

470 4th Ave. Fee Owner, LLC v Adam Am. LLC

2023 NY Slip Op 30603(U)

February 23, 2023

Supreme Court, New York County

Docket Number: Index No. 656506/2018

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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470 4TH AVENUE FEE OWNER, LLC,

INDEX NO. 656506/2018

Plaintiff,

MOTION DATE 03/31/2022

- v -

ADAM AMERICA LLC, 470 4TH AVENUE INVESTORS
LLC, DANYA CEBUS CONSTRUCTION, LLC,

MOTION SEQ. NO. 008

Defendant.

**DECISION + ORDER ON
MOTION**

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And other third-party actions.

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 409, 410, 411, 412, 413, 414, 415, 416, 421, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437

were read on this motion to

AMEND CAPTION/PLEADINGS

Plaintiff commenced this action alleging defendants defectively constructed a residential building located at 470 4th Avenue, Brooklyn, New York. Plaintiff alleges defendants intentionally concealed and misrepresented defects in construction, to induce plaintiff's purchase of the property. As its measure of damages, plaintiff seeks the costs of repair, lost rental income, and associated costs involving the extension of loans, borrowing of money, and additional interest payments thereon, amounting to approximately \$6 million.

Plaintiff now moves, pursuant to CPLR 3025, to amend the complaint to add as plaintiffs, 470 4th Avenue Owner, LLC, the sole owner of plaintiff ("Parent Company"), and Trinity Place Holdings, Inc., plaintiff's publicly traded holding company (together "Affiliates").

A party seeking leave to amend under CPLR 3025, may do so “at any time by leave of court’ [and] that leave ‘shall be freely given upon such terms as may be just.’” Plaintiffs seeking leave to amend their pleadings should be given the “widest possible latitude” (*Murray v City of New York*, 43 NY2d 400, 405 [1977]). Courts permit such amendments unless the defendants can demonstrate prejudice and surprise (*Spiegel v Gingrich*, 74 AD3d 425, 426 [1st Dept 2010]).

Plaintiff seeks leave to join two closely affiliated companies, 470 4th Avenue Owner LLC and Trinity Place Holdings, Inc. The former company is the sole owner, member, and parent company of plaintiff. The latter, Trinity, is the holding company that owns both plaintiff and 470 4th Avenue Owner LLC. Plaintiff seeks to add the affiliates as co-plaintiffs because the Affiliates were required to borrow the \$6 million that is the scope of damages in this action and are the entities who incurred expenses in remedying the construction defects purportedly caused by defendants. Plaintiff submits that the addition of the Affiliate entities will not result in unnecessary delay or prejudice to defendants, as all parties were placed on notice of the entities and their possible involvement with this action, following the deposition of witness Steven Kahn held on November 22, 2021.

In opposition, defendants argue that that they are prejudiced by plaintiff’s delay in naming the relevant entities. Defendants argue that plaintiff and the Affiliates were aware of the damages to the property yet undertook to finance and purchase the property notwithstanding. They further argue that they are prejudiced as plaintiff’s failure to name the proper entities is an inexcusable omission which will result in additional and unwarranted litigation costs.

On a motion for leave to amend, plaintiff need not establish the merit of its proposed new allegations but must simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit (*MBIA Ins. Corp. v Greystone & Co.*, 74 AD3d 499, 500 [1st Dept

2010]). The instant motion was accompanied by plaintiff's proposed amended complaint, an affirmation of counsel (NYSCEF doc. no. 411), and excerpts from the deposition of Steven Kahn, whose testimony allegedly revealed the existence of the Affiliated entities and established the need for the pleading amendment (NYSCEF doc. no. 415).¹ Such is sufficient to establish the merit of the plaintiff's proposed amendment (*MBIA Ins. Corp.*, 74 AD3d at 500).

Once a prima facie basis for the amendment has been established, the inquiry ends, unless prejudice or surprise results directly from the delay (*Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 [1st Dept 2007]). Here, this court finds that there is no undue prejudice or surprise caused by the amendment delay, as no new claims are being asserted and plaintiff seeks only to add affiliate entities who directly sustained the damages that are the subject of this action. The deposition that revealed the identities of the Affiliates occurred in November of 2021, therefore, defendants "had prior knowledge of the claim and an opportunity to prepare a proper defense" (*MK West Street Co. v Meridien Hotels, Inc.*, 184 AD2d 312, 313 [1st Dept 1992]). Given the liberal standard to amend and the absence of undue prejudice to defendants, this court finds that plaintiff's request for leave to add the Affiliate entities as plaintiffs should be granted.

Accordingly, it is hereby


ORDERED that the plaintiff's motion for leave to amend the complaint (motion seq. no. 008) is granted, and the second amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

¹ Khan testified that the entities who obtained financing for the building repairs and sustained the damages claimed in this action, were separate and distinct entities from the plaintiff (NYSCEF doc. no. 415).

ORDERED that the defendants shall serve an answer to the second amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a virtual status conference on March 23, 2023 at 11:30 a.m.

02/23/2023
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE