

Ortiz v Jar Carpentry Inc.
2022 NY Slip Op 30085(U)
January 10, 2022
Supreme Court, New York County
Docket Number: Index No. 153398/2020
Judge: Frank Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04

Justice

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FRANCO GARAY ORTIZ,
Plaintiff,

- v -

JAR CARPENTRY INC., JAY POMERANCE, ILENE FINE,
ILENE FINE, THE ILENE FINE REVOCABLE TRUST

Defendant.

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INDEX NO. 153398/2020
MOTION DATE 10/05/2021
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 40, 41, 42, 43, 44, 45, 46, 47

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

Plaintiff seeks an order adding Mac Carpentry Corp. (hereinafter "Mac") as a defendant to this action. The motion is unopposed.

CPLR § 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave is to be freely given absent a showing that amendment would cause surprise or prejudice (Fahey v. County of Ontario, 44 NY2d 934 [1978]; 170 W. Vil. Assoc. v. G & E Realty, Inc., 56 AD3d 372 [1st Dept 2008]; Lanpont v. Savvas Cab Corp., Inc., 244 AD2d 208 [1st Dept 1997]).

As relevant herein, plaintiff alleges violations of the Law Labor causing serious injury, including fractures to his skull. Following default judgment as

against defendant Jar Carpentry (hereinafter “Jar”), Jar filed an answer advising that the instant construction project was a joint project with Jar and Mac each having responsibility for same.¹ Plaintiff therefore seeks to add Mac as a defendant in this matter.

Accordingly, it is

ORDERED that the plaintiff’s motion for leave to amend the complaint herein is granted for the reasons sets forth in the moving papers, and the amended complaint in the proposed form annexed to the moving papers shall be served upon defendant Mac Carpentry Corp. within 20 days of notice of entry of this Decision and Order; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

[continued on following page]

¹ The Court notes that although plaintiff contends defendant Jar Carpentry has moved to vacate its default, and same is sub judice, no such motion has been filed to NYSCEF.

ORDERED that counsel are directed to submit a single-joint-proposed preliminary conference order, via NYSCEF and first-class mail to chambers, no later than March 25, 2022 (preliminary conference forms are available at: <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/PC-Genl.pdf>).

Should counsel fail to reach agreement on material contained in the proposed preliminary conference order, they shall submit, contemporaneously with the proposed order, a single-joint letter outlining the dispute. Failure to timely submit a proposed order shall constitute waiver of same and may result in the Court issuing a sua sponte preliminary conference order; and it is further

ORDERED that the caption shall be amended to reflect the additional defendant as follows:

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FRANCO GARAY ORTIZ,
Plaintiff

-against-

JAR CARPENTRY INC., MAC CARPENTRY
CORP., JAY POMERANCE ILENE FINE,
Individually, ILENE FINE A TRUSTEE OF
THE ILENE FINE REVOCABLE TRUST, and
THE ILENE FINE REVOCABLE TRUST,
Defendants

-----X

; and it is further

ORDERED that plaintiff shall file notice of entry of this Decision and Order upon the Clerk's Office, in accordance with the service directives for electronically filed matters, within 10 days.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/10/2022
DATE


FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE