

**14 So. Williamsport Holdings LLC v Cohen Fashion
Optical Store No. 281, LLC**

2021 NY Slip Op 32551(U)

December 1, 2021

Supreme Court, New York County

Docket Number: Index No. 652959/2021

Judge: Louis L. Nock

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

611, 612 [2017]). The proposed amendment to add Cohen Store is not palpably insufficient where Plaintiff alleges, *inter alia*, that Cohen Parent failed to observe corporate formalities and paid rent under the Lease. Therefore, the motion to amend is granted.

Consequently, the motion for summary judgment is denied. “When an amended complaint has been served, it supersedes the original complaint and becomes the only complaint in the case” (*R & G Brenner Income Tax Consultants v Gilmartin*, 166 AD3d 685, 688 [2d Dept 2018]). As such, it is procedurally improper to grant summary judgment at this time because the original complaint is a nullity. Therefore, the motion for summary judgment is denied without prejudice, as decreed hereinbelow.

Accordingly, it is

ORDERED that the plaintiff’s motion for leave to amend the complaint (motion sequence 002) is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion 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 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
14 SO. WILLIAMSPORT HOLDINGS LLC

Plaintiff,

- v -

COHEN FASHION OPTICAL STORE NO. 281, LLC
and COHEN FASHION OPTICAL, LLC,

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 (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address (www.nycourts.gov/supctmanh)); and it is further

ORDERED that the motion for summary judgment (motion sequence 001) is denied without prejudice and Plaintiff has leave to file a second motion for summary judgment as permitted under the CPLR after service of the amended complaint is complete and issue is joined.

Louis L. Nock

<u>12/1/2021</u> DATE					<u>LOUIS NOCK, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>				<input type="checkbox"/>	