

Hasanaj v Maimonides Med. Ctr.

2024 NY Slip Op 31355(U)

April 12, 2024

Supreme Court, Kings County

Docket Number: Index No. 521150/2019

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of APRIL, 2024

PRESENT:
HON. RICHARD VELASQUEZ
Justice.

-----X
LINDITA HASANAJ,

Plaintiff,

-against-

Index No.: 521150/2019
Decision and Order
Mot. Seq. No. 1

MAIMONIDES MEDICAL CENTER,

Defendants,

-----X
MAIMONIDES MEDICAL CENTER,

Third-Party Plaintiff,

-against-

SODEXO OPERATION, LLC.

Third-Party Defendant,

-----X
The following papers NYSCEF Doc #'s 34 to 56 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	34-40
Opposing Affidavits (Affirmations) _____	44-47; 48-50
Reply Affidavits _____	51-56

After having come before the Court on September 6, 2023 and the Court having heard oral argument and after a review of the foregoing the court finds as follows:

Plaintiff moves for and order pursuant to o CPLR §§3025(b) and 3043(b) to amend her previously served bills of particulars to the forms annexed to the accompanying affirmation; (ii) pursuant to CPLR §3025(b) amending the summons and

complaint to include a direct claim against third-party defendant, Sodexo Operation, LLC. Third-Party Defendant, SODEXO OPERATIONS, LLC opposes the same. Defendant Maimonides partially opposes plaintiff application only to the extent she seeks to amend her complaint and/or bill of particulars to assert, that she slipped on "water, dirt and/or mud". Maimonides takes no position regarding the plaintiff's motion seeking to assert a direct claim against SODEXO OPERATIONS, LLC.

Plaintiff contends the initial bills of particulars served by prior counsel failed to adequately articulate the facts of plaintiff's claim or the injuries she sustained, and that no one will suffer any surprise or prejudice.

Third-Party Defendant, SODEXO OPERATIONS, LLC contends Plaintiff's negligence claims are time-barred pursuant to CPLR § 214 and Plaintiff cannot rely on the relation-back doctrine to assert claims against SODEXO. Third-Party defendant contends that the Liverpool standard applies. Additionally, defendants contend the plaintiff cannot amend their Bill of Particulars to assert injuries not previously pled.

This action arises out of an alleged slip and fall accident that occurred on July 17, 2018 at Maimonides Medical Center. Plaintiff alleges she sustained injuries to her right ankle, right knee, right foot, right hand, right arm, right hip, head, neck and back when she allegedly slipped and fell when exiting an elevator. On November 22, 2022, Plaintiff moved to (1) amend her previously served bills of particulars pursuant to CPLR §§ 3025(b) and 3043(b), and (2) amend her complaint pursuant to CPLR § 3025(b) to assert a direct claim against Third-party defendant Sodexo. See Mot. Seq. No. 1 (NYSCEF Doc. Nos. 34-40). Third-party defendant Sodexo and Defendant, Maimonides Medical Center, timely opposed Plaintiff's motion. (NYSCEF DOC. Nos. 44-50).

It is well settled, in the absence of prejudice or surprise, leave to amend a bill of particulars should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit. *Lorincz v. Castellano*, 208 AD3d 573, 172 NYS3d 735 [2nd Dep't. 2022]; *Jones v. Lynch*, 298 AD2d 499, 748 NYS2d 509 [2nd Dep't. 2002]; *Hothan v. Mercy Medical Center*, 105 AD3d 905, 963 NYS2d 322 [2d Dept. 2013]; *Edenwald Contr. Co. v. City of New York*, 60 NY2d 957, 471 NYS2d 55 [1983]. Delay does not bar amendment where, as here: the proposed amendment does not result in significant prejudice; discovery is ongoing; a note of issue has not been filed; and any new facts revealed by amended assertions can be tested at a subsequent deposition, if appropriate. *Abrahamian v. Tak Chan*, 33 AD3d 947, 824 NYS2d 117 [2nd Dep't. 2006]; *Onewest, F.S.B. v. Goddard*, 131 AD3d 1028, 17 NYS3d 142 [2nd Dep't. 2015]; *Edenwald Contr. Co. v. City of New York*, 60 NY2d 957, 471 NYS2d 55 [1983]; *Worthen-Caldwell v Special Touch Home Care Servs., Inc.*, 78 AD3d 822, 911 NYS2d 122 [2nd Dep't. 2010]. Mere exposure to greater liability does not constitute prejudice. See, *Koch v. Acker, Merrall, Condit Co.*, 114 AD3d 596, 981 NYS2d 70 [1st Dept 2014].

In *Deputron v. A & J Tours, Inc.*, 93 AD3d 629, 939 NYS2d 713 [2nd Dep't. 2012], an otherwise time-barred amendment to a complaint was permitted where, just like the present case, the third-party complaint and the claim the plaintiff sought to assert against the third-party defendant arose out of the same conduct, transaction, or occurrence. In *Deputron* the Plaintiff was not required to demonstrate that the defendant and third-party defendant were united in interest, since the record demonstrates that the third-party defendant had actual notice of the plaintiff's potential claim against it within the applicable limitations period because it was a third-party defendant. See also,

Rodriguez v Paramount Dev. Assoc., LLC, 67 AD3d 767, 888 NYS2d 595 [2nd Dep't. 2009] ; *Tyz v Integrity Real Estate & Dev., Inc.*, 43 AD3d 1038, 842 NYS2d 475 [2nd Dep't. 2007] ; *Vincente v Roy Kay, Inc.*, 35 AD3d 448, 826 NYS2d 361 [2nd Dep't. 2006].

As to defendant, Maimonides contention that the amendment should be barred because the plaintiff is claiming a new theory of liability is without merit, there is no new theory of liability being offered.

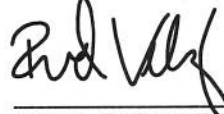
Additionally, contrary to the third-party defendants contentions, the *Liverpool* standard does not apply to the case at bar because the Third-party defendant was served with the Summon on March 10, 2021, in this case the statute of limitations expired in March 2, 2022. Therefore, the third-party defendant was not a stranger to this action before the expiration of the statute of limitations. As such the relation back doctrine applies in the present case. Moreover, there is no surprise or prejudice regarding any of the amendments, discovery is ongoing, there is no new theory of liability, and third-party defendants are in possession of all medical records substantiating the proposed amendments as to the injuries. (See *Bagan v. Tomer*, 139 AD3d 577, 30 NYS3rd 816 [2nd Dept. 2016]).

Accordingly, plaintiff's motion to amend is hereby granted in its entirety.

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
April 12, 2024

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

Hon. Richard Velasquez, JSC

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2024 APR 16 A 9:29
KINGS COUNTY CLERK
FILED