

Jimenez v Morales

2022 NY Slip Op 31457(U)

May 4, 2022

Supreme Court, New York County

Docket Number: Index No. 151847/2012

Judge: Louis L. Nock

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on a loan agreement “to provide [non-party] EILEEN ARAUJO, as President of NEGROCLARO CORP., the borrower, the amount of eighty thousand (\$80,000) DOLLARS to be used by the Borrower to aid in the establishment of a restaurant” (NYSCEF Doc. No. 327.); and forged the signature of plaintiff Nelson Jimenez on a certificate of change of corporate agent designating the aforesaid Eileen Araujo as an agent of the corporation (NYSCEF Doc. No. 329).

The complaint which plaintiff seeks to amend was filed over a decade ago – on April 16, 2012. Since that time, extensive discovery practice has taken place to the point when plaintiff filed his note of issue on June 28, 2018. This matter was scheduled for trial to occur on September 27, 2021. That date was adjourned at the request of plaintiff’s counsel after jury selection had already commenced. All the while, not a word was mentioned by plaintiff’s counsel about wanting to add a claim for punitive damages. Said counsel was perfectly ready to go forward to trial on the current complaint.¹

The trial was rescheduled to take place April 13, 2022; but in late March 2022, counsel for defendant Rud Morales informed plaintiff’s counsel and the court that he would not be able to serve as trial counsel, and sought a further adjournment of trial to facilitate the retention of substitute counsel. After a conference was held in late March of this year in connection with said application, the current jury trial rescheduling order was arrived at:

ORDERED that, on or before May 13, 2022, any notice of appearance of substitute trial counsel for defendant Rud Morales shall be filed, or any letter shall be filed on or before said date by present counsel for defendant Rud Morales informing of said defendant’s commitment to proceed to trial *pro se*; and it is further

ORDERED that the failure of satisfaction of any of the aforesaid contingencies shall enable plaintiff’s counsel to apply to this court for a default judgment without trial; and it is further

¹ But for the family emergency of one of plaintiff’s counsel which precipitated the September adjournment.

ORDERED that, in the event of satisfaction of either of the aforesaid contingencies, jury selection in this matter shall occur on June 21, 2022, and the trial shall occur June 27 through June 29, 2022, each such day commencing at 10:00 a.m.

(NYSCEF Doc. No. 335.)

Examination of the docket reveals that plaintiff's counsel – after not having done so since the inception of this case over a decade ago – apparently deliberately waited till March of this year to make this incredibly late-in-the-game/eve-of-trial motion to amend the complaint, aimed directly at the precise time when Ms. Morles is totally bereft of legal counsel and most vulnerable in this action. The court finds such a maneuver to warrant a denial of plaintiff's motion to amend because it deliberately thrusts an unbearable measure of prejudice on Ms. Morales, who, until now, never had to defend against a punitive damages claim; but now, in the absence of counsel, would have to deal with it on the eve of a jury trial (*see, Edenwald Contracting Co. v City of N.Y.*, 60 NY2d 957, 959 [1983] [even a motion to amend a pleading, which as a general rule is freely granted, should be denied if the motion is made late in the case and presents “significant prejudice to the other side”]). Therefore, the present circumstances merit the court's exercise of discretion in denying the motion to amend.

Accordingly, it is

ORDERED that plaintiff's motion (seq. no. 016) for an open commission to take the deposition of non-party witness Eileen Araujo, and to request the Superior Court of the State of Connecticut to issue a subpoena and subpoena duces tecum to her to appear and submit for deposition, is granted per the accompanying order of even date herewith; and it is further

ORDERED that plaintiff's motion (seq. no. 017) to amend the complaint is denied.

This will constitute the decision and order of the court.

ENTER:

Louis L. Nock
LOUIS L. NOCK, J.S.C.

5/4/2022
DATE

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 type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	