

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. **DENISE F. MOLIA,**  
Justice

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DARIA CAMPISI,

Plaintiff,

- against -

SLOMIN'S, INC.,

Defendant.

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CASE DISPOSED: NO  
MOTION R/D: 7/6/09  
SUBMISSION DATE: 7/10/09  
MOTION SEQUENCE NO.: 001 MG

ATTORNEY FOR PLAINTIFF

Roth & Roth, LLP  
192 Lexington Avenue, Suite 802  
New York, New York 10016

ATTORNEYS FOR DEFENDANT

Kirschenbaum & Kirschenbaum, PC  
200 Garden City Plaza, Suite 500  
Garden City, New York 11530

Upon the following papers filed and considered relative to this matter:

Order to Show Cause dated June 5, 2009; Affirmation dated June 5, 2009; Exhibits A and B; Affidavit in Opposition dated June 12, 2009; Affirmation in Opposition dated June 15, 2009; Reply Affirmation dated June 30, 2009; and upon due deliberation; it is

**ORDERED**, that the motion by plaintiff, pursuant to CPLR 1003, for leave to serve and file an Amended Verified Complaint so as to add a cause of action for fraud and misrepresentation as against the defendant, is granted; and it is further

**ORDERED**, that the plaintiff is hereby granted leave to serve the proposed Amended Verified Complaint herein upon the defendant within twenty (20) days after the date of the entry of this Order.

The instant action seeks to recover damages plaintiff claims to have sustained on May 5, 2006, resulting from the alleged carelessness and negligence of the defendant after the sounding of an alarm installed by the defendant. The plaintiff now wishes to add a cause of action for fraud alleging that the defendant misrepresented the reliability and effectiveness of the alarm

system it installed.

Leave to amend a pleading should be freely given provided the amendment is not defective on its face and does not surprise or prejudice the opposing party. CPLR 3025(b); Smith v. D.L. Peterson Trust, 254 A.D.2d 479, 678 N.Y.S.2d 788; Romeo v. Arrigo, 254 A.D.2d 270, 678 N.Y.S.2d 115; Goldstein v. St. John's Episcopal Hospital, 267 A.D.2d 426, 701 N.Y.S.2d 111. Disclosure is in the beginning stages and depositions have yet to be held. The defendant has not demonstrated any prejudice as a result of the proposed amendment, and in fact has admitted that it will not be substantially prejudiced should the requested relief be granted

The foregoing constitutes the Order of this Court.

Dated: July 27, 2009

**DENISE F. MOLIA**

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HON. DENISE F. MOLIA J.S.C.