

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. ZELDA JONAS

Justice

NICHOLAS CASTELLANO, an infant under the
age of 14 years, by his mother and natural
guardian, NANNETTE LOWEREE a/k/a
NANNETTE CASTELLANO,

Plaintiffs,

- against -

PETER HACKETT, M.D., LONG BEACH
MEDICAL CENTER, and POINT LOOKOUT-
LIDO FIRE DEPARTMENT,

Defendants.

TRIAL/IAS PART 26

Index # 25904/97

Sequence #: 5

Motion Date: November 14, 2001

Notice of Motion	1
Affirmation in Opposition	2

Defendant's motion for an order pursuant to CPLR §3025(b) to amend the verified answer admitting that defendant, Dr. Peter Hackett, was a volunteer member of the Point Lookout-Lido Fire Department is granted.


It is axiomatic that leave to amend the pleadings "shall be freely given" absent prejudice or surprise resulting in delay (CPLR 3025[b]; *Hilltop Nyack Corp. v. TRMI Holdings, Inc.*, 275 A.D.2d 440, 441). Mere lateness is not a barrier to an amendment, and significant prejudice must be demonstrated to justify the denial of an application for an amendment (*Hilltop Nyack Corp., supra*, at 441).

Even though the amendment has been made four years since the commencement of the above-entitled action, the defendant has stated that the amendment is to correct a factual misstatement in the verified answer which was just discovered by defendant as a

result of summary judgment motions made by the parties. Further, plaintiffs knew from the commencement of the action that defendant was a volunteer member of the Point Lookout- Lido Fire Department as evidenced from plaintiffs' complaint, paragraph six, which avers "That at all times herein mentioned, defendant Hackett, was a volunteer of the defendant POINT LOOKOUT-LIDO FIRE DEPARTMENT" (Defendant's Exhibit A). While defendant's belated motion is untimely, plaintiffs can hardly proclaim significant prejudice since plaintiffs already had knowledge that defendant Hackett was a volunteer fireman of the Point Lookout-Lido Fire Department.

Accordingly, it is hereby ordered that the time defendant Hackett has to serve an amended verified answer is extended until thirty (30) days after notice of entry of this order.

Dated: 1/18/02


J.S.C.

ENTERED

JAN 24 2002

**NASSAU COUNTY
COUNTY CLERKS OFFICE**