

Schessel v Global Poverty Project, Inc.

2020 NY Slip Op 31949(U)

June 17, 2020

Supreme Court, New York County

Docket Number: 159165/2017

Judge: Adam Silvera

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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HARRY SCHELSEL and RISA SCHELSEL

Plaintiff,

- v -

GLOBAL POVERTY PROJECT, INC., MARK
CHRZANOWSKI, 360 PRODUCTIONS INC. d/b/a BIG
WHITEY PRODUCTIONS, "ABC CORPORATION" and
"ABC PARTNERSHIP," (the aforesaid names being fictitious
and their true names being unknown)

Defendants.

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INDEX NO. 159165/2017

MOTION DATE 06/15/2020

MOTION SEQ. NO. 002 + 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23

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

Before the Court are two motions, motion sequence 002 and 003. In motion sequence 002 plaintiffs moves to amend the Complaint to reflect the name of "ABC CORPORATION" as "DIVERSIFIED PRODUCTION SERVICES, LLC. In motion sequence 003 defendants Global Poverty project, Inc., Mark Chrzanowski, and 360 Productions, Inc. d/b/a Big Whitey Productions (hereinafter referred to collectively as the "Defendants") move to strike the note of issue or in the alternative to extend Defendants' time to file dispositive motions until 60 days after the completion of discovery involving the proposed new defendant that Plaintiff is presently seeking to add to this action. Both motions are unopposed.

This action stems from a motor vehicle accident which occurred on September 20, 2017, inside Central Park near 84th Street and the West Side Drive, in the County, City and State of New York, when plaintiff was allegedly injured by Defendants' forklift.

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]).

Here, plaintiff has demonstrated that on October 10, 2019 upon Examination Before Trial of defendant Global Poverty Project, Inc., David Beame testified that said defendant engaged Diversified Production Services, LLC to manage, produce and handle the physical set up of an event to take place at the location of the subject accident and that plaintiff was injured during the setup of said event (Mot 002, Exh F). Absent opposition, plaintiffs’ motion, motion sequence 002, to amend the Complaint to reflect the name of “ABC CORPORATION” as “DIVERSIFIED PRODUCTION SERVICES, LLC is granted.

Defendants’ motion, motion sequence 003, is granted solely to extend Defendants’ time to file dispositive motions until 60 days after the completion of discovery involving the proposed new defendant that Plaintiff is presently seeking to add to this action.

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

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HARRY SCHESEL and RISA SCHESEL

Plaintiffs,

Index No.: 151999/2018

Plaintiff,

-against-

GLOBAL POVERTY PROJECT, INC., MARK CHRZANOWSKI,
360 PRODUCTIONS INC. d/b/a BIG WHITEY PRODUCTIONS,
“DIVERSIFIED PRODUCTION SERVICES, LLC and
“ABC PARTNERSHIP,” (the aforesaid names being fictitious
and their true names being unknown)

Defendants.

-----X

And it is further;

ORDERED that plaintiff shall serve and file the Amended Summons and Amended
Complaint upon the additional party DIVERSIFIED PRODUCTION SERVICES, LLC, 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 DIVERSIFIED PRODUCTION SERVICES,
LLC’s 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 within 30 days of entry of this order plaintiff shall serve a copy, with
notice of entry, upon all parties, the County Clerk (Basement of 60 Centre) and the Clerk of Trial
Support (Room 148 of 60 Centre), who shall mark their records to reflect the amendment to the
caption; and it is further

ORDERED that Defendants' motion, motion sequence 003, is granted solely to extend Defendants' time to file dispositive motions until 60 days after the completion of discovery involving the proposed new defendant Diversified Production Services, LLC

This constitutes the Decision/Order of the Court.

06/17/2020
DATE

ADAM SILVERA, J.S.C.

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