

SUPREME COURT-STATE OF NEW YORK
TRIAL SPECIAL TERM, PART 5 SUFFOLK COUNTY

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE: 9-30-11
MOT. Seq. #006 – AP – MG

EVELYN M. SCALISE and JOSEPH A.
SCALISE,

Plaintiffs,

-against-

OAK ISLAND BEACH ASSOCIATION, INC.,
GUS COLETTIM, JOHN BRUNKARD,
KEITH CONLON, THOMAS CANNING and
FRANK SOLINA,

Defendants.

PLAINTIFFS' ATTY:
SIBEN & SIBEN, LLP
By: Richard K. Perskin, Esq.
90 East Main Street
Bay Shore, NY 11706

DEFENDANTS' ATTYS:
LAW OFFICES OF CURTIS, VASILE P.C.
By: Michael J. Dorry, Esq.
2174 Hewlett Avenue
Merrick, NY 11566-0801

Upon the following papers numbered 1 to 3 read on this motion to amend pleadings: Notice of Motion/~~Order to Show Cause~~ and supporting papers 1; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 2; Replying Affidavits and supporting papers 3; Other ____; (and after hearing counsel in support and opposed to the motion); it is,

ORDERED that this motion by defendant Oak Island Beach Association, Inc. for an order pursuant to CPLR 3025 (b) granting it leave to serve an amended answer to assert a fifth affirmative defense is considered by the Court and is granted. Defendant shall serve the amended answer within 30 days after the date of entry of this order.

In allowing the amendment, the Court notes that pursuant to CPLR 3025 (b), leave to amend should be "freely given" in the absence of prejudice to the other party. Here, plaintiff has failed to demonstrate any basis for prejudice. It appears that plaintiff was well aware of the provision in the sublease agreement between the parties upon which the added affirmative defense is based. In fact, as defendant notes, plaintiff signed the document upon which this defense is based in 1990 and the sublease agreement was provided to plaintiff as part of discovery in this action.

Dated: FEBRUARY 17, 2011



J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION

____ DO NOT SCAN