

<b>Henry v Target Corp.</b>
2016 NY Slip Op 31487(U)
August 3, 2016
Supreme Court, New York County
Docket Number: 159959/13
Judge: Sherry Klein Heitler
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 30

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SHERINE HENRY,

Plaintiff,

-against-

TARGET CORPORATION,

Defendant.

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**SHERRY KLEIN HEITLER, J.:**

Index No. 159959/13  
Motion Seq. 003

**DECISION & ORDER**

Plaintiff Sherine Henry ("Plaintiff") alleges that she was injured inside a Target store in Mount Vernon, New York on August 10, 2013 when she slipped on liquid that had collected on one of the aisle floors. Thereafter, on October 29, 2013, Plaintiff commenced this action against defendant Target Corporation ("Target") to recover for her alleged injuries. Issue was joined by service of Target's answer on January 9, 2014. By decision and order dated November 25, 2015, this court ordered Target to provide full, complete, and timely responses to Plaintiff's numerous discovery demands. Target's March 17, 2016 response included a copy of a contract between Nestle USA, Inc. ("Nestle") and Target which was in effect on the date of Plaintiff's accident. In connection therewith, Target has admitted that it is being defended and indemnified by Nestle in this action pursuant to the contract.<sup>1</sup>

Pursuant to CPLR 3025(b)<sup>2</sup>, Plaintiff now seeks leave to amend her complaint by adding

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<sup>1</sup> See Plaintiff's exhibits E & F.

<sup>2</sup> Pursuant to CPLR 3025(b), 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."

Nestle as a party defendant to this action. The motion is opposed by Target, whose several arguments in opposition to this motion are not in tune with the law. Contrary to Target's contention, Plaintiff is not required to submit an affidavit of merit in support of the requested relief; Plaintiff need only show that the proposed amendment is not "palpably insufficient or clearly devoid of merit." *Delta Dallas Alpha Corp. v South St. Seaport L.P.*, 127 AD3d 419, 420 (1st Dept 2015). In this regard, the moving papers clearly show that, by reason of recent discovery responses<sup>3</sup>, Plaintiff is seeking to amend the complaint now that she has learned Nestle is defending and indemnifying Target. This provides a sufficient and good faith basis for Plaintiff's assertion that Nestle may be liable herein. In addition, there is no merit to Target's argument that Plaintiff erred by not serving Nestle with the motion papers. Until this court grants Plaintiff leave to file her amended pleadings, Nestle is not yet a party to this action and not entitled to service of motion papers. See 22 NYCRR § 1000.13.

Target's assertion that Plaintiff's motion is untimely because she should have become aware of Nestle's involvement earlier in the discovery process is belied by the record. Plaintiff only first became aware of the indemnification agreement between Nestle and Target on March 17, 2016. She filed this motion on May 2, 2016, less than two months later. This can hardly be considered inexcusable delay. Target's claim of prejudice is similarly meritless. The burden of establishing prejudice, which is more than "the mere exposure of the [party] to greater liability" (*Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981]), is on the party opposing the amendment (*Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 [2014]). To show prejudice, "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." *Id.* Nestle's

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<sup>3</sup> See Target's Response to Notice for Admission dated March 17, 2016, Plaintiff's exhibit F.



further

ORDERED that all parties are directed to appear for a status conference in Part 30 on September 19, 2016 at 10:00AM.

This constitutes the decision and order of the court.

ENTER:

DATED: Aug 3, 2016

  
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SHERRY KLEIN HEITLER, J.S.C.