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Order on Motions For Leave to Amend Claim,
Add Counterclaims, Add Parties, & Add Third
Party Claims (MILLENIUM PARTNERS)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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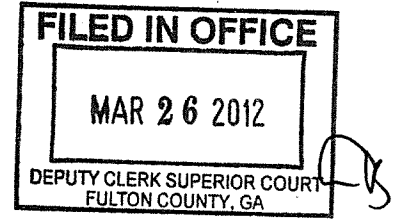
MILLENIUM PARTNERS, LLC,)
RAHIM SABADIA and NAFEES EL)
BATOOL, Co-Trustees of the)
SABADIA FAMILY TRUST, and)
ISHTAQ A. KHAN)

Plaintiffs,)

v.)

M. SHAILENDRA, a/k/a SHI)
SHAILENDRA, SHAILENDRA)
GROUP, LLC, SG CONSULTING, LLC,)
and KIRAN SHAILENDRA)

Defendants.)



Civil Action File No.
2011-CV-195604

**ORDER ON MOTION FOR LEAVE TO AMEND ANSWER AND ASSERT
COUNTERCLAIMS, TO ADD ADDITIONAL PARTIES AND TO SERVE THIRD
PARTY COMPLAINT**

This matter is before the Court on Defendants' Motion for Leave to Amend Answer and Assert Counterclaims, to Add Additional Parties, and to Serve Third Party Complaint. Upon consideration of the motion, the briefs submitted on the motion, and the record of the case, this Court finds as follows:

Defendants M. Shailendra, Shailendra Group, LLC, SG Consulting, LLC and Kiran Shailendra move the Court to allow them to amend their Answer to assert counterclaims against Plaintiffs Rahim Sabadia and Nafees El Batool, as co-Trustees of the Sabadia Family Trust, and Ishtiaq Khan, individually, and to add as additional parties Rahim Sabadia, individually, Nafees El Batool, individually, Kingsley Asset Management, LLC and AHAD Properties, LLC and to serve a Third Party Complaint.

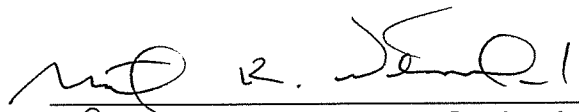
As an initial matter, the Court notes that the claims that form the basis of Defendants' request are the same claims at issue in another action before this Court, Shailendra v. Sabadia, No. 2011CV195621. In that action, the claims were recently subject to a motion to dismiss, which sought dismissal on the basis that the claims were compulsory counterclaims to this action. On February 17, 2012, the Court issued an Order denying the motion to dismiss finding that "although they may share certain commonalities," the claims did not arise out of the same transaction or occurrence as the claims asserted in this action.

Defendants have asked the Court for leave to assert these claims here, presumably out of an abundance of caution in the event the Court granted the motion to dismiss filed in Shailendra. Additionally, Defendants argue that justice requires the claims to be pursued in one action, pointing out that the trial of these matters is scheduled to occur at different times, with trial set to take place in the instant action well before trial is scheduled in Shailendra. As a result, Defendants contend that a judgment in this case may foreclose Defendants' claims against Plaintiffs asserted in Shailendra.

O.C.G.A. § 9-11-13(f) provides: "When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment." Under O.C.G.A. § 9-11-13(h), additional parties can be added as defendants "[w]hen the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim."

Defendants contend that considerations of justice weigh in favor of allowing Defendants to amend their answers to file counterclaims. The Court disagrees. Because the Court denied the motion to dismiss filed in Shailendra, Defendants will have the opportunity to pursue their claims in that forum. Moreover, by expanding the scope of this litigation so close to the trial date, the Court finds that Plaintiffs would suffer prejudice. The parties may, of course, agree to consolidate their several law suits pending in this court, an action the Court has recommended. For the foregoing reasons, and under the current posture of this case, Defendants' motion is **DENIED**.

SO ORDERED this 26th day of March, 2012.


for ALICE D. BONNER, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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