

Unger v Nae Edison LLC
2016 NY Slip Op 32701(U)
October 14, 2016
Supreme Court, Kings County
Docket Number: 9699/12
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14th day of October, 2016¹

HONORABLE FRANCOIS A. RIVERA

-----X
BELLA UNGER,

Plaintiff,

DECISION & ORDER
Index No. 9699/12

- against -

NAE EDISON LLC dba EDISON HOME HEALTH CARE and GAMZEL NY, INC. d/b/a REVIVAL HOME HEALTH CARE,

Defendants.

-----X
Recitation in accordance with CPLR 2219 (a) of the papers considered on the joint notice of motion of defendants Nae Edison LLC d/b/a Edison Home Health Care (hereinafter Edison) and Gamzel NY, Inc. d/b/a Revival Home Health Care (hereinafter Revival) (collectively referred to as the movants), filed on May 11, 2016, under motion sequence number two for an order dismissing the complaint pursuant to CPLR 3212.

- Notice of motion
- Affirmation in support
- Exhibits A - M
- Affirmation in opposition
- Affirmation in reply

BACKGROUND

On May 9, 2012, Bella Unger commenced the instant action for damage for

¹This is also the date the decision and order was mailed to the parties.

personal injuries by filing a summons and verified complaint with the Kings County Clerk's office. The movant interposed a joint verified answer dated May 30, 2012.

The verified complaint annexed as exhibit A to the movant's motion papers is incomplete as evidenced by the following. It only had two numbered pages with the second page ending on the twelfth allegation of fact. The two pages did not contain a demand for relief or a verification signature by either the plaintiff or plaintiff's counsel. The annexed verified complaint is apparently missing pages. There is no other copy of the verified complaint contained in the movant's motion or reply papers. The plaintiff's opposition papers also do not contain a copy of the verified complaint.

LAW AND APPLICATION

“There is no authority for compelling [a court] to consider papers which were not submitted in connection with the motion on which it is ruling; indeed, under CPLR 2214(c), the court may refuse to consider improperly submitted papers” (*Biscone v JetBlue Airways Corp.*, 103 AD3d 158 [2nd Dept 2012]).

In accordance with CPLR 2214(c), the movants must at a minimum, annex a copy of the pleading to its motion which it wants the court to dismiss (*Alizio v Perpignano*, 225 AD2d 723 [2nd Dept 2013]).

CPLR 3212(b) provides in pertinent as follows:

Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person

having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit.

A motion made pursuant to CPLR 3212 requires the annexing of pleadings under section 3212(b). “The pleadings” means “a complete set of the pleadings” *Wider v Heller*, 24 AD3d 433 [2nd Dept 2006] or “all the pleadings” (*Welton v Drobnicki*, 298 AD2d 757 [3rd Dept 2002]).

The requirement that a motion for summary judgment be supported by the pleadings is mandatory. In fact, the failure to include the pleadings would render the motion procedurally defective (*Matsyuk v Konkalipos*, 35 AD3d 675 [2nd Dept 2006]; *Wider v Heller*, 24 AD3d 433 [2nd Dept 2006]).

The movants motion is for summary judgment dismissing the complaint as asserted against them pursuant to CPLR 3212. However, the movants did not annex a complete copy of the verified complaint. Although Bella Unger did not raise this deficiency in opposition to the movant’s motion, the requirement of a complete set of pleadings is mandatory and exists for the benefit of the court. Accordingly, the movants’ motion is denied (*Thompson v Foreign Cars Center, Inc. et al.*, 40 AD3d 965 [2nd Dept 2007]). The denial, however, is without prejudice (*Greene v Wood*, 6 AD3d 976 [3rd Dept 2004]).

CONCLUSION

Nae Edison LLC d/b/a Edison Home Health Care and Gamzel NY, Inc. d/b/a

Revival Home Health Care motion for an order dismissing the complaint pursuant to CPLR 3212 is denied without prejudice.

Nae Edison LLC d/b/a Edison Home Health Care and Gamzel NY, Inc. d/b/a Revival Home Health Care may move for the same relief again so long as the motion corrects the aforementioned defect and the motion is filed on or before January 6, 2017.

The foregoing constitutes the decision and order of this Court.

Enter:


J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C

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