

Financial Med. Sys., Inc. v Nassau Health Care Corp.
2015 NY Slip Op 32633(U)
March 16, 2015
Supreme Court, Nassau County
Docket Number: 602645-12
Judge: Timothy S. Driscoll
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

ORIGINAL

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----X
FINANCIAL MEDICAL SYSTEMS, INC.,

**TRIAL/IAS PART: 14
NASSAU COUNTY**

Plaintiff,

Index No: 602645-12

-against-

**Motion Seq. No. 5
Submission Date: 1/30/15**

NASSAU HEALTH CARE CORP.,

Defendant.

-----X

The following papers having been read on this motion:

- Notice of Motion, Affirmation in Support and Exhibits.....X**
- Memorandum of Law in Support.....X**
- Affidavit in Opposition and Exhibits.....X**
- Affirmation in Opposition and Exhibits.....X**
- Memorandum of Law in Opposition.....X**
- Reply Affirmation in Further Support and Exhibits.....X**
- Reply Memorandum of Law in Further Support.....X**

This matter is before the Court for decision on the motion filed by Defendant Nassau Health Care Corp. ("NHCC" or "Defendant") on December 24, 2014 and submitted on January 30, 2015, following oral argument before the Court. For the reasons set forth below, the Court denies the motion.

BACKGROUND

A. Relief Sought

Defendant moves for an Order, pursuant to CPLR § 3025(b), granting Defendant leave to serve its Second Amended Answer with Counterclaims.

Plaintiff Financial Medical Systems, Inc. ("FMS" or "Plaintiff") opposes the motion.

B. The Parties' History

The parties' history is outlined in detail in prior decisions ("Prior Decisions") of the Court dated October 9, 2013 ("2013 Decision") and March 25, 2014 ("2014 Decision") and the Court incorporates the Prior Decisions by reference as if set forth in full herein. As noted in the Prior Decisions, the Complaint alleges that, pursuant to a Billing, Collection and Services Agreement dated February 1, 2003, as amended in 2005, 2006, 2007, 2008, 2009, 2010 and 2011 (collectively with the amendments, "Agreement"), FMS provided various services and on-site personnel to NHCC, for which FMS has not been paid and/or reimbursed. Plaintiff alleges that it performed its obligations under the Agreement and submitted timely invoices to Defendant. Plaintiff alleges that the revenues it collected entitled Plaintiff to bonuses which Defendant failed to pay. Plaintiff also alleges that it did not receive from Defendant the reimbursements for the salaries and unemployment benefits for the On-Site Personnel it provided. The Complaint contains four (4) causes of action: 1) breach of the Agreement by Defendant for failing to pay Plaintiff the Amounts Owed for services provided by Plaintiff to Defendant under the Agreement, 2) account stated based on the allegation that on or about May 31, 2012, an account was stated with NHCC in the sum of \$852,574.27 for services rendered and fees owed under the Agreement to which Defendant never objected, and Defendant has failed to satisfy that obligation, 3) *quantum meruit* based on the allegation that Plaintiff substantially performed its obligations under the Agreement and Defendant has breached its obligations under the Agreement by withholding payments due to Plaintiff, and 4) unjust enrichment by Defendant which has improperly retained the benefit of the services and personnel provided by Plaintiff, for which it has not made payment.

In the 2013 Decision, the Court granted Defendant's prior motion to dismiss the second, third and fourth causes of action, and denied the prior motion to dismiss the first cause of action, alleging breach of contract, with the caveat that any claims prior to December 21, 2006 are time-barred by the six year statute of limitations set forth in CPLR § 213(2). In the 2014 Decision, the Court denied Plaintiff's prior motion to dismiss the counterclaim ("Counterclaim") filed by Defendant and granted Defendant's prior motion to compel Plaintiff to accept Defendant's Amended Answer with Counterclaim dated November 26, 2013.

The Counterclaim asserted in Defendant's Amended Answer with Counterclaim is based on Defendant's allegations, *inter alia*, that 1) the Agreement was to terminate as of December 31, 2011; 2) Section 9 of the Agreement provided that, upon the effective date of termination, FMS was required to deliver to NHCC a final list of accounts receivable and the status of all claims, payments and payor responses in both a printed and electronic format; 3) Section 9 of the Agreement also required FMS to provide all transitional services and other services reasonably requested by NHCC to effect a transition to NHCC or NHCC's agent; 4) pursuant to Section 5 of the Agreement, upon termination of the Agreement, FMS was required to return to NHCC all patient information and records, fee schedules, managed care or third party payor contracts, and all other related information, to NHCC; 5) upon termination, NHCC requested that FMS deliver all patient billing and collection records, as well as monthly and yearly reports and related records, to NHCC or its agents so that NHCC could transition the billing and collection services without interruption; 6) FMS advised NHCC that it would only comply with NHCC's request if NHCC made certain payments to FMS, which FMS knew were neither due nor payable; 7) as a result of FMS' wrongful failure and refusal to deliver the billing and collections records, and related data, to NHCC, NHCC was hindered and delayed in its ability to collect on more than \$3 million in accounts receivable; and 8) without the billing and collection records and related data that FMS withheld, NHCC had difficulty with issues including verifying which claims were billed and reimbursed, and re-billing for any claims refused by insurers due to billing errors. The Counterclaim alleges that FMS' failure or refusal to effectuate the timely turnover of information constitutes a breach of the Agreement and/or a breach of the implied covenant of good faith and fair dealing. Defendant alleges that it has sustained damages of not less than \$500,000, and that FMS has failed to indemnify NHCC for those losses, as required by the Agreement.

In support of the motion now before the Court, counsel for NHCC ("Defendant's Counsel") provides a copy of Defendant's proposed Second Amended Answer with Counterclaims ("PSAA") (Ex. 1 to Hsi Aff. in Supp.). The PSAA seeks to add four (4) additional counterclaims against FMS and Paul Abrams ("Abrams"), its sole shareholder, that "came to light" during discovery (Hsi Aff. in Supp. at ¶ 4). Specifically, Defendant's Counsel affirms, Defendant discovered from an analysis of its accounting records that, in the approximate

six-month period before the Agreement terminated, FMS' billing and collection services fell, for no apparent reason, by over \$1.5 million. Defendant believes that FMS may have improperly and negligently reduced its services and resources in retaliation for NHCC's non-renewal of the Agreement, as the six-month time period correlates with the time when Plaintiff realized that the Agreement would not be renewed. Thus, it is Defendant's position that Plaintiff may be liable for breach of contract in connection with the alleged work slow down for lost revenues potentially exceeding \$1.5 million.

Defendant's Counsel affirms that Defendant also seeks to assert counterclaims against Abrams, FMS' principal, and to hold him liable either by piercing the corporate veil and/or due to fraudulent conveyances from FMS to Abrams. Defendant alleges that Abrams may have improperly transferred funds to himself, or to others associated with him, in anticipation of his lawsuit against NHCC, to render FMS judgment-proof from potential counterclaims by Defendant for defective performance. Defendant's Counsel submits that FMS has conceded that it commenced this action in December 2012 but waited until just after liquidating virtually all of its assets to a third party, eTransmedia Technology, Inc. d/b/a Medi-Claim ("eTrans") on April 30, 2013, before serving the complaint in this action on May 20, 2013. In support, Defendant provides an affirmation of counsel for Plaintiff ("Plaintiff's Counsel") dated December 19, 2014, submitted in support of Plaintiff's motion to compel non-party eTrans to produce documents in compliance with a subpoena duces tecum ("Subpoena").¹ In his affidavit, Plaintiff's Counsel affirmed that on April 30, 2013, FMS entered into an Asset Purchase Agreement ("APA") with eTrans, pursuant to which eTrans acquired certain aspects of FMS' business. As part of this transaction, all of FMS' computer servers were transferred to eTrans and, as of the date of Plaintiff's Counsel's affidavit, all of FMS' electronic records were hosted on servers located at eTrans' headquarters, and were in eTrans' sole possession and control. Defendant's Counsel affirms that Defendant, in the PSAA, alleges that Abrams may have improperly transferred funds from FMS to himself without fair consideration, in bad faith, and that Abrams caused those transfers to be made with the intent to hinder Defendant from recovering on its claims.

¹ As discussed herein, this issue was resolved and the clerk's records reflect that this motion was withdrawn on January 30, 2015.

Defendant's Counsel submits that FMS cannot claim any prejudice or surprise from the proposed amendment, particularly because the parties are in the early stages of discovery, and FMS has not yet obtained, reviewed and produced its own documents that are responsive to NHCC's original discovery demands dated October 30, 2013. In light of the fact that there are still documents outstanding, the parties have not yet conducted depositions. To avoid further delay that might be occasioned by the proposed amendment, Defendant has simultaneously served additional demands on Plaintiff (Ex. 4 to Hsi Aff. in Supp.), which are limited to the proposed amendments. In addition, Defendant submits, Abrams cannot claim surprise because, as the sole principal of "the dissolved corporation" FMS (Hsi Aff. in Supp. at ¶ 18), Abrams is controlling this litigation, including Plaintiff's defense with respect to the Counterclaims.

In opposition, Paul Abrams ("Abrams"), the President of FMS, affirms that, throughout the parties' relationship, FMS was not fully compensated for the work that it provided, and was "significantly undercompensated" (Abrams Aff. in Opp. at ¶ 9) for contract years 2010 and 2011. By letter dated November 28, 2011 (Ex. 4 to Abrams Aff. in Opp.), FMS memorialized the parties' discussions regarding the winding down period. FMS also advised NHCC of its failure to compensate FMS fully for services provided in contract year 2010, for the completed eight months for contract year 2011, and for bonus payments.

Abrams affirms that after NHCC terminated the Agreement at the end of 2011, NHCC requested that FMS deliver, by electronic transfer, NHCC's data files that remained in FMS' possession so that NHCC could transition the billing and collection services to another vendor. On or about February 1, 2012, FMS entered into an Interim Settlement Agreement ("ISA") with NHCC, to resolve parts of this dispute. Pursuant to the ISA, in exchange for NHCC depositing certain funds into an escrow account, FMS agreed to upload the disputed data to a file transfer protocol ("FTP") site for NHCC's review and "advisement of acceptability" (Abrams Aff. in Opp. at ¶ 16). Abrams affirms that NHCC did not reserve additional rights under the ISA to refuse to advise FMS whether the transferred data were acceptable. FMS did not receive the reimbursements for the salaries and unemployment benefits for the On-Site Personnel that it was owed, or the bonus payments to which it was entitled under Contract Amendments 6 and 7. Accordingly, FMS commenced this action on December 21, 2012.

Abrams affirms that on April 30, 2013, FMS executed the APA with eTrans pursuant to which eTrans purchased certain aspects of FMS' business, and there was a transfer of FMS' computer servers and the employment of certain FMS employees. Abrams affirms that FMS was not dissolved as a result of the APA and is an active corporate entity. In support, Abrams provides documentation from the New York State, Department of State, Division of Corporations dated January 7, 2015 which lists FMS as an active corporation (Ex. 6 to Abrams Aff. in Opp.).

In further opposition to the motion, Plaintiff's Counsel affirms that FMS' electronic records are hosted on servers located at eTrans' headquarters in Albany, NY, and are in eTrans' sole possession, custody and control. Plaintiff's Counsel affirms that in May 2014, he contacted counsel for eTrans by email to negotiate the terms of FMS' access to and imaging of eTrans' server. Plaintiff's Counsel also advised Defendant's Counsel of Plaintiff's intention to serve the Subpoena on eTrans regarding documents responsive to Defendant's discovery demand. On July 8, 2014, an associate of Plaintiff's Counsel sent an email to Defendant's Counsel regarding the proposed Subpoena to which Defendant's Counsel responded on the same day (*see* e-mail exchange, Ex. 1 to Kessler Aff. in Opp.). In his response, Defendant's Counsel did not request an expanded search concerning potential counterclaims on an alter-ego theory or for fraudulent conveyance. On July 10, 2014, Plaintiff served the Subpoena on eTrans which sought documents that were requested in Defendant's document demands served October 30, 2013, which pertained to FMS' remaining claims against Defendant, and Plaintiff's defense to Defendant's single Counterclaim as asserted in its Amended Answer. Plaintiff provided Defendant's Counsel with notice of the Subpoena.

Plaintiff's Counsel affirms that on August 5, 2014, the return date of the Subpoena, the parties advised the Court that they were actively engaged in obtaining and processing electronic discovery, which included service of the Subpoena. Later that day, Plaintiff's Counsel emailed Defendant's Counsel, as a follow-up to Plaintiff's Counsel's July 24, 2014 email, regarding Defendant's input concerning the parameters of the document search on eTrans' servers (*see* Ex. 3 to Kessler Aff. in Opp.). Defendant's Counsel never demanded additional discovery regarding a proposed counterclaim on an alter ego theory, or for a fraudulent conveyance claim, and never advised Plaintiff's Counsel of Defendant's intention to assert additional counterclaims.

Plaintiff's Counsel affirms that on November 12, 2014, he received Defendant's draft Second Amended Answer ("Draft") with a cover email from Defendant's Counsel asking whether Plaintiff would consent to the proposed amendment (Ex. 4 to Kessler Aff. in Opp.) The Draft contained Defendant's counterclaim against FMS for FMS' alleged pre-termination breach of the Agreement but contained no causes of action relating to Abrams' alter ego liability or any fraudulent conveyance claims pursuant to the Debtor and Creditor Law ("DCL"). The next day, counsel attended a conference with the Court during which Defendant's Counsel advised the Court and Plaintiff's Counsel that Defendant intended to submit a PSAA that was different than the Draft and in which Defendant would be seeking to impose liability against Abrams and Eunice Abrams. Defendant's Counsel did not mention proposed counterclaims for violations of the DCL. During this conference, the Court set a briefing schedule for Defendant's motion to amend, which was to be coordinated with FMS' motion to seek compliance with the Subpoena. The motions were to be served on December 19, 2014, and Defendant's Counsel was directed to provide Plaintiff's Counsel with a copy of the revised PSAA so that Plaintiff's Counsel could determine whether to consent to the proposed amendment, which would obviate the need for the motion to amend.

Plaintiff's Counsel affirms that on December 19, 2014, FMS filed and served its motion to compel in connection with the Subpoena. Defendant's Counsel provided Plaintiff's Counsel with the PSAA on December 18, 2014 at 6:50 p.m. (*see* email, Ex. 5 to Kessler Aff. in Opp.), the night before Defendant was scheduled to file its motion to amend, and sought a 30-day extension of Defendant's time to move to amend. By email dated December 19, 2014 (Ex. 6 to Kessler Aff. in Opp.), Plaintiff's Counsel advised Defendant's Counsel that Defendant would not consent to the proposed amendment because Defendant believed that the newly asserted claims against Abrams were without merit, and would not consent to an adjournment of the motion deadline. On December 19, 2014, instead of filing the motion to amend, Defendant's counsel "inexplicably" (Kessler Aff. in Opp. at ¶ 24) faxed a letter to the Court (Ex. 7 to Kessler Aff. in Opp.) seeking a pre-motion conference to discuss Defendant's putative motion to amend. Plaintiff submits that Defendant, without a good faith basis for asserting that a fraudulent conveyance took place or that Abrams' alleged domination of FMS resulted in Defendant's injuries under the Agreement, served Plaintiff with supplemental discovery demands on

December 23, 2014. These supplemental discovery demands were served before the Court had granted Defendant leave to serve additional counterclaims,

Plaintiff's Counsel affirms that in late December 2014 and early 2015, counsel continued to resolve the Subpoena issues with eTrans counsel. On January 7, 2015, FMS and eTrans executed an Agreement to Facilitate Production of Documents ("Document Agreement") (Ex. 8 to Kessler Aff. in Opp.). On January 7, 2015, Plaintiff's Counsel provided eTrans' counsel with Defendant's response to Plaintiff's motion to compel. The next day, counsel for eTrans advised Plaintiff's Counsel that, in reliance on Plaintiff's prior commitment that it would withdraw its motion to compel "upon the establishment of remote access pursuant to the terms of the parties' Agreement to Facilitate Production of Documents," eTrans would "continue to move forward under the agreement" (Ex. 9 to Kessler Aff. in Opp.). Plaintiff's Counsel affirms that, to his knowledge, Defendant has not served eTrans with a subpoena seeking any documents in this case.

In reply, Defendant's Counsel affirms that FMS recently settled its discovery production issues with eTrans, as evidenced by Plaintiff's withdrawal of its motion to compel, and FMS has now been given full access to eTrans' servers. Defendant's Counsel submits that eTrans was aware of Defendant's supplementary demands prior to entering into the Document Agreement and, therefore, Plaintiff cannot claim prejudice from having to engage in additional discovery because, as a result of the Document Agreement, it should now be simple for FMS to obtain documents. Defendant submits, further, that 1) in light of the fact that FMS only recently entered into the Document Agreement, this is not a situation in which FMS has already completed reviewing documents and must now review another set of documents; 2) FMS' initial search process was inadequate because its proposed search terms to eTrans were too limited and, because FMS has not yet performed an adequate search of the servers or obtained documents from eTrans, the addition of a few new categories of search terms will not prejudice Plaintiff; and 3) Plaintiff could have avoided any prejudice arising from discovery if it had retained a copy of its hospital-related files, which it failed to do.

C. The Parties' Positions

In its PSAA, Defendant seeks to add an additional counterclaim for breach of contract, and to hold Abrams, FMS' sole shareholder, potentially liable for FMS' debts by piercing the

corporate veil. Defendant also seeks to void any fraudulent conveyances from FMS to Abrams. Defendant has served additional discovery demands on Plaintiff limited to its additional claims. Defendant submits that the Court should grant its motion to amend in consideration of the liberal amendment policy set forth in CPLR § 3025 and applicable case law, and because the parties are still in the early stages of discovery due to the delay attributable to FMS' initial inability to obtain documents from eTrans. Defendant submits that Plaintiff cannot articulate any prejudice or surprise arising from the PSAA in light of the fact that Plaintiff has not yet obtained, reviewed or produced its own documents in response to Defendant's original demands. Defendant contends, further, that there is no prejudice simply because Plaintiff may be required to perform additional discovery in response to the PSAA.

Defendant also submits that its claims in the PSAA are not palpably insufficient or patently devoid of merit as its allegations in the PSAA set forth an additional breach of contract claim for Plaintiff's failure to render the requisite level of billing and collection services prior to the expiration of the Agreement. Defendant contends, further, that the allegations against Abrams, FMS' sole shareholder, seeking to pierce the corporate veil and for fraudulent conveyances "reflect the practical reality found in many small, close-held companies" (P's Memo. of Law in Supp. at p. 7).

Plaintiff opposes the motion, submitting that the Court should not grant leave to amend at this juncture, when the parties are over two years into this litigation, particularly in light of the fact that Defendant had knowledge of FMS' alleged pre-termination breach since at least as early as the expiration of the parties' contractual relationship on December 31, 2011 and/or the filing of this action in November 2012. Plaintiff contends that Defendant has always had access to its own records, and that the issues regarding FMS' access to its own records, which were resolved when Plaintiff entered into the Document Agreement with eTrans, do not alter this fact. In his Affirmation in Support, Defendant's Counsel affirms that Defendant "discovered from an analysis of its accounting records that in the approximate six-month period before FMS' contract terminated, FMS' billing and collection services drastically plummeted, for no apparent reason, by over \$1.5 million" (Hsi Aff. in Supp. at ¶ 5). Thus, Plaintiff contends, Defendant concedes that the information on which its first new proposed counterclaim is predicated has been known to Defendant for more than three years. Defendant, however, filed its initial Amended Answer with Counterclaim without alleging a counterclaim for pre-termination breach of the Agreement by virtue of FMS' alleged unilateral reduction in services. Plaintiff contends that Defendant has not offered a satisfactory excuse for its delay in asserting this counterclaim, and submits that

Plaintiff is being prejudiced by these additional allegations in light of the June 2015 trial date set by the Court.

Plaintiff contends, further, that FMS and eTrans are prejudiced by Defendant's delay in seeking this amendment. FMS has expended significant resources negotiating the Document Agreement so that it can comply with Defendant's October 2013 demands, and Plaintiff is aware of the steps that Defendant has taken to comply with those demands. Plaintiff notes further that, on the eve of the status conference with the Court in November 2014, Defendant provided Plaintiff with a draft of its proposed new counterclaims which did not contain causes of action relating to Defendant's alter ego or fraudulent conveyance claims. Plaintiff submits that it is prejudiced by the proposed counterclaims for fraudulent conveyance because the allegations supporting those counterclaims are made "upon information and belief" (PSAA at ¶¶ 141-147, 149-157, 159-165) and fail to specify the facts on which that information and belief are based. Addressing Defendant's argument that the fraudulent conveyance claims "reflect the practical reality found in many small, close-held companies," Plaintiff contends that this statement is not only "wildly offensive" (P's Memo. of Law in Opp. at p. 15) but is also contradicted by the allegations in paragraph 153 of the PSAA that "FMS and Paul Abrams caused such transfers to be made before the anticipated claims by NHCC against FMS were filed."

Plaintiff also submits that the PSAA fails to plead a cognizable claim to impose alter ego liability. Plaintiff contends that the PSAA fails to allege facts supporting this theory, and fails to allege any connection between Abrams' alleged domination and control of FMS and FMS' alleged breach of the Agreement. Plaintiff argues, further, that the PSAA fails to plead cognizable fraudulent conveyance claims, in part because those counterclaims are premised on the "hypothetical existence of liabilities owed by FMS to NHCC" (P's Memo. of Law in Opp. at p. 20).

In reply, Defendant submits *inter alia* that 1) Plaintiff cannot demonstrate prejudice warranting denial of the motion; and 2) the issues that Plaintiff has raised regarding the merits of the proposed new counterclaims do not warrant denial of the motion because the legal sufficiency or merits of a pleading will not be examined unless the insufficiency or lack of merit is clear and free from doubt (D's Reply Memo. of Law at p. 6, quoting *Lucido v. Mancuso*, 49 A.D.3d 220 227 (2d Dept. 2008)).

RULING OF THE COURT

While leave to amend a pleading shall be freely granted, a motion for leave to amend is committed to the broad discretion of the court. *Oh v. Jin*, 2015 N.Y. App. Div. LEXIS 340, * 3-4 (2d Dept. 2015), citing CPLR § 3025(b) and *Ravnikar v. Skyline Credit-Ride, Inc.*, 79 A.D.3d 1118, 1119 (2d Dept. 2010). In exercising its discretion, the court should consider how long the party seeking the amendment was aware of the facts on which the motion was predicated and whether a reasonable excuse for the delay was offered. *Oh v. Jin*, 2015 N.Y. App. Div. LEXIS 340 at * 4, quoting *Cohen v. Ho*, 38 A.D.3d 705, 706 (2d Dept. 2007). Generally, in the absence of prejudice or surprise to the opposing party, leave to amend pleadings should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit. *Oh v. Jin*, 2015 N.Y. App. Div. LEXIS 340 at * 4 citing, *inter alia*, *Rodgers v. New York City Tr. Auth.*, 109 A.D.3d 535, 537 (2d Dept. 2013).

Where, however, the application for leave to amend is made long after the action has been certified for trial, judicial discretion in allowing such amendments should be discrete, circumspect, prudent and cautious. *Oh v. Jin*, 2015 N.Y. App. Div. LEXIS 340 at * 4, citing *Morris v. Queens Long Is. Med. Group, P.C.*, 49 A.D.3d 827, 828 (2d Dept. 2008), quoting *Clarkin v. Staten Is. Univ. Hosp.*, 242 A.D.2d 552 (2d Dept. 1997). Moreover, when leave is sought on the eve of trial, judicial discretion should be exercised sparingly. *Oh v. Jin*, 2015 N.Y. App. Div. LEXIS 340 at * 4, quoting *Morris v. Queens Long Is. Med. Group, P.C.*, 49 A.D.3d at 828.

The Court denies the motion to amend in consideration of factors including 1) the upcoming trial date of June 22, 2015 which the Court scheduled in its Preliminary Conference Order dated November 7, 2013, 2) the fact that Defendant has been aware of the facts on which its motion is predicated for years, as evidenced, *e.g.*, by the affirmation of counsel for Defendant regarding Defendant's discovery of a drastic reduction in Plaintiff's billing and collection services which supports the conclusion that the information on which Defendant's first new proposed counterclaim is predicated has been known to Defendant for years, and 3) the Court's conclusion that the delay resulting from FMS' resolution of its document issues with eTrans does not explain Defendant's delay in seeking this amendment. While the Court is mindful of the liberal amendment policy, the Court concludes that it would not be appropriate to grant Defendant's motion under these circumstances.

All matters not decided herein are hereby denied.

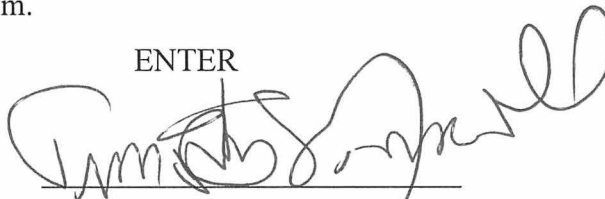
This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a pre-trial conference on April 13, 2015 at 9:30 a.m.

DATED: Mineola, NY

March 16, 2015

ENTER



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

MAR 25 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE