

Vega v City of New York

2014 NY Slip Op 30588(U)

March 7, 2014

Supreme Court, New York County

Docket Number: 156116/2013

Judge: Kathryn E. Freed

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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: Part 5

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LUIS VEGA,

Plaintiff,

-against-

DECISION/ORDER

Index No.: 156116/2013

Seq. No.: 001

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW YORK
CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, NEW YORK CITY DEPARTMENT OF
DESIGN & CONSTRUCTION and CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC.,

Defendants.

-----X
HON. KATHRYN E. FREED:

RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF
THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	1-2(Exs. A-E)
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
STIPULATIONS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THIS MOTION IS AS FOLLOWS:

Plaintiff moves, pursuant to CPLR 3025(b), for an Order permitting him to amend the caption and summons and complaint to add as defendants Mount Sinai Hospital and Mount Sinai School of Medicine of the City University of New York. No opposition has been submitted by defendants. After a review of the instant motion, all relevant statutes and case law, this Court **grants** the motion.

Factual and Procedural Background:

This case arises from an incident on October 16, 2012 in which plaintiff was allegedly injured when he fell on a defective sidewalk on Madison Avenue between East 98th and East 99th Streets in Manhattan. On or about July 3, 2013, plaintiff commenced this action against defendants The City of New York, New York City Department of Transportation, New York City Department of Environmental Protection, New York City Department of Design & Construction, and Consolidated Edison Company of New York, Inc. In his initial complaint, plaintiff alleged that his accident occurred due to the negligence of the named defendants.

Plaintiff testified at a hearing pursuant to section 50-h of the General Municipal Law on February 15, 2013. At his hearing, plaintiff testified that he was injured while exiting the main entrance of the building located at 1425 Madison Avenue, New York, New York. Plaintiff's counsel learned that the said address was that of Mount Sinai Hospital. Counsel then examined the deed to 1425 Madison Avenue and learned that the premises were owned by the Mount Sinai School of Medicine of the City University of New York and leased to Mount Sinai Hospital.

Plaintiff's Position:

Plaintiff argues that the caption, summons, and complaint must be amended to add as defendants Mount Sinai School of Medicine of the City University of New York and Mount Sinai Hospital, since those entities, respectively, were the owner and lessee of the premises abutting the sidewalk where he fell and are thus proper additional parties.

Conclusions of Law:

Pursuant to CPLR 3025(b), a party may amend its pleading at any time by leave of court, and leave shall be freely given upon such terms as may be just. It is within the court's discretion whether to permit a party to amend its complaint. See Peach Parking Corp. V. 345 W. 40th Street, LLC, 43 A.D.3d 82 (1st Dept. 2007). On a motion for leave to amend, a plaintiff need not establish the merit of its proposed new allegations (see Lucindo v. Mancuso, 49 A.D.3d 220, 227 [1st Dept. 2008]), but must show that the proffered amendment is not palpably insufficient, is not clearly devoid of merit, and has merit. See Pier 59 Studios, L.P. v. Chelsea Piers, L.P., 40 A.D.3d 363, 366 (1st Dept. 2007); MBIA Ins. Corp. v. Greystone & Co., Inc., 74 A.D.3d 499 (1st Dept. 2010).

Here, since plaintiff has presented evidence suggesting that Mount Sinai School of Medicine of the City University of New York and/or Mount Sinai Hospital controlled the sidewalk where he was allegedly injured, the Court grants his motion to amend the caption and complaint to add those entities as additional defendants.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that plaintiff's motion for leave to amend the summons and complaint herein is granted; and it is further,

ORDERED that the amended summons and 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 upon all parties who have appeared in the action; and it is further,

ORDERED that an amended summons and complaint, in the form annexed to the motion papers, shall be served, in accordance with the CPLR, upon the additional parties in this action within 30 days after service of a copy of this Order with notice of entry; and it is further,

ORDERED that the action shall bear the following caption:

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LUIS VEGA,

Plaintiff,

-against-

Index No.: 110491/2011

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION, NEW YORK
CITY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, NEW YORK CITY DEPARTMENT OF
DESIGN & CONSTRUCTION and CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC.,
MOUNT SINAI HOSPITAL AND MOUNT SINAI
SCHOOL OF MEDICINE OF THE CITY UNIVERSITY
OF NEW YORK,

Defendants.

-----X

And it is further,

ORDERED that plaintiff's counsel shall serve a copy of this Order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the additional parties; and it is further,

ORDERED that the depositions in this matter, directed by the Case Scheduling Order of February 18, 2014 to proceed on May 14, 2014, shall not be held on that date; and it is further,

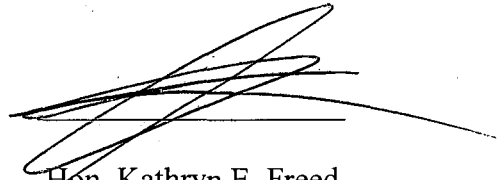
ORDERED that the compliance conference currently scheduled for June 17, 2014 will instead be conducted on May 13, 2014 at 80 Centre Street, Room 103, at 2 p.m.; and it is further,

ORDERED: that this constitutes the decision and order of the Court.

DATED: March 7, 2014

ENTER,

MAR 07 2014



Hon. Kathryn E. Freed,
HON. KATHRYN E. FREED
JUSTICE OF SUPREME COURT