standing to make these arguments in Third-Party Defendants' favor. Nevertheless, the Court has considered the arguments as if they are directed towards the proposed amendments to the answer, defenses and counterclaims.

Plaintiffs do not argue that they have been prejudiced or have been unfairly surprised by the proposed amendments. Nor could they, as Defendant seeks to amend its answer, defenses and counterclaims to add and/or to rework its counterclaims based on Plaintiffs' receipt of amounts from Terrinaz. Plaintiffs do not deny that they were paid by Terrinaz.

Plaintiffs' argument that Defendant does not have any active UCC-1 filings on Brook's Ave's property is without merit. The UCC-1 Financing Statement based on N&A Produce's loan, to which Brook's Ave is listed as an additional debtor, is active. The UCC-1 Financing Statement was filed on December 15, 2015, and would have lapsed on December 15, 2020, but a Continuation Statement was filed on June 18, 2020, which is scheduled to lapse on December 15, 2025 (Plaintiffs' Exhibit H, #13; Defendant's Exhibit B in Reply, #13).

Plaintiffs make a number of arguments that Brook's Ave's assets located at the Premises are not subject to Defendant's UCC filing against N&A Produce. First, Plaintiffs argue that the address listed for Brook's Ave on Defendant's security agreement with N&A Produce is 1345 Castle Hill Avenue, Bronx, NY, not the address of the Premises. However, the security agreement dated December 15, 2015, lists Brook's Ave as a "Grantor" and states that the "Grantor grants to Lender a security interest in the Collateral to secure the indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law". The security agreement states that: "The word 'Collateral' as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, *and wherever located*, in which Grantor is giving to Lender a security interest for the payment of the indebtedness and performance of all other obligations under the Note and this Agreement . . ." (Plaintiffs' Exhibit I) (emphasis added). The security agreement does not limit the scope of the pledge of collateral to the address listed. Additionally, the UCC Financing Statement lists Brook's Ave as an additional debtor and lists its address at the Premises (Plaintiffs' Exhibit J). As such, at this time, the Court cannot find as a matter of law that the property at the Premises is not subject to this security agreement or the

Financing Statement. The Court notes that the fact that there may be an issue of fact or the fact that “the documentary record is inconclusive with respect to the truth or falsity of [] these allegations does not mandate dismissal, as plaintiffs are not required to prove their allegations at this stage” (*Cohen v Saks Incorporated*, 169 AD3d 515, 515 [1st Dept 2019]).

Second, Plaintiffs argue that the description of the collateral in the security agreement and the UCC Financing Statement are overly broad and do not comply with UCC § 9-108(c), which states that: “A description of collateral as ‘all the debtor’s assets’ or ‘all the debtor’s personal property’ or using words of similar import does not reasonably identify the collateral”. Plaintiffs argue that the description does not give notice that the property at the Premises would be subject to the security agreement with N&A Produce. However, contrary to Plaintiffs’ argument, the Financing Statement and the security agreement do not simply state that the collateral is “all business assets” (Affirmation in Opposition, ¶50). The Financing Statement lists Brook’s Ave as an additional debtor and lists its address at the Premises. The Financing Statement also states that it covers the following collateral: “All Business Assets Including But Not Limited to All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing” (Plaintiffs’ Exhibit J). In any case, “[a] financing statement sufficiently indicates the collateral that it covers if the financing statement provides: . . . (2) an indication that the financing statement covers all assets or all personal property” (UCC § 9-504).

Moreover, the security agreement is reasonably specific in its identification of the collateral and provides the types of collateral covered (*General Elec. Capital Commercial Automotive Finance, Inc. v Spartan Motors, Ltd.*, 246 AD2d 41, 52 [2d Dept 1998]). The security agreement states that:

“The word ‘Collateral’ as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the indebtedness and performance of all other obligations under the Note and this Agreement: All Business Assets Including But Not Limited on All Inventory, Chattel Paper, Accounts, Equipment and General Intangibles. In addition, the word ‘Collateral’ also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located: (A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the

collateral described herein, whether added now or later. (B) All products and produce of any of the property described in this Collateral section. (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section. (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process. (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain and process any such records or data on electronic media."

Third, Plaintiffs argue that Brook's Ave is not listed on the UCC Continuation Statement filed on June 18, 2020. However, a review of the Continuation Statement demonstrate that it is a continuation of the Financing Statement filed on December 15, 2015, and no amendments were made (Plaintiffs' Exhibit K). There is no dispute that the Financing Statement filed on December 15, 2015 lists Brook's Ave as an additional debtor (Plaintiffs' Exhibit J). Moreover, there is no dispute that Brook's Ave granted Defendant security interest in its collateral in the security agreement.

Fourth, Plaintiffs argue that the lease entered into between Terrinaz and Brook Meat in August 2020 was a new lease, not an assignment or amendment of Brook's Ave's lease. As a result, Plaintiffs argue that there is no privity between Terrinaz or Brook Meat with Defendant. It is unclear how this argument is relevant to the counterclaims against Plaintiffs. Defendant is alleging that because of its senior security interest in Brook's Ave's collateral, it is owed half of the distribution that Terrinaz already paid Plaintiffs. Whether Terrinaz or Brook Meat had privity with Defendant is irrelevant to these counterclaims.

Accordingly, Defendant's motion for leave to file and serve its proposed first amended answer, defenses and counterclaims is granted.<sup>4</sup>

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<sup>4</sup> To the extent that Plaintiffs' opposition may be arguing that Defendant is not entitled to half of the proceeds that Plaintiffs received from Terrinaz, because Defendant has been paid in full on the A&N Food and Brook's Ave loans, the Court finds that the argument is not sufficient to warrant a denial of Defendant's motion. Defendant has demonstrated that its proposed amendments are not palpably insufficient or clearly devoid of merit by: (1) asserting that it is seeking payment based on the N&A Produce loan, to which Brook's Ave was a guarantor, and providing documents evidencing its security interest in Brook's Ave's

Proposed Third-Party Summons and Complaint:

In its proposed third-party complaint, Defendant alleges cause of action for declaratory judgment, conversion, accounting, unjust enrichment, and replevin against Terrinaz, Ms. Rodriguez and Brook Meat, based on the same allegations made in the proposed amended answer, defenses and counterclaims.

There is no time limit within which to commence a third-party action (CPLR § 1007; Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Law of NY, CPLR C1007:6 [“CPLR 1007 specifies no outside time limit for the initiation of a third-party claim”]). As such, Defendant does not need to obtain leave of Court to file and serve its third-party complaint.

In light of the foregoing, the Court need not consider Plaintiffs’ arguments in opposition. However, even if the Court were to consider them, they would be without merit, as Defendant is not seeking to amend a pleading, but to file a third-party action. The Court also notes that Plaintiffs do not claim any prejudice from the short delay in filing the third-party action. Defendant filed its answer on September 30, 2020. Defendant contends that it discovered the new facts forming the basis of the third-party complaint on December 1, 2021. Defendant filed the instant motion on January 18, 2022, less than two months later. The note of issue has not been filed and the action is not on the eve of trial. In fact, the parties have filed a stipulation dated February 3, 2022, so-ordered by the Court, staying discovery until the determination of this motion.

Accordingly, Defendant’s motion to file and serve its third-party summons and complaint is denied.

It is hereby

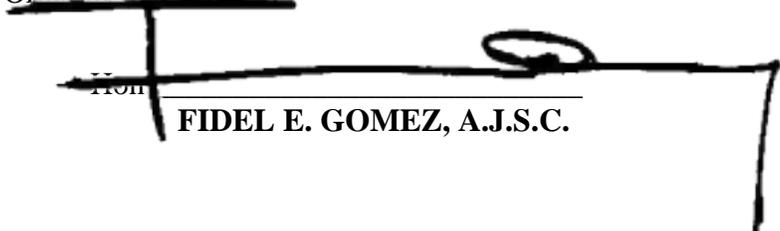
**ORDERED** that Defendant file and serve its proposed answer, defenses and counterclaims, attached as Exhibit A (NYSCEF Doc. No. 30) of its motion, within sixty (60) days of the date of this Decision and Order; and it is further

**ORDERED** that Defendant serve a copy of this Decision and Order upon Plaintiffs, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court

Dated:

5 / 4 / 22

  
FIDEL E. GOMEZ, A.J.S.C.

property based on the N&A Produce loan; and (2) raising an issue of fact as to the enforceability of the intercreditor agreements.