

D.N. UWY-CV-15-6025912-S

JAMES GRECHKA

v.

WHOLE FOODS MARKET GROUP, INC.

SUPERIOR COURT

J.D. OF WATERBURY

AT WATERBURY

JUNE 30, 2016

OBJECTION TO MOTION TO CITE IN ADDITIONAL DEFENDANT

The Defendant, Whole Foods Market Group, Inc., hereby Objects to Plaintiff's Motion to Cite In WFM Properties Cheshire, LLC as an additional defendant (Pleading No. 126.00). In support of this Objection, the Defendant Whole Foods Market Group, Inc. represents as follows:

1. By Writ, Summons and Complaint dated 12/17/2014, the Plaintiff James Grechka brought a negligence action for personal injuries against the Defendant Whole Foods Market Group, Inc. ("Whole Foods") arising out of his trip and fall accident on alleged uneven pavers on a walkway leading into the office trailer of non-party Lily Transportation located at 400 East Johnson Avenue, Cheshire, Connecticut on 10/4/2013.

2. The real property known as 400 East Johnson Avenue, Cheshire, Connecticut is comprise of that part occupied by the Defendant Whole Foods which operates a Distribution Center thereon and that part wholly occupied by non-party, Lily Transportation, a trucking company. The title holder/owner of the real property known as 400 East Johnson Avenue, Cheshire, Connecticut is non-party WFM Properties Cheshire, LLC ("WFM Cheshire").

3. Plaintiff's Complaint alleges that the Defendant Whole Foods was negligent because it failed to: 1) inspect the paver walkway leading into non-party Lily Transportation's office trailer; 2) warn the Plaintiff of the dangerous condition of the paver walkway; 3) repair the

**ORAL ARGUMENT IS REQUESTED
TESTIMONY IS NOT REQUIRED**

paver walkway; and 4) erect barriers to prevent those lawfully on the premises from falling due to the dangerous condition.

4. On 5/14/2015, in its Answers to Plaintiff's Interrogatories and Requests for Production, Defendant Whole Foods advised the Plaintiff that WFM Properties is the owner of the premises known as 400 East Johnson Avenue, Cheshire, Connecticut at all times relevant.

5. Plaintiff's Motion to Cite in WFM Properties should be denied because: 1) it is untimely; 2) it causes undue prejudice to the Defendant Whole Foods; and 3) WFM Properties is not a necessary party needed for the Court to make a complete determination of the issues in the case.

6. "Whether to allow the addition of a party to a pending legal proceeding generally rests in the sound discretion of the trial court." Lettieri v. American Savings Bank, 182 Conn. 1, 13 (1980); Price-Jayner v. A.F. Conte & Co., 8 Conn. App. 83, 90 (1986). "Factors to be considered include the timeliness of the application, the possibility of prejudice to the other party, and whether the applicant's presence will enable the court to make a complete determination of the issues." Lettieri v. American Savings Bank, *supra*.

7. In our present case, the Plaintiff was advised on 5/14/2015 by way of Whole Food's Answers to Plaintiff's Interrogatories and Requests for Production that non-party WFM Properties is the owner/title holder of the subject premises. Despite having this knowledge for over one year, Plaintiff waited until 6/30/2016, the day before the Trial Management Conference of 7/1/2016 in the above entitled matter, to file his subject Motion to Cite In WFM Properties as an additional defendant. The Trial of this matter is scheduled to commence on 8/2/2016.

8. Plaintiff has not set forth any reason or good cause as to why he has waited until the eve of Trial to seek to add WFM Properties as an additional Defendant when he has had this information for over one year.

9. Plaintiff's proposed addition of WFM Properties will delay the Trial of this matter scheduled for 8/2/2016 because WFM Properties will want to conduct discovery and will likely file a Motion for Summary Judgment on the grounds that Plaintiff's proposed Complaint against it is barred by the two year statute of limitations set forth in Conn. Gen. Stat. §52-584 which states in relevant part that "no action to recover damages for injury to that person. . . . caused by negligence . . . shall be brought but within two years from the date when the injury is first sustained or discovered...." Plaintiff's accident occurred on 10/4/2013. Thus, the statute of limitations for negligence expired on 10/4/2015.

10. WFM Properties' anticipated Motion for Summary Judgment based upon the statute of limitations bar cannot be drafted, oral arguments cannot be heard and the Court's decision on such Motion cannot be drafted all in the one month before the Trial which will commence on 8/2/2016. Also, Plaintiff will likely want to file an Objection thereto which will require additional time. Thus, the granting of Plaintiff's Motion to Cite In WFM Properties will cause undue delay to the Trial of this matter.

11. Moreover, Plaintiff's Motion to Cite In WFM Properties filed one day before the Trial Management Conference on 7/1/2016 can only be viewed as a delay tactic by Plaintiff. As stated herein, Plaintiff has been advised that WFM Properties is the owner/title holder of the premises since 5/14/2015.

12. Further, WFM Properties is not a necessary party and its presence is not necessary for the Court to make a complete determination of the issues in the case. Since Plaintiff has

brought a premises liability case, liability is dependent upon who has possession and control over that portion of the premises which contained the alleged defect that caused the Plaintiff's accident and injuries. "The touchstone of liability for unsafe premises is control over the area of danger which causes injury." Smith v. Housing Authority, 144 Conn. 13, 16 (1956); Chambers v. Lowe, 117 Conn. 624, 628 (1933). It is the control and not the ownership which determines liability. See LaFlamme v. D'Allessio, 261 Conn. 247, 256-57 (2002).

13. "The general rule regarding premises liability in the landlord-tenant context is that the 'landlords owe a duty of reasonable care as to those parts of the property over which they have retained control. . . [L]andlords [however] generally [do] not have a duty to keep and repair any portion of the premises leased to and in the exclusive possession and control of the tenant.'" LaFlamme v. D'Allessio 261 Conn. 247, 256-57 (2002) (citation omitted).

14. In our present case, Plaintiff conducted discovery in this matter including the deposition of James Doyle, facility manager for the Whole Foods Distribution Center located at 400 East Johnson Avenue, Cheshire, Connecticut. Additionally, Plaintiff served Requests for Admissions upon Whole Foods and Whole Foods responded, among other things, that non-party Lily Transportation: 1) was in exclusive possession and control of that portion of the premises in which the Plaintiff was injured; 2) owned the subject paver walkway; 3) repaired and removed the subject paver walkway; 4) was responsible for maintaining, repairing and inspecting the subject paver walkway; 5) was responsible for maintaining the surrounding land/property upon which the subject paver and officer trailer sits; and 6) owned the office trailer to which the subject paver walkway led. These same facts were attested to by James Doyle of Whole Foods in his deposition where these issues were explored at length by Plaintiff's counsel.

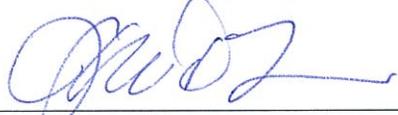
15. Mr. Doyle further testified in his deposition that non-party Lily Transportation installed the subject paver walkway and that Lily Transportation was solely responsible for maintaining the surrounding land/property upon which the subject pavers and office trailer sits. He testified that Whole Foods was not responsible for the premises wholly occupied and in exclusive possession and control of Lily Transportation. He testified that Whole Foods was only responsible for that portion of 400 East Johnson Avenue, Cheshire, Connecticut occupied by its Distribution Center.

16. Plaintiff has presented no evidence in his Motion to Cite In to demonstrate that WFM Properties retained any control over that portion of the premises in which the Plaintiff's accident occurred. As such, WFM Properties as owner/title holder of the premises is not necessary for the Court's complete determination of this premises liability case where liability is dependent upon possession and control of the subject premises and not title to the premises.

17. The addition of WFM Properties as an additional defendant at this late date will also cause undue prejudice to Whole Foods in that Whole Foods would be required to incur additional costs as discovery would be reopened and Whole Foods would have to participate in additional depositions noticed by Plaintiff. Thus, the Trial would have to be delayed until discovery is completed as to WFM Properties and WFM Properties is afforded an opportunity to prepare its defenses for Trial.

WHEREFORE, based upon the foregoing the Defendant Whole Foods Market Group, Inc. respectfully requests that this Court deny Plaintiff's Motion to Cite in WFM Properties Cheshire, LLC as an additional Defendant in this matter.

DEFENDANT,
WHOLE FOODS MARKET GROUP, INC.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2016, a copy of the above was mailed and/or e-mailed to
the following counsel and pro se parties of record:

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