

Ihsen v Ken Jones Photography

2020 NY Slip Op 33261(U)

October 2, 2020

Supreme Court, New York County

Docket Number: 158534/2018

Judge: Robert D. Kalish

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

-----X

MAEVE IHSSSEN,

Plaintiff,

- v -

KEN JONES PHOTOGRAPHY, FULTON STUDIO 203, INC., and TODD GEORGE,

Defendants.

-----X

INDEX NO. 158534/2018

MOTION DATE 08/21/2020, 09/10/2020

MOTION SEQ. NO. 002, 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

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

Motion (Seq. No. 002) by Plaintiff MAEVE IHSSSEN for an order, pursuant to CPLR 3124 and 3126, to (1) strike defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC.'S answer; or, in the alterative to (2) preclude defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. from offering any evidence in this action; or, in the alterative to (3) compel defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. to respond to Plaintiff's Combined Demands, and Notice for Discovery and Inspection, dated December 12, 2019; and to (4) compel defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. to produce affidavits of search for all documents and information demanded in Plaintiff's Combined Demands, and Notice for Discovery and Inspection, dated December 12, 2019, that Defendants claim not to possess; and to (5) set a date certain for the depositions of defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. is GRANTED to the extent Defendants KEN JONES PHOTOGRAPHY and FULTON STUDIO 203, INC., are precluded from offering any evidence in this action, there being no papers filed in opposition of the motion; and further,

Motion (Seq. No. 003) by Plaintiff MAEVE IHSSSEN for an order, pursuant to CPLR 3025(b), seeking an order to (1) allow Plaintiff to file a supplemental summons and amended complaint; to (2) amend the caption, (NYSCEF Doc No 42), and to (3) extend the time to serve Todd George with the Amended Complaint for 30 days after receipt from defendants KEN

JONES PHOTOGRAPHY, FULTONSTUDIO 203, INC., and KEN JONES, of Todd George¹'s last known address is GRANTED to the extent Ken Jones is added as a new party defendant, there being no papers filed in opposition to the motion, and is otherwise denied for the reasons stated herein.

I. General Overview

This is a personal injury action arising out of an accident that allegedly occurred on March 28, 2018, at the premises known as Ken Jones Photography, located at 121 Fulton Street, fifth floor, New York, New York, 10038. Plaintiff Maeve Ihssen ("Plaintiff") alleges that defendants KEN JONES PHOTOGRAPHY, FULTON STUDIO 203, INC., and TODD GEORGE retained her to work as a model for a photo shoot that involved suspending her in the air by use of ropes, slings and other devices and equipment; were careless and negligent, *inter alia*, in their ownership, operation, maintenance, management, and control of the aforesaid premises and/or equipment situated thereat; and, "solely and wholly" as a result of their carelessness and negligence, Plaintiff was "caused to fall and injure herself." (Complaint, NYSCEF Doc No 45, ¶¶ 18, 70-72.)

At present, Plaintiff makes the following two motions, *inter alia*, to strike and amend the pleadings.

II. Motion Sequence No. 002

Plaintiff makes the present motion sequence no. 002, which is unopposed. (NYSCEF Doc No 26.) Plaintiff seeks, *inter alia*, an order striking Defendants' Answer; or, in the alternative preclude Defendants' pleadings. (*Id.*) The Court grants this motion to the extent Defendants are precluded from offering any evidence in this action for the reasons stated as follows.

A. Background

On September 14, 2018, Plaintiff commenced the present action against Defendants by filing a summons and complaint. (Complaint, NYSCEF Doc Nos 1/45.)

On July 26, 2019, Plaintiff made a motion for an order, pursuant to CPLR 3215, granting a default judgment against Defendants KEN JONES PHOTOGRAPHY and FULTON STUDIO 203, INC. (collectively, "Defendants"). (Notice of Motion for Default Judgment, NYSCEF Doc No 6.)

On August 16, 2019, Defendants answered said complaint, interposed counterclaims and affirmative defenses. (Answer, NYSCEF Doc No 46.) Thereafter, on September 4, 2019, Plaintiff's motion seeking a default judgment was withdrawn. (Letter, NYSCEF Doc No 21; Order on Motion, NYSCEF Doc No 22.)

¹ The Notice of Motion notes that Defendant Todd George "has failed to appear" although Plaintiff's counsel concedes that said named defendant has never been served. (*See* NYSCEF Doc No 42-43.)

On August 29, 2019, according to Plaintiff, Plaintiff served a Notice to Take Depositions Upon Oral Examination. (NYSCEF Doc No 19.)

On November 6, 2019, the Court held a preliminary conference and ordered, *inter alia*, that responses for discovery and inspection were to be produced on or before December 6, 2019. (Preliminary Conference Order, NYSCEF Doc No 23.) The Court further ordered that Plaintiff was to be produced for an EBT on or before January 31, 2020, and Ken Jones Photography was to be produced for an EBT on or before January 24, 2020. (*Id.*) The Court noted that, “Defendant Todd George ha[d] not [yet] appeared. There [was] no affidavit of service as to Todd George on NYSCEF.” (*Id.*)

On December 12, 2019, according to Plaintiff, Plaintiff served Combined Demands, and Notice for Discovery and Inspection (“demands dated December 12, 2019”) on Defendants. (Memo in Supp, NYSCEF Doc No 27, at 2, citing Plaintiff’s Discovery Demands, NYSCEF Doc No 32.)

On February 4, 2020, the Court held a compliance conference with Plaintiff’s counsel and Defendants’ counsel Howard Simmons, Esq.—with the latter appearing telephonically, notwithstanding his failure to obtain permission to do so in advance. During the conference, the Court noted that the preliminary conference order was not complied with as to the EBTs. (Compliance Conference Order, NYSCEF Doc No 25.) The Court further ordered that Defendant was to respond to Plaintiff’s demands dated December 12, 2019 within twenty days of the date of the compliance conference order. (*Id.*) The Court further noted that parties were to file a stipulation that discovery was complete by April 17, 2020. (*Id.*)

In the moving papers, Plaintiff’s counsel states that, on February 20, 2020, it sent defense counsel good faith correspondence requesting outstanding discovery. (Memo in Supp, NYSCEF Doc No 27, at 3, citing Good Faith Letter, NYSCEF Doc No 34.) It is marked on the letter that the letter was “sent via regular mail.” (*Id.*) The letter has been addressed to Defendants’ counsel Howard Simmons, Esq. (*Id.*)

On March 3, 2020, Plaintiff made the present motion sequence no. 002, which is unopposed. (NYSCEF Doc No 26; *see also infra* Section B [Plaintiff’s Contentions].)

This Court, having received the instant motion, scheduled a virtual conference on July 22, 2020, between the parties and issued an order on the same date directing Defendants to comply with the past discovery demands dated December 12, 2019 and to comply with the Preliminary Conference order dated November 6, 2019. Again, Defendants did not appear at the virtual conference, which necessitated the Court in calling the Defendants’ counsel on his cell phone. In the Conference Order dated July 22, 2020, the Court ordered Defendants to respond to Plaintiff’s demands dated December 12, 2019, by August 14, 2020. (Conference Order dated July 22, 2020, NYSCEF Doc No 39/52.)

On July 23, 2020, Plaintiff’s counsel e-filed a letter to the Court stating that, in violation of the Court’s July 22 conference orders, the defense counsel failed to contact their office to discuss the outstanding discovery and has failed to respond to the demands of December 12,

2020 and failed to provide *Jackson* affidavits. (Letter to the Court dated July 23, 2020, NYSCEF Doc No 51.)

At the next conference of August 18, 2020, the Court was informed by Defendants' counsel—who joined this virtual conference very late—that he was not in communication with his clients. Defendants' counsel stated that he therefore had not complied with this Court's order of July 22, 2020 or responded to the motion to strike. A few days later, Defendants' attorney contacted the Court stating that he was now again in communication with his clients and would comply with the Court's order. At the next conference of September 9, 2020, Defendants had still not complied with this Court's July 22, 2020 order and the Court gave Defendants one last opportunity to comply.

At the next conference of September 17, 2020, Defendants' counsel failed to appear online. Plaintiff's attorney indicated to the Court that Defendant's counsel had sent him some photographs regarding Plaintiff that were taken on the day of the accident. However, as to other requests regarding documents, Defendants had failed to submit said records and/or a *Jackson* affidavit as required by the Court.

B. Plaintiff's Contentions

On March 3, 2020, Plaintiff made the present motion sequence no. 002, which is unopposed. (NYSCEF Doc No 26.) Plaintiff seeks to strike Defendants' Answer; or, in the alternative preclude Defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. from offering any evidence in this action; or in the alternative, compel Defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. to respond to Plaintiff's demands dated December 12, 2019 and to produce said documents and/or *Jackson* affidavits for all documents and information so requested and set an EBT date for Defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203. (*Id.*)

In the present motion, Plaintiff argues that she “has been unable to prosecute this action as a result of [D]efendants' failure to comply with their discovery obligations.” (Memo in Supp, [Motion Seq No 002], NYSCEF Doc No 27, at 2.) Plaintiff further argues that Defendants failed to comply with their discovery obligations as “Defendants have failed to serve responses to Plaintiff's demands, have failed to produce the [*Jackson*] affidavits of search, and have failed to appear for depositions.” (*Id.* at 3.) Plaintiff further argues that “all defendants have willfully and contumaciously failed to comply with court ordered discovery.” (*Id.*)

C. Discussion

CPLR 3126 provides:

“If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article,

the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or
2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or
3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.”

“Although actions should be resolved on the merits whenever possible, a court may strike a pleading as a sanction against a party who refuses to obey an order for disclosure[.]” (*Reidel v Ryder TRS, Inc.*, 13 AD3d 170, 171 [1st Dept 2004] [internal citations and quotations omitted].) “A trial court has discretion to strike pleadings under CPLR 3126 when a party’s repeated noncompliance is dilatory, evasive, obstructive and ultimately contumacious.” (*CDR Creances S.A.S. v Cohen*, 23 NY3d 307, 318 [2014] [internal citations omitted].) “While the nature and degree of the penalty to be imposed on a motion pursuant to CPLR 3126 is a matter of the Supreme Court’s discretion, striking a pleading is appropriate where there is a clear showing that the failure to comply with discovery demands is willful, contumacious, or in bad faith.” (*Birch Hill Farm, Inc. v Reed*, 272 AD2d 282, 282 [2d Dept 2000]; see also *Peterson v New York Cent. Mut. Fire Ins. Co.*, 174 AD3d 1386, 1388 [4th Dept 2019].) “Similarly, the alternative remedy of preclusion may also be appropriate where the offending party’s lack of cooperation with disclosure was willful, deliberate, and contumacious. The willful and contumacious character of a party’s conduct can be inferred from the party’s repeated failure to comply with discovery demands or orders without a reasonable excuse.” (*Arpino v F.J.F. & Sons Elec. Co., Inc.*, 102 AD3d 201, 210 [2d Dept 2012] [internal citations omitted].) “Once a moving party establishes that the failure to comply with a disclosure order was willful, contumacious or in bad faith, the burden shifts to the nonmoving party to offer a reasonable excuse.” (*Id.* at 1388 [internal citations and quotation marks omitted].)

The Court finds the Defendants’ conduct was willful and contumacious in their failure to comply with the Court’s orders and that Defendants have failed to provide any explanation—let alone an adequate explanation—for their non-compliance. (*Arpino v F.J.F. & Sons Elec. Co., Inc.*, 102 AD3d 201, 207 [2d Dept 2012] [“Compliance requires not only a timely response, but a good-faith effort to provide a meaningful response.”].) The Court cannot allow Defendants “failure to abide by the[] basic rules governing compliance with disclosure orders” to continue without any repercussions. (*Id.* at 207.) At present, Defendants are more than four months beyond the response date fixed by the Compliance Conference Order to respond to the demands of December 12, 2019, even when excluding the 42 days during which litigants could not e-file

on NYSCEF during the pandemic caused by COVID-19. Further, Defendants failed to appear at the virtual conferences with the Court and have failed to respond to the instant motion. Accordingly, said motion by Plaintiff is granted to the extent that Defendants shall be precluded from offering evidence at the time of trial or on any dispositive motion for summary judgment on the issue of liability or damages. (*See Arts4All, Ltd. v Hancock*, 54 AD3d 286, 288 [1st Dept 2008], *affd*, 12 NY3d 846 [2009], and *affd*, 13 NY3d 812 [2009]; *Cooper v MTA*, 2020 NY Slip Op 05132 [1st Dept Sept. 29, 2020].)

III. Motion Sequence No. 003

Plaintiff makes the present motion sequence no. 003 for an order, pursuant to CPLR 3025(b), granting leave to amend the summons and complaint in her action to add additional defendants, amend the caption, and extend the time to serve Defendant Todd George with the amended complaint. The Court denies this motion for the reasons stated below.

A. Background

As stated above, on September 14, 2018, Plaintiff commenced the present action against Defendants by filing a summons and complaint. (Complaint, NYSCEF Doc Nos 1/45.)

On August 19, 2020, Plaintiff filed a supplemental summons and amended complaint. (Amended Complaint, NYSCEF Doc No 53.) The supplemental summons proposes to add to the action the parties Ken Jones in his individual capacity and CASTEGA-121-123 Fulton Street, LLC. (*Id.*) The supplemental summons has the address of Ken Jones as 133-42 39th Avenue, Flushing, New York, 11354 and the address of CASTEGA-121-123 Fulton Street, LLC c/o Cedar Management Corp. as 20 Vesey Street, New York, New York, 10007. (*Id.*) The proposed amended complaint has the additional following paragraphs as they relate to adding the aforementioned two parties to the action: paragraphs 9-12, 20-22, 25, and 77-110. (*Id.*) The complaint is otherwise unchanged.

B. Plaintiff's Contentions

Plaintiff argues that “[f]or over a year, Defendants Ken Jones Photography and Fulton Studio 203, Inc. have frustrated plaintiff’s ability to prosecute her case and have to failed to provide court ordered discovery.” (Memo in Supp [Seq. No. 003], NYSCEF Doc No 43 ¶ 21.) Plaintiff further argues that, “Defendants Ken Jones Photography and Fulton Studio 203, Inc. believe that now they can have their counsel withdraw and they can evade all liability for this action by hiding behind the corporate form and using the corporate form to evade liability.” (*Id.* ¶ 22.)

Plaintiff additionally argues that “proposed new defendant Ken Jones is the principal of Ken Jones Photography and Fulton Studio 203, Inc. Indeed, Ken Jones verified the Defendants’ answer. See Exhibit B hereto, verification page. The proposed amended complaint alleges, upon information and belief, that proposed defendant Ken Jones personally participated in the photo shoot that resulted in plaintiff’s injuries and is an eyewitness.” (*Id.* ¶ 23.) Plaintiff further argues that “[she is] now moving to add Ken Jones in his personal capacity so that he cannot hide

behind a corporation in order to insulate himself from liability while he evades his discovery obligations, prejudice's plaintiff's case, and waste this Court's and counsel's time and resources." (*Id.* ¶ 24.)

Plaintiff further argues that "defendants Ken Jones Photography and Fulton Studio 203, Inc. lease the subject accident location from proposed new defendant Castega – 121-123 Fulton Street, LLC. Upon information and belief, proposed new defendant Castega – 121-123 Fulton Street, LLC owns the subject location and, therefore, has a non-delegable duty to maintain the premises in a reasonably safe condition, which duty was breached in connection with this action." Plaintiff adds that, "[a]s a result, plaintiff has asserted meritorious claims against said property owner defendant and Ken Jones." (*Id.* ¶ 25.) In support, Plaintiff asserts that "defendants Ken Jones Photography and Fulton Studio 203, Inc. have a written lease with proposed new defendant Castega – 121-123 Fulton Street, LLC. Upon information and belief, said lease requires defendants Ken Jones Photography and Fulton Studio 203, Inc. to procure commercial general liability coverage that would provide insurance coverage for plaintiff's injuries." (*Id.* ¶ 26.)

Finally, Plaintiff seeks an extension of time to serve named defendant Todd George ("George"), pursuant to CPLR 306-b. As Plaintiff concedes, although this action was commenced by filing the complaint more than two years ago in September 2018, George has never been served. Plaintiff asserts that "we have not been able to locate and serve Todd George because defendants Ken Jones Photography and Fulton Studio, 203 Inc. refuse to provide his last known address." (*Id.* ¶ 10.)

There is no opposition.

C. Discussion

CPLR 3025(b) "Amendments and supplemental pleadings by leave" provides that:

"A party may amend his or her 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 shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." (CPLR 3025[b].)

"As a general rule, leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit . . . , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court." (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [internal quotation marks omitted]; *see also Y.A. v Conair Corp.*, 154 AD3d 611 [1st Dept 2017] [holding that leave should be granted "absent . . . surprise resulting therefrom"].) "[P]laintiff need not establish the merit of its proposed new allegations, but simply show that the proffered

amendment is not palpably insufficient or clearly devoid of merit.” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010].)

First, Plaintiff seeks to add CASTEGA-121-123 Fulton Street, LLC, (“CASTEGA”) as a named defendant to the case reasoning that defendants Ken Jones Photography and Fulton Studio 203, Inc., leased the subject accident location from CASTEGA, who owned the subject location and, therefore, had a non-delegable duty to maintain the premises in a reasonably safe condition. However, the Court finds that Plaintiff fails to show that the proffered amendment is not palpably insufficient or clearly devoid of merit as it relates to adding CASTEGA as a named defendant to the case. The general rule is that an out-of-possession landlord is not liable for negligence with respect to a condition of the property after its transfer of possession and control to the tenant unless landlord is either contractually obligated to make repairs or maintain the premises or has a contractual right to reenter, inspect and make needed repairs at tenant's expense, and liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision. (*Malloy v Friedland*, 77 AD3d 583, 584 [1st Dept 2010] [“Pursuant to the lease, the tenant had sole responsibility for maintaining the area where plaintiff alleges he sustained his injuries. Therefore, as out-of-possession owners, the Friedland defendants cannot be held liable under these circumstances.”]; *Howard v Alexandra Rest.*, 84 AD3d 498, 499 [1st Dept 2011] [“Pursuant to the lease, the sole responsibility for maintaining the area where plaintiff alleges he sustained his injuries belonged to the tenant, with regard to nonstructural defects. Therefore, the out-of-possession owner or, here, his estate, cannot be held liable under these circumstances.”].) Here, Plaintiff has failed to allege any facts that would allow a fact-finder to make any determination other than that CASTEGA-121-123 Fulton Street LLC has no liability for the alleged accident. Rather, even reading Plaintiff's complaint as liberally as possible in conjunction with her moving papers, Plaintiff's theory would appear to be that Castega is liable because it was the out-of-possession owner of the premises in which the alleged accident occurred. As a matter of law, this is not a cognizable theory of liability upon which damages can be sustained—absent some above exception being alleged.

Second, Plaintiff seeks to add to the case as a party defendant Ken Jones, who is the principal of Defendant KEN JONES PHOTOGRAPHY. The proposed amended complaint alleges that Ken Jones “operated ropes, slings, and other devices and equipment, used to suspend models in the air,” (Proposed Amended Complaint, NYSCEF Doc No 53, ¶ 82.), and the moving papers assert that Ken Jones was personally involved in the subject accident, (Affirm in Supp ¶ 23). The facts alleged are sufficient to establish a cognizable theory against him. (*See Connell v Hayden*, 83 AD2d 30, 50 [2d Dept 1981].) Further, the answer that has been filed in the case by party Defendants has been verified by Ken Jones. (*See* NYSCEF Doc. No. 18.) Notably, Defendants' counsel has opted not to oppose the instant motion notwithstanding Ken Jones is the principal of Defendant KEN JONES PHOTOGRAPHY. Accordingly, the Court grants the leave to amend the complaint to add Ken Jones as a defendant.

Finally, Plaintiff seeks an extension of time to serve named defendant George, pursuant to CPLR 306-b. Again, this action was commenced on September 14, 2018, but, as Plaintiff concedes, George has never been served. CPLR 306-b states as follows:

“Service of the summons and complaint ... shall be made within one hundred twenty days after the commencement of the action or proceeding If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.”

Here, for the Court to grant Plaintiff’s motion, Plaintiff must establish either: 1) good cause for her failure to serve George within 120 days of the commencement of the action; or 2) that the Court should grant the extension in the interest of justice. (*See generally Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 106-07 [2001].)

This Court finds that Plaintiff has failed to establish either prong. Here, the time to serve George expired in January 2019. Plaintiff did not seek this relief until August 19, 2020—roughly 19 months after the time to serve expired. Plaintiff’s only excuse for this is that Defendant’s counsel apparently promised and then failed to provide George’s last known address. While this Court does not excuse Defendant’s counsel’s failure—assuming such to be true—this alone is insufficient to justify an extension of time, under either “good cause” or “interest of justice” analysis. (*See Johnson v Concourse Vil., Inc.*, 69 AD3d 410, 411 [1st Dept 2010]; *compare Sternkopf v James E. Fitzgerald, Inc.*, 2020 WL 5809074 [N.Y. Sup Ct, NY County Sept. 24, 2020] [Kalish, J.].) Accordingly, the branch of the motion seeking an extension of time to serve George, pursuant to CPLR 306-b is denied, and the complaint is dismissed without prejudice as against George.

IV. Conclusion

Accordingly, and for the reasons so stated, it is hereby

ORDERED that the motion (Seq. No. 002) by Plaintiff MAEVE IHSEN for an order, pursuant to CPLR 3124 and 3126, to (1) strike defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC.'S answer; or, in the alternative to (2) preclude defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. from offering any evidence in this action; or, in the alternative to (3) compel defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. to respond to Plaintiff's Combined Demands, and Notice for Discovery and Inspection, dated December 12, 2019; and to (4) compel defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. to produce affidavits of search for all documents and information demanded in Plaintiff's Combined Demands, and Notice for Discovery and Inspection, dated December 12, 2019, that Defendants claim not to possess; and to (5) set a date certain for the depositions of defendants KEN JONES PHOTOGRAPHY AND FULTON STUDIO 203, INC. is GRANTED, without opposition, to the extent that Defendants KEN JONES PHOTOGRAPHY and FULTON STUDIO 203, INC. are precluded from offering any evidence in this action and said motion is otherwise denied; and it is further,

ORDERED that the motion (Seq. No. 003) by Plaintiff MAEVE IHSEN for an order, pursuant to CPLR 3025(b), seeking an order to (1) allow Plaintiff to file a supplemental summons and amended complaint; to (2) amend the caption, (NYSCEF Doc No 42), and to (3) extend the time to serve Todd George for 30 days is GRANTED to the extent that Ken Jones is added as a party defendant and said motion is otherwise denied; and it is further,

ORDERED that the complaint is dismissed, without prejudice, as against defendant TODD GEORGE for failure to timely serve said defendant pursuant to CPLR 306-b; and it is further,

ORDERED that the action shall bear the following caption:

-----X
MAEVE IHSEN,

Plaintiff, Index No.: 158534/2018

- v -

KEN JONES PHOTOGRAPHY, FULTON STUDIO 203, INC.,
and KEN JONES,

Defendants.
-----X

And it is further

ORDERED that Plaintiff shall file a copy of the supplemental summons and amended complaint adding Ken Jones as a party defendant within ten days of the filing date of the decision and order on this motion; and it is further,

ORDERED that Defendants KEN JONES PHOTOGRAPHY and FULTON STUDIO 203, INC., shall answer or respond to the amended complaint as per the CPLR; and it is further,

ORDERED that Plaintiff shall serve the new party defendant KEN JONES with process per the CPLR; and it is further,

ORDERED that defendant KEN JONES shall answer or respond to the amended complaint per the CPLR; and it is further,

ORDERED that Plaintiff shall, within 10 days of the filing date of the decision and order on this motion, serve a copy of this order with notice of entry upon defendants and upon the county clerk and the Clerk of the Trial Support Office who shall mark their records to reflect the change in the caption herein; and it is further

ORDERED that counsel for all parties in the newly captioned matter are directed to appear for a virtual conference on Tuesday, January 12, 2020, at 10:30 AM with a link to said conference to be provided by subsequent NYSCEF court notice.

The foregoing constitutes the decision and order of the Court.

10/02/2020
DATE


ROBERT DAVID KALISH, J.S.C.

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