

Perry v Brinks, Inc.
2019 NY Slip Op 30119(U)
January 14, 2019
Supreme Court, New York County
Docket Number: 152340/2018
Judge: Adam Silvera
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 22

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DAVID PERRY,
Plaintiff,

- v -

BRINKS, INCORPORATED, BRINKS ARMORED,
INCORPORATED, BRINKS ARMORED CAR, INC., JOHN DOE
Defendant.

INDEX NO. 152340/2018

MOTION DATE 11/07/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

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HON. ADAM SILVERA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for AMEND CAPTION/PLEADINGS

Before the Court is plaintiff’s motion pursuant to CPLR 3025(b) for leave to serve a supplemental summons and amended complaint to add the alleged driver of the defendant vehicle as a defendant and pursuant to 510(1) and 511 to change the place of trial of this action from New York County to Bronx County. This action stems from a motor vehicle accident alleged to have occurred on May 11, 2017, when plaintiff’s vehicle was struck in the rear by defendant Brink’s armored truck operated by defendant “John Doe” driver, at the intersection of Sixth Avenue and 28th Street in the City, County and State of New York.

Upon further discovery, plaintiff alleges that defendant driver “John Doe” is an individual named Roger Ruiz. Plaintiff now seeks to amend the caption of the case to replace Ruiz in the place and stead of defendant “John Doe.” Defendants do not oppose the branch of the motion for leave to serve a supplemental summons and amend the Complaint to name the driver, Ruiz, as an additional party defendant. Pursuant to CPLR § 3025(b), “[a] party may

amend his 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 to amend pleadings is generally freely granted, absent prejudice and surprise (*See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]; *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 [1st Dep’t 2006]). To find prejudice, there must be some indication that the defendant has been hindered in the preparation of his case or prevented from taking some measure in support of his position (*See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 [1st Dep’t 2000]). Plaintiff has set forth a basis for late service on Ruiz since he was only recently identified through discovery and has demonstrated that there is no prejudice. Thus, the branch of plaintiff’s motion to amend is granted.

The branch of plaintiff’s motion to change the venue of this action from New York County to Bronx County is denied. Plaintiff argues that it was “denied the opportunity to choose the Bronx as the venue for this action” because Ruiz left the scene of the accident, was not identified, and he resides in the Bronx (Mot at 5, ¶9)

Pursuant to CPLR 510 a party may move to change the place of trial of an action when

1. the county designated for that purpose is not a proper county; or
2. there is reason to believe that an impartial trial cannot be had in the proper county; or
3. the convenience of material witnesses and the ends of justice will be promoted by the change.

Here, plaintiff does not allege that New York County is not a proper venue for the action at hand; but, rather states that “had plaintiff known defendant, the driver, Roger Ruiz resided in Bronx County, it would have been his right to choose Bronx County as the venue of this action”

(Mot at 6, ¶ 11). Further, plaintiff has not provided evidence of inconvenience of a material witness or that an impartial trial cannot be held in New York County. Thus, the branch of plaintiff's motion to change venue is denied.

Accordingly, it is

ORDERED that the branch of plaintiff's motion for leave to serve and file a supplemental summons and amended complaint to name the driver, Roger Ruiz, as an additional party defendant is granted; and it is further

Accordingly, it is ORDERED that plaintiff's motion to amend is granted and the caption read as follows:

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DAVID PERRY,

Plaintiff,

-against-

Index No. 152340/2018

BRINK'S, INCORPORATED,
BRINK'S ARMORED, INCORPORATED
BRINK'S ARMORED CAR, INC.
and ROGER RUIZ

Defendants

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And it is further;

ORDERED that plaintiff shall serve and file the Amended Summons and Amended Complaint upon the additional party Roger Ruiz, and mail a copy to the other defendants, within 30 days, together with a copy of this order with notice of entry; and it is further

ORDERED that the defendants shall serve an answer to the Amended Complaint within 20 days from the date of said service; and it is further

ORDERED that within 14 days of receipt defendants' answer, plaintiff shall serve a copy of all prior pleadings and previously exchanged discovery, including all deposition transcripts, if any; and it is further

ORDERED that the branch of plaintiff's motion to change the venue of this action from New York County to Bronx County is denied; and it is further

ORDERED that counsel for all parties appear for a preliminary conference in room 103 of 80 Centre Street, New York, NY, on March 25, 2018, at 9:00AM; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this Decision/Order upon defendants with notice of entry

This constitutes the Decision/Order of the Court.

1/14/2019

DATE



ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE