

**KLG Jewelry LLC v 706 Madison LLC**

2022 NY Slip Op 33332(U)

October 3, 2022

Supreme Court, New York County

Docket Number: Index No. 160854/2017

Judge: William Perry

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. WILLIAM PERRY PART 23**

*Justice*

-----X

KLG JEWELRY LLC,

Plaintiff,

- v -

706 MADISON LLC, FRIEDLAND PROPERTIES, INC., TRANSPARENT CONSTRUCTION LLC, JRM CONSTRUCTION MANAGEMENT, LLC, SCALPEL CONSTRUCTION INC., SCALPEL CONTRACTING, INC., JOHN DOE CONTRACTOR CORPORATIONS 1-10, JOHN DOE SUBCONTRACTOR CORPORATIONS 1-10, **VALERIE TRESNOWSKE, RICHARD TRESSAN, ALICE HUBRECHT WALKER, ARTICLE 2 TRUST UNDER RICHARD TRESSAN FAMILY TRUST U/A 4/3/17, CHARLES TRESSAN, ALICE HUBRECHT WALKER, ARTICLE 2 TRUST UNDER CHARLES TRESSAN FAMILY TRUST U/A 4/3/17, 700 MADISON PARTNERS LLC, UNITED DRILLING, INC.,**

Defendant.

-----X

SCALPEL CONSTRUCTION INC., SCALPEL CONTRACTING, INC.

Plaintiff,

-against-

UNITED DRILLING, INC.

Defendant.

-----X

**DECISION + ORDER ON MOTION**

Third-Party  
Index No. 595391/2018

The following e-filed documents, listed by NYSCEF document number (Motion 001) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 119, 120, 121, 122, 123, 124, 125

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

Plaintiff moves to amend its own name from “KLG Jewelry LLC” to “KLG Jewelry LLC/KLG New York LLC d/b/a De Grisogono.” (NYSCEF Doc No. 104, Pl.’s Memo.)

Defendants Scalpel Construction Inc. and Scalpel Contracting Inc. (collectively, “Scalpel”) oppose

the motion (NYSCEF Doc No. 119, Scalpel Opp.), as do Defendants 706 Madison Partners LLC, Friedland Properties, Inc., Transparent Construction LLC, and JRM Construction Management LLC (collectively, “706 Madison”). (NYSCEF Doc No. 122, 706 Madison Opp.)

### **Background**

Plaintiff commenced this action on December 7, 2017. (NYSCEF Doc No. 1.) Scalpel impleaded United Drilling via third-party complaint on May 18, 2018 (NYSCEF Doc No. 48), with Plaintiff amending its complaint to add United Drilling as a direct defendant on the same day. (NYSCEF Doc No. 52, Am. Cmplt.)

Plaintiff’s counsel states that during the April 26, 2021 deposition of Plaintiff’s witness, David Klein, it “became apparent” that KLG Jewelry LLC “had legally changed its name to KLG New York LLC and the company name that was used to conduct business at 700 Madison Avenue by the principals of KLG was De Grisogono USA Inc.” (Pl.s’ Memo at ¶ 9.) Plaintiff argues that the motion should be granted because “nothing in the suit will change as a result of the change of caption other than the Plaintiff will be correctly named.” (*Id.* at ¶ 27.) In support, Plaintiff submits a screenshot of an NY Department of State webpage demonstrating that KLG New York LLC’s Articles of Organization were filed by KLG Jewelry LLC. (NYSCEF Doc No. 114.)

In opposition, Defendants argue that they would be prejudiced by the amendment because KLG New York LLC and De Grisogono are separate, distinct corporations, De Grisogono is bankrupt, and that the testimony of David Klein is insufficient to establish Plaintiff’s entitlement to amend its own name. (Scalpel Opp. at 1-3; 706 Madison Opp. at 1-6.)

The motion is granted. “In general, leave to amend should be freely granted in the absence of prejudice or surprise, upon showing that the proposed amendment has merit.” (*Centrifugal Assocs., Inc. v. Highland Metal Indus., Inc.*, 193 AD2d 385, 385 [1st Dept 1993].) Additionally,

pursuant to CPLR 2001, “[a]t any stage of an action, a court may permit a mistake, omission, defect or irregularity to be corrected upon such terms as may be just.” (*Pinto v House*, 79 AD2d 361, 365 [1st Dept 1981].) Defendants fail to adequately allege specific prejudice that they would suffer as a result. (*Chambers v Prug*, 162 AD3d 974, 975 [2d Dept 2018].)

Although Plaintiff fails to attach a copy of the proposed second amended complaint, such a failure is a “technical defect”, and the proposed amendment is adequately described in the motion papers. (*Berkeley Research Group, LLC v FTI Consulting, Inc.*, 157 AD3d 486, 490 [1st Dept 2018].) Thus, it is hereby

ORDERED that Plaintiff’s motion sequence 001 for leave to amend the caption is granted; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
KLG JEWELRY LLC/KLG JEWELRY NEW YORK LLC  
d/b/a DE GRISOGONO USA, INC.

Plaintiff,

Index No. 160854/2017

-against-

706 MADISON LLC, FRIEDLAND PROPERTIES,  
INC., TRANSPARENT CONSTRUCTION LLC,  
JRM CONSTRUCTION MANAGEMENT, LLC,  
SCALPEL CONSTRUCTION INC., SCALPEL  
CONTRACTING, INC., JOHN DOE CONTRACTOR  
CORPORATIONS 1-10, JOHN DOE  
SUBCONTRACTOR CORPORATIONS 1-10, and  
UNITED DRILLING, INC.,

Defendants.

-----X

SCALPEL CONSTRUCTION INC., SCALPEL  
CONTRACTING, INC.

Third-Party Plaintiffs,

-against-

Third-Party Index No. 595391/2018

UNITED DRILLING, INC.

Third-Party Defendant.

-----X

And it is further

ORDERED that the second amended summons and complaint shall be deemed served upon service of a copy of this order with notice of entry upon all parties in the action; and it is further

ORDERED that the second amended summons and complaint shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that Plaintiff’s counsel 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 parties being added 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 (www.nycourts.gov/suptmanh)).

10/03/2022  
DATE

  
WILLIAM PERRY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE