

**Fandino v Singh**

2019 NY Slip Op 34044(U)

October 11, 2019

Supreme Court, Queens County

Docket Number: 700645/18

Judge: Timothy J. Dufficy

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This opinion is uncorrected and not selected for official publication.

[\* 1]

**ORIGINAL**

**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

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**ALBA FANDINO,**

**Plaintiff,**

**Index No.: 700645/18**

**Mot. Date: 10/8/19**

**-against-**

**Mot. Seq. 6**

**GURPEET SINGH, BALKAN SEWER AN  
WATER MAIN SERVICE LLC, 226-228  
W. 25 REALTY LLC, 226-228 WEST 25<sup>TH</sup>  
STREET LLC, PAVILLION CONTRACTING  
INC.,**

**Defendants.**

-----X

The following papers were read on this motion by the plaintiff for an order granting plaintiff leave to file and serve an Amended Summons and Amended Verified Complaint, pursuant to CPLR 3025(b), amending the caption herein, pursuant to CPLR 1009, to add Grand View Sponsor LLC, as an additional party defendant; and granting the plaintiff leave to file and serve the Amended Summons and Verified Complaint as proposed in the moving papers (Exhibit "J"); and on the cross-motion by defendant Balkan Sewer and Water Main Service LLC for an order, *inter alia*, pursuant to CPLR 3126, striking plaintiff's Complaint on the grounds that plaintiff failed to provide court-ordered discovery.

**PAPERS**  
**NUMBERED**

Notice of Motion-Affidavits-Exhibits .....	EF 112-125
Notice of Cross-Motion-Affidavits-Exhibits.....	EF 126-145
Answering Affidavits-Exhibits.....	EF 149-151
Replying Affidavits-Exhibits.....	EF 152-154

Upon the foregoing papers, it is ordered that the motion and cross-motion are granted solely to the extent set forth below:

**FILED**  
**OCT 21 2019**  
**COUNTY CLERK**  
**QUEENS COUNTY**

This is a personal injury action whereby, on August 28, 2017, plaintiff Alba Fandino allegedly sustained serious injuries while riding her bicycle past construction around 135-46 Grand Central Parkway, Queens, New York. The construction blocked her path on the sidewalk and the construction pathway led her into opposing traffic from the Grand Central Parkway where defendant Gurpreet Singh collided into her in front of 135-30 Grand Central Parkway.

Plaintiff now seeks leave to amend the pleadings to add an additional party defendant - Grand View Sponsor LLC - to this action.

It is well settled law that motions for leave to amend the pleadings are to be freely granted, as long as there is no prejudice or surprise to the adversary (*see* CPLR 3025(b); *Wirhouski v Armoured Car & Courier Serv.*, 221 AD2d 523 [2d Dept 1995]).

Plaintiff demonstrated that Grand View Sponsor LLC should be joined as a defendant in this action, as the plaintiff established that the deed holder of the property at 135-46 Grand Central Parkway in Queens, New York, is listed as Grand View Sponsor LLC. Furthermore, the record reveals no prejudice.

Thus, the plaintiff is granted leave to serve an Amended Summons and Amended Verified Complaint to amend the caption to add Grand View Sponsor LLC", as a party defendant in this action, in the form proposed in the moving papers. The motion was opposed.

Defendant Balkan Sewer and Water Main Service LLC cross-moves, *inter alia*, for an order compelling the plaintiff to provide outstanding discovery or be precluded from offering evidence or testimony on trial based upon the ground that the plaintiff failed to provide court-ordered discovery. Pursuant to the Preliminary Conference Order (PC Order), dated July 3, 2018, the plaintiff was directed to provide outstanding discovery and appear for an examination before trial. It is undisputed that the plaintiff failed to comply with the terms of this PC Order. Thereafter, pursuant to the Compliance Conference Order (CC Order), dated December 18, 2018, the plaintiff was again directed to provide outstanding discovery and appear for an examination before trial. It is undisputed that the plaintiff failed to comply with the terms of this Order. Thereafter, pursuant to the So-Ordered Stipulation, dated April 2, 2019, this Court again directed,

*inter alia*, the plaintiff to provide outstanding discovery and appear for an examination before trial.

Plaintiff opposes the cross-motion. Plaintiff maintains that an omnibus response to the outstanding demands was provided, in August, 2019. However, moving defendant claims that the plaintiff failed to fully comply with three Court Orders by failing to provide a Response to the “Demand for amount of Damages pursuant to 3017(c)” and “Demand for Mental Health Records.” Thus, the plaintiff shall provide responses to the “Demand for amount of Damages pursuant to 3017(c) and “Demand for Mental Health Records”, as set forth below, or the plaintiff shall be precluded from presenting evidence at trial in support of all matters addressed by the moving defendant’s “Demand for amount of Damages pursuant to 3017(c) and “Demand for Mental Health Records.”

Accordingly, it is

**ORDERED** that plaintiff’s motion is granted; and it is further

**ORDERED** that the amended title of the action shall be:

**SUPREME COURT STATE OF NEW YORK  
COUNTY OF QUEENS**

-----X

**ALBA FANDINO,**

**Plaintiff,**

**Index No.: 700645/18**

**-against-**

**GURPEET SINGH, BALKAN SEWER AND  
WATER MAIN SERVICE LLC, 226-228  
W. 25 REALTY LLC, 226-228 WEST 25<sup>TH</sup>  
STREET LLC, PAVILLION CONTRACTING  
INC., and GRAND VIEW SPONSOR LLC,**

**Defendants.**

-----X

; and it is further

**ORDERED** that the motion by plaintiff is granted, without opposition; and it is further

[\* 4]

**ORDERED** that the plaintiff shall serve and file the Amended Summons and Amended Verified Complaint, in the form proposed in the moving papers, within thirty (30) Days of the entry of this Order, upon all defendants, and added party defendant Grand View Sponsor LLC; and it is further

**ORDERED** that the defendant Balkan Sewer and Water Main Service LLC's cross-motion is granted to the extent that, within thirty (30) days from the date of service of a copy of this Order with Notice of Entry, upon the plaintiff, the plaintiff shall provide responses to the "Demand for amount of Damages pursuant to 3017(c) and "Demand for Mental Health Records" or the plaintiff shall be precluded from presenting evidence at trial in support of all matters addressed by the moving defendant's "Demand for amount of Damages pursuant to 3017(c) and "Demand for Mental Health Records;" and it is further

**ORDERED**, that a copy of this Order with Notice of Entry be served on all parties to the action, and the Clerk of Queens County, who is directed to amend the caption upon receipt of service.

This constitutes the decision and order of the Court.

**Dated: October 11, 2019**

  
TIMOTHY J. DUFFICY, J.S.C.

FILED  
OCT 21 2019  
COUNTY CLERK  
QUEENS COUNTY