

Cobb v Setzer

2025 NY Slip Op 33645(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 654150/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

CRYSTAL COBB,

Plaintiff,

- v -

RIDVAN SETZER, 1A CONSTRUCTION LLC, MKNK
WASTE REMOVAL, INC.

Defendants.

-----X

INDEX NO. 654150/2023

MOTION DATE 9/9/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for EXTEND – TIME, AMEND – COMPLAINT.

Plaintiff’s motion to extend the note of issue and discovery deadlines and to amend her complaint is granted.

Background

Plaintiff alleges that she hired defendants to perform work on her apartment in Manhattan and brought this breach of contract case against them, alleging that the work was never completed and that the work that was done was performed negligently. Plaintiff further alleges that defendant Rivian Setzer represented himself as being the manager of defendant 1A Construction LLC (“1A”), despite the fact that no such LLC existed. Plaintiff further claims that neither defendant 1A nor MKNK Waste Removal, Inc. were licensed to perform the work for which they were hired.

Here, plaintiff seeks an extension of time to complete discovery, an extension of the deadline to file the note of issue, and permission to file an amended complaint and have it

deemed served on defendants. Plaintiff alleges that the failure to comply with previous Court orders was the fault of plaintiff's previous counsel. This is supported by the affidavit of plaintiff Crystal Cobb (NYSCEF Doc. No. 25).

Defendants oppose plaintiff's request for an extension of the note of issue and discovery deadlines based on plaintiff's failure to follow the law of the case – claiming that plaintiff did not follow the roadmap laid out in this Court's August 14, 2025 order at NYSCEF Doc. No. 22. The key part of that order, which denied plaintiff's motion to amend the complaint, stated that, "[t]his motion [to amend] may be brought again after the note of issue is filed, or, if plaintiff successfully obtains a stay of the note of issue deadline upon a proper application, after such a motion is decided" (*id.*).

Defendants further claim that they would be prejudiced if the Court allows plaintiff to file an amended complaint and say that granting the OSC would reopen discovery and force defendants to defend against new claims two years after this case was commenced. Defendants bolster their argument by pointing to the fact that defendants have already answered, asserted counterclaims, and have relied on the Court's deadlines to prepare their case.

Discussion

Extend Time

The Court's previous order which denied plaintiff's request to file an amended complaint states, in part, that the motion to amend the complaint "...may be brought again after the note of issue is filed, or, if plaintiff successfully obtains a stay of the note of issue deadline upon a proper application, after such a motion is decided" (NYSCEF Doc. No. 22). In this instant motion, plaintiff properly sought to extend the note of issue deadline, blaming her former attorney for ignoring the Court's deadlines and failing to communicate with her.

Plaintiff avers that little to no discovery has been completed, and this is not disputed by defendants. The Court therefore grants the part of plaintiff's motion which seeks to extend the parties' time to complete discovery and to file the note of issue.

Amend

Since plaintiff has met her burden to extend the note of issue deadline, the Court will now consider the part of plaintiff's motion which seeks to amend the complaint and have it deemed served upon defendants.

Leave to amend should be freely given under CPLR 3025(b) absent a showing of prejudice or surprise stemming from the delay (*Valdes v Marbrose Realty Inc.*, 289 AD2d 28, 29 [1st Dept 2001]). "Prejudice arises when a party incurs a change in position or is hindered in the preparation of its case or has been prevented from taking some measure in support of its position, and these problems might have been avoided had the original pleading contained the proposed amendment" (*id.*).

Defendants claim that they will be prejudiced since it would reopen discovery and force them to defend against new claims two years after commencement.

The Court does not notice any substantial changes to the facts in the proposed amended complaint at NYSCEF Doc. No. 31, and defendants do not point to any. The facts concern the same parties, the same work, and the same series of events. The proposed amended complaint does add several causes of action: unjust enrichment, breach of implied covenant of good faith and fair dealing, deceptive acts and practices, deceptive advertising, and common law fraud. The addition of unjust enrichment and breach of implied covenant of good faith and fair dealing are not prejudicial and should come as no surprise. They are often plead together with breach of contract. With regard to the other new proposed causes of action, plaintiff clearly bases the

additional claims on the same facts that were included in the original complaint, as no new facts were alleged in the proposed amended complaint. The Court does not find that the amended complaint represents a surprise or prejudice to defendants.

Furthermore, contrary to defendants' argument, granting the motion to amend does not reopen discovery – extending the note of issue deadline and allowing discovery to proceed already did that. And even though defendants have answered and asserted counterclaims, that does not equal prejudice sufficient to deny the plaintiff's motion. Defendants certainly will now have the opportunity to respond however they deem appropriate to the amended complaint; they can revisit their answer and may, but are not required to, assert new counterclaims, for example.

It is undisputed that little to no discovery has taken place. Furthermore, defendants have not pointed to any facts or claims that were added to the amended complaint that change their position, hinder their preparation of the case, or that have prevented them from taking some measure in support of their position. The Court therefore grants plaintiff's motion to file her amended complaint.

To keep a clean record, plaintiff must upload a copy of her amended complaint and label it as amended complaint (it is only an exhibit now). Plaintiff must upload it within five days of this decision being uploaded. Upon plaintiff uploading her amended complaint, it will be deemed served upon defendants.

Summary

The Court grants the part of plaintiff's motion which seeks to extend the note of issue and discovery deadlines; both parties agree that little to no discovery has been done, and plaintiff blames her prior counsel for these failures. The Court further grants the part of plaintiff's motion which seeks to amend her complaint and have it deemed served upon defendants upon uploading

to NYSCEF. Defendants did not show that they were prejudiced or surprised by the amended complaint, which adds causes of action but no new facts.

Accordingly, it is hereby

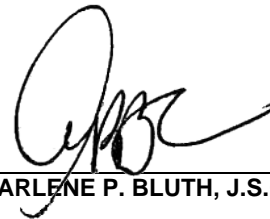
ORDERED that plaintiff’s motion to extend the note of issue and discovery deadlines is granted to the extent that the Court vacates the note of issue deadline and schedules a discovery conference for November 3, 2025 at 10 a.m. On or before October 26, 2025, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or, 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). If no update is uploaded by October 26, 2025, or if the documents submitted show that inadequate progress has been made, the Court may adjourn the conference or order a note of issue be filed.

ORDERED that plaintiff’s motion to amend her complaint is granted and she shall upload the proposed amended complaint relabeled as “Amended Complaint” and, upon uploading, shall be deemed served upon defendants; and it is further

ORDERED that all other relief the parties sought is denied.

9/26/2025

DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: