

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
XXXXXXXXXXXXXXXXXXXX,

Plaintiff(s)

Index No. XXXXX/XX

-against-

XXXXXXXXXXXXXXXXXXXX,

NOTICE OF MOTION

Defendant(s)

-----X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of XXXXXXXXXXXX dated June 25, XXXX, and the copy of the proposed amended answer and the exhibits annexed thereto and all the pleadings and proceedings heretofore had herein, the undersigned will move this Court before an IAS Motion Support Part at the Courthouse located at 360 Adams Street, Brooklyn, New York, on the 17th day of August, XXXX at 9:30 a.m. in the forenoon of that day or soon thereafter as counsel can be heard, for an Order permitting Defendant, XXXXXXXXXXXXXXXXXXXX. to amend its answer and for summary judgment pursuant to C.P.L.R. 3212 and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, are required to be served on the undersigned at least seven (7) days prior to the return date of this motion pursuant to C.P.L.R. 2214(b).

Dated: XXXXXXXX, New York
XXXXX XX, XXXX

Yours, etc.,

XXXXXXXXXXXXXXXXXX
Attorneys for Defendants
Office and P.O. Address
XXXXXX
XXXXXXXX, NY XXXXX
(XXX) XXX-XXXX

XXXXXXXXXXXXXXXXXXXX
Attorneys for Plaintiff(s)

XXXXXXXXXX
XXXXXX, NY XXXXX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
XXXXXXXXXXXXXXXXXXXX,

Plaintiff(s)

Index No. XXXXX/XX

-against-

XXXXXXXXXXXXXXXXXXXX,

NOTICE OF MOTION

Defendant(s)

-----X

XXXXXXXXXXXXXXXXXXXX, an attorney duly admitted and licensed to practice in the State of New York, hereby affirms the following under penalty of perjury:

I am of counsel to XXXXXXXXXXXXXXXX, which represents Defendant XXXXXXXXXXXXXXXX to amend their answer to allege the affirmative defense that, "the Defendant alleges that the vehicle alleged to have been involved herein was stolen from the Defendant prior to the alleged incident. As there was no permission or consent to its use said remedy is a complete bar to the maintenance of the present action."

Additionally, this affirmation is submitted in support of Defendant XXXXXXXXXXXXXXXX's motion seeking an order granting summary judgment in their favor based upon said affirmative defense.

The relevant facts of this action are more fully stated in the annexed affidavit of merit of XXXXXXX XXXXXXX, owner of XXXXXXXXXXXXXXXX. As per XXXXXXXXXXXXX's affidavit, he had parked the GMC tow truck in the driveway outside the shop, locked the vehicle, put the keys inside the shop which he then locked up for the night and left the premises. He was informed later that evening that the tow truck had been involved in an accident and he reported it as stolen at that time. Also annexed is a copy of the police recovery report.

Through an office error the affirmative defense was not alleged in Defendant XXXXXXXX's answer dated December 4, XXXX.

The law is clearly settled that, "...motions for leave to serve amended pleadings should be liberally granted unless the rights of the parties are substantially prejudiced." Anderson v. University of Rochester, 91 A.D.2d 851

"Where the party opposing a motion to serve an amended pleading cannot demonstrate prejudice resulting directly from the delay, denial of the motion has been deemed an abuse of discretion." Murray v.

Dated: XXXXXXXX, New York
XXXX XX, XXXX

XXXXXXXXXXXXXXXXXXXX