

**Goldberg-Zoino Assoc. of N.Y., P.C. v Persian
Congregation of Flatbush**

2024 NY Slip Op 30829(U)

March 12, 2024

Supreme Court, New York County

Docket Number: Index No. 153761/2022

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

GOLDBERG-ZOINO ASSOCIATES OF NEW YORK, P.C.,
d/b/a GZA GEOENVIRONMENTAL OF NEW YORK,

Plaintiff,

INDEX NO. 153761/2022

MOTION DATE 06/02/2023

MOTION SEQ. NO. 001

- v -

PERSIAN CONGREGATION OF FLATBUSH, A
CORPORATION; THE MOINIAN GROUP, A FICTITIOUS
NAMED CORPORATION; and JOSEPH MOINIAN,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, and 20

were read on this motion to AMEND PLEADINGS.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion for leave to amend the complaint and serve a supplemental summons is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 11-12, 20) and the exhibits attached thereto, in which the court concurs, as summarized herein.

“Leave [to amend] shall be freely given upon such terms as may be just” (CPLR 3025[b]). Absent undue delay, prejudice, or surprise, and provided the proposed amendment arises from the same transactions and occurrences as the original complaint, the motion should be granted (*Fellner v Morimoto*, 52 AD3d 352, 353 [1st Dept 2008]). Here, defendants make no showing of prejudice, surprise, or undue delay.

Defendants argue that plaintiff failed to adequately support the motion with an affidavit of merit or documentary evidence. The court first notes that documentary evidence regarding the

proposed defendant to be added, Rasheed Shaikh, is attached to the proposed amended complaint (NYSCEF Doc. No. 16). Moreover, “[a]t this stage, plaintiff was not required to support its allegations with evidence or an affidavit of merit” (*St. Nicholas W. 126 L.P. v Republic Inv. Co., LLC*, 193 AD3d 488 [1st Dept 2021]). To the extent plaintiff failed to submit a redlined version of the amended complaint in accordance with CPLR 3025(b), the court views this as an excusable defect given that a proposed pleading, albeit one without redlines, was attached (CPLR 2001; *Greene v Esplanade Venture Partnership*, 36 NY3d 513, 526 n 3 [2021] [“To the extent defendants contend that the motion should have been denied for the independent reason that plaintiffs failed to comply with the submission requirements of CPLR 3025(b), that contention should be rejected”]).

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers (within NYSCEF Doc. No. 16), shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers (within NYSCEF Doc. No. 16), 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 the action shall bear the following caption:

“-----X

GOLDBERG-ZOINO ASSOCIATES OF NEW YORK, P.C.,
d/b/a GZA GEOENVIRONMENTAL OF NEW YORK,

Index No. 153761/2022

Plaintiff,

-v-

PERSIAN CONGREGATION OF FLATBUSH,
A CORPORATION; THE MOINIAN GROUP, A FICTITIOUS
NAMED CORPORATION; JOSEPH MOINIAN, d/b/a THE
MOINIAN GROUP, and RASHEED SHAIKH,

Defendants.

-----X”; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, 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); and it is further

ORDERED that the parties shall appear for a preliminary conference on May 15, 2024, at 2:15 PM in Room 1166, 111 Centre Street, New York, New York.

This constitutes the decision and order of the court.



<u>3/12/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE