

<b>Ragone v 110 Fifth Realty Corp.</b>
2022 NY Slip Op 31475(U)
May 5, 2022
Supreme Court, New York County
Docket Number: Index No. 160836/2020
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

-----X

DONNA RAGONE,

Plaintiff,

- v -

110 FIFTH REALTY CORP., SAMSON MANAGEMENT,  
LLC,CAMP STORES, LLC,

Defendant.

-----X

110 FIFTH REALTY CORP., SAMSON MANAGEMENT, LLC

Plaintiff,

-against-

JFS INC.

Defendant.

-----X

**INDEX NO.** 160836/2020  
**MOTION DATE** 04/29/2022  
**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595427/2021

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

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

**BACKGROUND**

Plaintiff commenced this action against 110 Fifth Realty Corp., (herein "FRC"), Samson Management, LLC (herein "SM") and Camp Stores, LLC (herein "CS") seeking damages for personal injuries allegedly sustained from a slip and fall accident on February 4, 2019.

FRC and SM appeared and answered on February 25, 2021. CS has failed to appear or answer. On May 10, 2021, FRC and SM filed a Third-Party Summons and Complaint as against JFS, Inc (herein "JFS"). JFS has failed to appear or answer.

On February 8, 2022, plaintiff was awarded a default judgment as against Camp Stores LLC and FRC and SM were awarded a default judgment as against third party defendant JFS Inc.

### **PENDING MOTION**

Plaintiff now moves to supplement the summons and complaint to include a direct action as against third-party defendant JFS Inc. The motion was returnable on April 29, 2022. JFS has failed to appear or submit opposition.

### **DISCUSSION**

Cplr §3025(b) provides,

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.

It is well settled that leave to amend pleadings shall be freely granted unless the amendment sought is palpably improper or insufficient as a matter of law, or unless prejudice or surprise directly results from the delay in seeking such amendment. (*Risk Control Assocs. Ins. Grp. v. Maloof, Lebowitz, Connahan & Oleske, P.C.*, 151 A.D.3d 527, 57 N.Y.S.3d 139 [1st Dept. 2017]).

The court finds the supplemental summons and complaint to be sufficient and, as JFS is already a party to this action and has been on notice of the same, the court finds no prejudice or surprise results in seeking the amendment. Therefore, plaintiff has established entitlement to amend the summons and complaint herein.

The caption is amended as follows

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DONNA RAGONE,

Plaintiff,

Index No.: 160836/2020

-against

110 FIFTH REALTY CORP.,  
SAMSON MANAGEMENT, LLC,  
CAMP STORES, LLC, and JFS INC.,

Defendants.

-----  
110 FIFTH REALTY CORP. and  
SAMSON MANAGEMENT, LLC,

Third-Party Plaintiffs,

-against-

JFS INC.,

Third-Party Defendant

-----  
**CONCLUSION**

Wherefore, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be served upon JFS Inc in accordance with the CPLR; 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

ORDERED that counsel are directed to appear for a virtual status conference via MS Teams, on June 14, 2022, at 10:30 AM.


ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of

this order with notice of entry on defendants, and to JFS Inc. c/o The Corporation Trust Company Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such 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/suptctmanh](http://www.nycourts.gov/suptctmanh)); and it is further

This constitutes the decision and order of the court.

5/5/2022  
DATE

  
SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: