

Ruderman v Frantz
2022 NY Slip Op 33320(U)
October 3, 2022
Supreme Court, New York County
Docket Number: Index No. 153778/2022
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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JANET RUDERMAN, SAMUEL RUDERMAN,

Plaintiffs,

- v -

CHARLES YVES FRANTZ, THE CITY OF NEW YORK, THE
NEW YORK CITY DEPARTMENT OF EDUCATION

Defendants.

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INDEX NO. 153778/2022

MOTION DATE 08/29/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to AMEND CAPTION/PLEADINGS

Plaintiffs bring this negligence action against defendants Charles Yves Frantz, the City of New York, and the New York City Department of Education for injuries allegedly sustained on December 6, 2021, when Janet Ruderman was struck by a school bus owned and operated by defendants while traversing the crosswalk located at East 40th Street and Second Avenue, New York, New York.

Plaintiffs now move: (1) pursuant to CPLR §3025(b), for leave to amend the complaint and add Little Lisa Bus Co., Inc. ("Little Lisa") as a defendant based on its alleged ownership of the subject school bus; and (2) pursuant to CPLR §3403(a)(4), for a special trial preference based on their advanced age. Defendants oppose only that branch of plaintiffs' motion seeking a trial preference, contending that such relief is premature. For the reasons set forth below, plaintiffs' motion is granted in part.

DISCUSSION

“Leave to amend pleadings under CPLR §3025(b) should be freely given and denied only if there is prejudice or surprise resulting directly from the delay or if the proposed amendment is palpably improper or insufficient as a matter of law” (McGhee v Odell, 96 AD3d 449, 450 [1st Dept 2012] [internal citations and quotations omitted]), Here, the amendment sought is neither palpably improper nor insufficient as a matter of law (See Nung Ja Suh v Nevarez-Biscello, No. 713320/2016, 2017 WL 1423047, at *1 [Sup Ct, Queens County 2017]). Moreover, defendants do not oppose plaintiffs’ request to add Little Lisa as a defendant. Accordingly, that branch of plaintiffs’ motion is granted.

That branch of plaintiffs’ motion seeking a trial preference is denied without prejudice to renew upon the filing of the note of issue. Although CPLR §3403(a)(4) enables a plaintiff who has reached the age of seventy years to apply for special preference in any action, the notice of motion for the preference must be served with or after the note of issue unless the court otherwise orders (See CPLR §3403(b); Tacinelli v Liberty Lines, 123 AD2d 756, 758 [2nd Dept 1986]). Here, since discovery is incomplete and a note of issue has not been filed, this motion is premature (See Seraita v Seraita, 93 AD2d 725, 726 [1st Dept 1983]; World City Foundation, Inc. v Sacchetti, 2004 WL 5537521 [Sup Ct, New York County 2004]; Oliver v Janss, 2018 WL 5879918, at *1 [Supreme Ct, New York County 2018]).

Accordingly, it is

ORDERED that the plaintiffs’ motion for leave to amend the complaint and add Little Lisa Bus Co., Inc. as a defendant is granted, and the action shall bear the following caption;

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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JANET RUDERMAN and SAMUEL RUDERMAN, Index No.: 153778/2022

Plaintiff,

-against-

CHARLES YVES FRANTZ, LITTLE LISA BUS CO., INC.,
THE CITY OF NEW YORK, and THE NEW
YORK CITY DEPARTMENT OF EDUCATION,

Defendants.
-----X

and it is further

ORDERED that plaintiffs’ Summons and Amended Verified Complaint in the proposed form annexed as Exhibit C to plaintiffs’ moving papers (NYSCEF Doc. No. 11) shall be deemed served upon all parties who have previously appeared in the action upon plaintiffs’ service of a copy of this decision and order with notice of entry on those parties; and it is further

ORDERED that plaintiff shall serve the Summons and Amended Verified Complaint in the proposed form annexed as Exhibit C to plaintiffs’ moving papers (NYSCEF Doc. No. 11), along with a copy of this decision order with notice of entry, on Little Lisa Bus Co., Inc. in accordance with the CPLR within twenty days of the date of this order; and it is further

ORDERED that plaintiffs’ request for a trial preference is denied without prejudice to its renewal upon filing the note of issue; and it is further

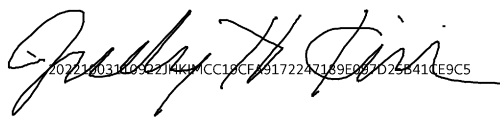
ORDERED that the Clerk of the Court is directed to set this matter down for a preliminary conference at the earliest available date; and it is further

ORDERED that counsel for plaintiffs 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 amended caption 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 (ww.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.



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10/3/2022

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE