

<b>Connor v Core Four Constr.</b>
2022 NY Slip Op 31061(U)
March 17, 2022
Supreme Court, New York County
Docket Number: Index No. 159558/2015
Judge: Sabrina B. Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

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GREG CONNOR,

Plaintiff,

- v -

CORE FOUR CONSTRUCTION, 205 WEST 39TH ST  
COMPANY, 205 WEST 39TH ST CORPORATION, 205  
WEST 39TH ST, LLC NO1, 205 WEST 39TH ST, LLC NO2,  
205 WEST 39TH ST, LLC NO3, 205 WEST 39TH ST, LLC  
NO4, 205 WEST 39TH ST, LLC NO5, 205 WEST 39TH ST,  
LLC NO6, 205 WEST 39TH ST, LLC NO7, CALVIN KLEIN,  
INC.,PVH CORP., 205 WEST 39TH STREET COMPANY,  
L.P.,

Defendant.

-----X

CORE FOUR CONSTRUCTION, CALVIN KLEIN, INC., PVH  
CORP., 205 WEST 39TH STREET COMPANY, L.P., 205  
WEST 39TH STREET COMPANY, 205 WEST 39TH STREET  
CORPORATION, 205 WEST 39TH STREET, LLC NO.1, 205  
WEST 39TH STREET, LLC NO.2, 205 WEST 39TH STREET,  
LLC NO.3, 205 WEST 39TH STREET, LLC NO.4, 205 WEST  
39TH STREET, LLC NO.5, 205 WEST 39TH STREET, LLC  
NO.6, 205 WEST 39TH STREET, LLC NO.7

Plaintiff,

-against-

TF NUGENT, LL FLOOR DESIGNS

Defendant.

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**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595147/2016

The following e-filed documents, listed by NYSCEF document number (Motion 006) 201, 202, 203, 204,  
205, 206, 207, 214, 215, 216, 217, 218, 219, 221

were read on this motion for leave to supplement the Bill of Particulars.

**BACKGROUND**

This is an action to recover damages for injuries alleged sustained by plaintiff as a result  
of a work-related accident which occurred on May 7, 2015. Plaintiff, a union painter was

working under the direction of the General Contractor Core Fore painting a cast iron radiator during a renovation project at 205 West 39th Street, which fell on him.

In this action a note of issue has been filed and dispositive motions have been made and ruled upon.

### **THE PENDING MOTION**

On August 9, 2021, plaintiff moved for an order for leave to supplement the Bill of Particulars to assert a claim for lost wages pursuant to CPLR §3025(b) and (c) and CPLR §3042(b).

For the reasons stated below, the motion is granted.

### **DISCUSSION**

Plaintiff originally asserted a loss wage claim pursuant to his Bill of Particulars, which claim plaintiff testified to at his first deposition conducted on August 23, 2017. However, the loss wage claim was later withdrawn because plaintiff's tax returns had not been filed for several years and he was receiving wage benefits through Workers Compensation. Plaintiff alleges he was uncertain about his future employment status. When Worker's Compensation ended, plaintiff was found to be 50% disabled and unable to return to his occupation as a painter. As such, plaintiff was required to file for Social Security Disability. Plaintiff alleges that the Bill of Particulars was not amended, in part, due to the fact that his late filed tax returns were needed to verify his claim. Plaintiff has since filed said tax returns, and authorizations for Plaintiff's Disability Records were previously been provided to Defendant's attorneys.

Plaintiff alleges he was never able to return to work as a painter after the accident. His yearly income before the accident was \$73,949.00; the year after the accident it was \$7,368.

Plaintiff is asserting that he is entitled to loss wages caused by the injuries he sustained due to the subject incident.

CPLR 3025(b) 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.

Motions for leave to amend or supplement bills of particulars are governed by the same standards as those applying to motions to amend pleadings under CPLR 3025 (subd. [b]). *Cardy v. Frey*, 86 A.D.2d 968, 969 (4th Dep't 1982). After the note of issue is filed, a plaintiff must seek leave of the court, but such "leave to amend the pleadings, including a bill of particulars, is to be freely given, absent prejudice or surprise" to the opposing party. *Cherebin v. Empress Ambulance Serv., Inc.*, 43 A.D.3d 364, 365 (1st Dep't 2007). The burden of showing prejudice or surprise is on the opposing party. *A.J. Pegno Constr. Corp. v. City of New York*, 95 A.D.2d 655, 656 (1st Dep't 1983).

Prejudice is not found in the exposure of the defendant to greater damages, rather defendants must that they have been hindered in the preparation of their case. *Loomis v. Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18 (1981). *See also, Torres v. New York City Transit Authority* 78 AD3d 419(1st Dept, 2010) (*affirming trial court's permission of an amendment although after the note of issue was filed, and in the absence of a reasonable excuse for the delay, given the lack of prejudice to*).

Defendants acknowledge that at plaintiff's deposition in June 2019, counsel for plaintiff advised that because workers compensation had ceased plaintiff may seek to amend his claim to include lost wages. Defendants allege the new claim will require an additional deposition and

perhaps an additional expert for their case. Defendants have failed to show any prejudice that cannot be cured by the reopening of discovery for the purposes of addressing the claims in the amended bill of particulars. Additionally, plaintiff has consented to the note of issue being vacated so defendants may proceed with any discovery deemed necessary on this issue.

Based on the foregoing the motion is granted.

### **CONCLUSION**

WHEREFORE it is hereby:

ORDERED that plaintiff's motion for leave to amend/ supplement the bill of particulars is granted and the proposed supplemental bill of particulars is deemed served; and it is further

ORDERED the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that the parties shall appear for a conference via MS Teams on Wednesday, April 6<sup>th</sup>, 2022 at 2 PM; and it is further

ORDERED that all further discovery in this matter shall be completed within 90 days from the date of said conference; and it is further

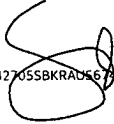
ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that, within 15 days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of issue and certificate of readiness, to which shall be attached a copy of this order; and it is further

ORDERED that service upon the Clerk 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](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

  
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3/17/2022  
DATE

SABRINA KRAUS, J.S.C.

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