

**Sheridan v 7-Eleven Store #34086**

2015 NY Slip Op 30760(U)

April 27, 2015

Supreme Court, Suffolk County

Docket Number: 000521-2014

Judge: John H. Rouse

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INDEX NO. 000521-2014

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 12 - SUFFOLK COUNTY

MOTION DATE: 09/29/14

ADJ. DATE: 04/15/15

Mot. Seq. 001-MG

MOTION DATE: 12/17/14

ADJ. DATE: 04/15/15

Mot. Seq. 002-MG

**PRESENT:**Hon. John H. Rouse  
Acting Supreme Court Justice

MOTION DATE: 04/15/15

ADJ. DATE: 04/15/15

Mot. Seq. 003-MG

FRANCIS N. SHERIDAN,

Plaintiffs

-against-

**DECISION & ORDER**7-ELEVEN STORE #34086, 7-ELEVEN, INC., BELLMORE  
REALTY GROUP, LLC and NAZZARO GROUP, LLC,

Defendants

**TO:**CELINO & BARNES, P.C.  
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Upon the reading and filing of the following papers in this matter: (1) Notice of Motion by Defendant, NAZZARO GROUP, LLC, dated August 28, 2014, the Affirmation of Kathleen S. Commander, Esq. dated August 15, 2014, Affidavit of James J. Nazzaro dated August 15, 2014 and Exhibits A-D attached thereto; (2) Notice of Cross Motion by Defendant Bellmore Realty Group, LLC dated December 12, 2014, the Affirmation of John F. Boland, Esq., dated December 12, 2014 and Exhibits A and B attached thereto; (3) Notice of Cross Motion by Plaintiff dated March 24, 2015, the Affirmation of Stephen A. Saltzman, Esq., dated March 24, 2015 and Exhibits 1-5 attached thereto; and (4) Affirmation in Opposition to Plaintiff's Cross Motion by Kathleen S. Commander, Esq., dated April 1, 2015 and Exhibits A and B attached thereto; it is:

**ORDERED** that the motion (Seq. #001) by Defendant, NAZZARO GROUP, LLC for summary judgment is granted to the extent that the summons and verified complaint are amended from NAZZARO GROUP, LLC to now be J. NAZZARO PARTNERSHIP, LP; and it is further

**ORDERED** that the motion (Seq. #002) by Defendant BELLMORE REALTY GROUP, LLC for summary judgment is granted and the case against it is dismissed; and it is further

**ORDERED** that the motion (Seq. #003) by Plaintiff to amend the summons and verified complaint is granted such that the summons and verified complaint are amended from NAZZARO GROUP, LLC to now be J. NAZZARO PARTNERSHIP, LP; and it is further;

**ORDERED** that J. NAZZARO PARTNERSHIP, LP is directed to serve its answer to the amended summons and complaint within twenty days of service upon it of a copy of this decision and order together with notice of entry; and it is further

**ORDERED** that the Clerk of the Court will amend the caption from NAZZARO GROUP, LLC to now be J. NAZZARO PARTNERSHIP, LP.

#### **DECISION**

This case is a slip and fall on ice that is alleged to have occurred on January 31, 2011 at premises described as 2950 Merrick Road, Bellmore, New York, which the Plaintiff described as being commonly known as "the 7-11 store." This action was commenced by the filing of a Summons and Verified Complaint with the Suffolk County Clerk on January 9, 2014. This motion and the two cross motions concern the identity of the owner of the premises.

The Defendant NAZZARO GROUP, LLC contends that it did not own the premises on the date of the accident (Motion Seq. #001). Similarly, the Defendant BELLMORE REALTY GROUP, LLC contends that it had owned the premises prior to the accident, but that on January 28, 2011 had sold the premises to J. NAZZARO PARTNERSHIP, LP. (Motion Seq. #002). The Plaintiff, upon her Cross Motion, seeks to amend the summons and complaint to correct the "misnomer" in

her original summons and complaint from NAZZARO GROUP, LLC to J. NAZZARO PARTNERSHIP, LP.

Cross Motion for Summary Judgment by Defendant BELLMORE REALTY GROUP, LLC

It is uncontested the BELLMORE REALTY GROUP, LLC had sold the premises prior to the date of the accident and accordingly bears no responsibility for the alleged injuries and fall at this address. Accordingly BELLMORE REALTY GROUP, LLC's motion for summary judgment is granted.

Motion for Summary Judgment by Defendant NAZZARO GROUP, LLC  
and Cross Motion by Plaintiff to Amend the Summons and Complaint

It is uncontested that NAZZARO GROUP, LLC did not own the premises on the date of the accident and accordingly bears no responsibility for the alleged injuries and fall at this address. However, Plaintiff moves to amend the summons and complaint to reflect that the entity it intended to name was the owner of the premises at issue, J. NAZZARO PARTNERSHIP, LP.

Counsel for NAZZARO GROUP, LLC while moving for summary judgment for NAZZARO GROUP, LLC also opposes the amendment of the summons and complaint to J. NAZZARO PARTNERSHIP, LP.

A motion pursuant to CPLR § 305(c) to correct a misnomer requires that the court have acquired jurisdiction over the misnamed defendant. *Honeyman v. Curiosity Works, Inc.*, 120 A.D.3d 1302 (2nd Dept., 2014).

Here the Plaintiff served a summons and verified complaint by delivering a copy of the summons and verified complaint to Lise Mille at the place of business of Defendant NAZZARO GROUP, LLC at 8 Saxon Avenue, Suite C, Bay Shore, New York, and alleged that Lise Mille was an authorized agent to accept service of process for NAZZARO GROUP, LLC. Defendant NAZZARO GROUP, LLC in its opposition to the amendment submitted an Affidavit by Lise Mille in which she averred that she was employed by a third "Nazzaro" entity, JJ Nazaro Associates, Ltd.. Lise Mille did not deny that she had received service of process at the 8 Saxon Avenue, Suite C address, only that she has never been an employee of J. NAZZARO PARTNERSHIP, LP. This service of process did not meet the requirements for service upon a Limited Partnership. *See CPLR § 310-a.*

However, the Plaintiff also attempted to effect service by delivery of the summons and verified complaint to the New York Secretary of State for service of process.

NY Partnership Law § 121-109 Service of process on limited partnerships provides:

(a) Service of process on the secretary of state as agent of a domestic or authorized foreign limited partnership shall be made as follows:

(1) By personally delivering to and leaving with him or his deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement.

(2) The service on the limited partnership is complete when the secretary of state is so served.

(3) The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, addressed to the limited partnership at the post office address, on file in the department of state, specified for that purpose.

In this instance, the address on file with the New York Secretary of State for J. NAZZARO PARTNERSHIP, LP. is 8 Saxon Avenue, Suite C, Bay Shore, New York which is the same address on file for the NAZZARO GROUP, LLC. Delivery of the summons and complaint to the New York Secretary of State on January 22, 2014 did, consequently, effect service of process on J. NAZZARO PARTNERSHIP, LP with mailing to 8 Saxon Avenue, Suite C, Bay Shore, New York.

Upon NAZZARO GROUP, LLC's present motion for summary judgment, James J. Nazzaro provided an affidavit in which he alleged that he is **both** a member of NAZZARO GROUP, LLC and a General Partner in J. NAZZARO PARTNERSHIP, LP.

A plain reading of the verified complaint reflects that Plaintiff sought to secure personal jurisdiction over the entity that owned the premises known as "7-11" located at 2950 Merrick Road, Bellmore, New York. *See Verified Complaint at pars. 25 and 29 wherein it is alleged that NAZZARO GROUP, LLC owned these premises and was responsible for maintenance of the premises.* The Defendant, J. NAZZARO PARTNERSHIP, LP, by service of this Verified Complaint at its address of record with the Secretary of State, was fairly apprised that it, as the owner of these premises, was the intended Defendant in this action.

James J. Nazzaro, a General Partner in J. NAZZARO PARTNERSHIP, LP, did not dispute that service of the summons and complaint at partnership's actual place of business by the Secretary of State was sufficient to obtain jurisdiction over J. NAZZARO PARTNERSHIP, LP. pursuant to NY Partnership Law § 121-109. Nor does he deny that J. NAZZARO PARTNERSHIP, LP.

received actual notice of the institution of the lawsuit, or assert that J. NAZZARO PARTNERSHIP, LP. would be prejudiced if the misnomer is corrected.

This Court need not delve into the question of whether any one or more of the five<sup>1</sup> active "Nazzaro" entities that list 8 Saxon Avenue, Suite C, Bay Shore, New York as their respective addresses for service of process by the Secretary of State are united in interest such that service upon one is good as service upon one or more of the others entities. The delivery of the summons and verified complaint to 8 Saxon Avenue, Suite C, Bay Shore, New York by the New York Secretary of State, under the circumstances herein, was sufficient to obtain personal jurisdiction over J. NAZZARO PARTNERSHIP, LP.

Accordingly, the motion for summary judgment by NAZZARO GROUP, LLC is granted to the extent that the summons and complaint will be amended from NAZZARO GROUP, LLC to J. NAZZARO PARTNERSHIP, LP. such that the former bears no liability for the alleged injuries, and the later entity, J. NAZZARO PARTNERSHIP, LP., will proceed with the defense of the action.

The foregoing shall constitute the decision and order of the court.

Dated: April 27, 2015



JOHN H. ROUSE, Acting J.S.C.

NON-FINAL DISPOSITION

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<sup>1</sup>A. NAZZARO ASSOCIATES, INC.; J. NAZZARO PARTNERSHIP, L.P.; J.J. NAZZARO ASSOCIATES, LTD.; NAZZARO FAMILY PARTNERSHIP, L.P. and NAZZARO GROUP, LLC; as published by the NY Department of State on their official website of which this court takes judicial notice. *See Matter of Transtechnology Corp. v Assessor, 71 A.D.3d 1034 (2nd Dept. 2010).*