

Martinez v Precision Collision Auto Body Inc.
2024 NY Slip Op 35668(U)
October 22, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 623061/2023
Judge: James F. Quinn
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Action 1

Index No.: 623061/2023

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 41 - SUFFOLK COUNTY

P R E S E N T :

Hon. JAMES F. QUINN
Acting Justice of the Supreme Court

MOT. DATE 09/16/2024

MOT. SUBMIT DATE 10/22/2024

Mot. Seq. #003-MG

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Action 1 Index No.: 623061/2023

DECISION AND ORDER

ANJELICA SIMONE MARTINEZ,

Plaintiff,

- against -

PRECISION COLLISION AUTO BODY INC.
and JASWINDER SINGH,

Defendants.

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Action 2 Index No.: 607577/2024

LORI KELLY, as Administratrix of the Estate of
JOSEPH KELLY, deceased, and LORI KELLY,
individually,

Plaintiff,

- against -

MACK TRUCKS, INC., PRECISION
COLLISION AUTO BODY, INC., TRIUS, INC.,
VASSO SYSTEMS, INC. and JASWINDER
SINGH,

Defendants.

-----X
Upon the E-File document list numbered 45-52 read on application by the Plaintiff in Action #1 Anjelica Simone Martinez seeking an order pursuant to CPLR §§1001, 1002, 1003 and 3025 granting leave to amend the Summons and Complaint and to amend the caption, without opposition; it is hereby

ORDERED, Plaintiff in Action #1 Anjelica Simone Martinez's application for an order pursuant to CPLR §3025 granting Plaintiff leave to amend the Summons and Complaint, without opposition, is **granted**; and it is further

ORDERED, Plaintiff in Action #1 Anjelica Simone Martinez's application for an order pursuant to CPLR §1001, 1002 and 1003 granting Plaintiff leave to amend the caption, without opposition, is **granted**.

This action, *inter alia*, seeks damages for personal injuries allegedly sustained by Plaintiff in a car accident on July 3, 2023. This Court issued a Decision and Order consolidating Action #1 and Action #2 on dated October 10, 2024.

CPLR §3025(b) provides that "[a] party may amend his 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." "Leave to amend a pleading should be freely granted unless the amendment sought is palpably improper as a matter of law or unless prejudice or surprise results from the delay" (*Uliano v Entemann's, Inc.*, 148 A.D.2d 604, 605 [2d Dept 1989]; *see also Clark v Clark*, 93 AD3d 812, 941 NYS2d 192 [2d Dept. 2012]). No evidentiary showing of merit is required on a motion under CPLR §3025(b) (*see Lucido v Mancuso*, 49 Ad3d 220, 851 NYS2d 238 [2d Dept. 2008]). Whether to grant or deny leave to amend is committed to the court's discretion (*Edenwald Contracting Co., Inc. v City of New York*, 60 N.Y.2d 957, 959 [1983]).

Prejudice sufficient to defeat an amendment must show prejudice traceable not only to the new matter sought to be added but also to the fact that it is being added at a relatively late stage in the proceedings. (*See, Edenwald Contracting v City of New York*, 471 N.Y.S.2d 55, 60 N.Y.2d 957, 459 N.E.2d 164 (1983); *St. Paul Fire and Marine Ins. Co. v Town of Hempstead*, 291 AD2d 488, 738 N.Y.S.2d 226 [2d Dept. 2002]).

It is clear from the Court's review of all the papers presented on this application that Plaintiff in Action #1 Anjelica Simone Martinez has met their burden to amend the summons and complaint. It is also clear from a review of the papers to the Court there is no surprise or prejudice to the other parties. Here, as there is no opposition to the application to amend the summons and complaint, that application is granted.

Accordingly, it is hereby

ORDERED, the Court deems the proposed supplemental summons and amended complaint filed as of the date of this Decision and Order; and it is further

ORDERED, Plaintiff in Action #1 Anjelica Simone Martinez shall serve the Supplemental Summons and Amended Complaint upon Defendants Mack Trucks, Inc., Trius, Inc. And Vasso Systems, Inc. within fifteen (15) days of this Decision and Order; and it is further

ORDERED, Plaintiff in Action #1 Anjelica Simone Martinez's request to amend the caption, without opposition, is hereby **granted**; and it is further

ORDERED, that the Clerk of the Court is directed to amend the caption as follows, and all future pleadings and papers will use the amended caption:

Action 1 Index No.: 623061/2023

ANJELICA SIMONE MARTINEZ,

Plaintiff,

- against -

PRECISION COLLISION AUTO BODY INC.
and JASWINDER SINGH, MACK TRUCKS,
INC., TRIUS, INC., and VASSO SYSTEMS,
INC.,

Defendants.

Action 2 Index No.: 607577/2024

LORI KELLY, as Administratrix of the Estate of
JOSEPH KELLY, deceased, and LORI KELLY,
individually,

Plaintiff,

- against -

MACK TRUCKS, INC., PRECISION
COLLISION AUTO BODY, INC., TRIUS, INC.,
VASSO SYSTEMS, INC. and JASWINDER
SINGH,

Defendants.

-----X
ORDERED, if applicable, the movant shall serve notice pursuant to CPLR §8019(c) upon the Clerk of the County of Suffolk within thirty (30) days from the date of the entry of this order; and it is further

ORDERED, all counsel shall appear **IN PERSON** for a Compliance Conference on **December 10, 2024 at 9:30am**, as scheduled.

The foregoing constitutes the **Decision and Order** of this Court.

Dated: October 22, 2024
Riverhead, New York


HON. JAMES F. QUINN, A.J.S.C.

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