

Thomas v County of Westchester
2018 NY Slip Op 33864(U)
February 22, 2018
Supreme Court, Westchester County
Docket Number: 66883/15
Judge: David F. Everett
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To commence the 30-day statutory time period for appeals as of right under CPLR 5513 (a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
KEITH THOMAS,

Plaintiff.

-against-

Index No. 66883/15
Motion Sequence No. 001
Decision and Order

THE COUNTY OF WESTCHESTER.

Defendant.

-----X
EVERETT, J.

The following papers were read on the motion:
Notice of Motion/Affirmation in Supp/Exhibits A-F (docs 36-43)
Affirmation in Opp/Exhibits A-C (docs 45-48)
Reply Affirmation (doc 49)

Plaintiff Keith Thomas (Thomas) moves for an order, pursuant to CPLR 1003 and 3025 (b), granting leave to amend the complaint to add non party Faculty Student Association of Westchester Community College Inc. (FSA) as a party defendant and to amend the caption to reflect the amendment. Upon the foregoing papers, the opposed motion is granted as set forth below.

The following facts are taken from the pleadings, motion papers, affidavits, documentary evidence and the record, and are undisputed unless otherwise indicated.

Plaintiff commenced the instant action by filing a summons and complaint in the Office of the Westchester County Clerk on October 5, 2015, to recover damages stemming from actions taken by, on behalf of, or under the control of, defendant County of Westchester (County). According to the complaint, Thomas was enrolled as a student at Westchester Community

College (WCC), and during the spring semester of 2014, he was a member of WCC's varsity men's basketball team. It is alleged that, at or about that time, Thomas was being scouted by various basketball Division I colleges, including St. John's University, and that, without his knowledge, WCC's basketball coach and/or other members of the WCC basketball team, sent a falsified copy of his academic transcript to interested Division I schools. It is further alleged that, upon discovering that the transcript had been falsified, St. John's University, which had offered Thomas a full scholarship and position on its basketball team, released and/or expelled him from St. John's University, and ruled him ineligible from playing Division I basketball. This, Thomas alleges, has caused him both emotional stress and trauma, and it has harmed his chances to rebuild his future.

Issue was joined by service of the County's answer with affirmative defenses on or about October 27, 2015, after which the parties began to conduct discovery pursuant to the preliminary conference and several follow-up compliance conference orders. According to Thomas, it was through discovery that he learned of the need to add the FSA as a party defendant, based upon its status as employer of the WCC basketball coach who purportedly falsified his transcript, and/or facilitated the transmission of the falsified transcript to the Division I schools, including St. John's University. Thomas argues that it is appropriate to grant him leave to amend his complaint, and to order the appropriate caption change based on this disclosure.

It is well settled in New York that "[l]eave to serve amended pleadings shall be freely given absent prejudice and surprise resulting from the delay" (*Fahey v County of Ontario*, 44 NY2d 934, 935 [1978]; CPLR 3025 [b]). It is also well settled that CPLR 1003, which grants courts wide latitude to determine whether to allow the joinder of parties, permits the addition of

parties to the litigation at any stage of the proceedings, unless doing so would cause prejudice or undue delay to the previously named parties (*see Micucci v Franklin Gen. Hosp.*, 136 AD2d 528, 529 [2d Dept 1988]).

Here, the argument advanced in opposition to plaintiff’s motion is limited to questions regarding proper service upon putative defendant FSA. Conspicuously absent is any claim of prejudice or surprise.

Accordingly, it is

ORDERED that plaintiff’s motion is granted and the amended verified complaint, in the proposed form annexed to the moving papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended verified complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

-----X
KEITH THOMAS,

Plaintiff,

-against-

THE COUNTY OF WESTCHESTER and
FACULTY STUDENT ASSOCIATION OF
WESTCHESTER COMMUNITY COLLEGE,

Defendants.

-----X;

And it is further

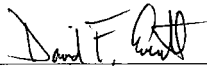
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and upon the Clerk of the Court, who are directed to mark the court's records to reflect the additional party; and it is further

ORDERED that counsel are directed to appear for a compliance conference on March 20, 2018, at 9:30 a.m., in room 800, at the Westchester County Courthouse at 111 Dr. Martin Luther King, Jr. Blvd, White Plains, New York.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
February 22, 2018

ENTER:


HON. DAVID F. EVERETT, A.J.S.C.

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