

Popa-Vidal v 9C Realty Assoc. LP

2015 NY Slip Op 30318(U)

March 9, 2015

Supreme Court, New York County

Docket Number: 154967/2014

Judge: Cynthia S. Kern

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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 55

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JOSE POPA-VIDAL,

Plaintiff,

Index No. 154967/2014

-against-

DECISION/ORDER

9C REALTY ASSOCIATES LP, THE WAYLAND
and WEEB AMY,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Affidavits in Reply.....	<u>3</u>
Exhibits.....	<u>4</u>

This is a personal injury action to recover damages for an alleged battery and negligence, which occurred on April 13, 2014. Defendant 9C Realty Associates LP (“9C Realty”) initially moved to compel plaintiff to comply with discovery demands and plaintiff cross-moved to amend its complaint to add an additional claim against 9C Realty and an additional defendant and compel discovery from 9C Realty. 9C Realty has since withdrawn its motion to compel. Thus, the court shall only address plaintiff’s cross-motion, which is granted to the extent described below.

The relevant facts are as follows. On or about April 13, 2014, plaintiff alleges that he was at the bar known as The Wayland when he was forcefully grabbed by the bar’s bouncer,

defendant Weeb Amy, and forcefully thrown out of the bar causing him to sustain severe injuries.

Defendant 9C Realty is the owner of the building where The Wayland is located and leases the premises to Eldridge Bistro, Inc., the entity that operates the bar.

Based on the alleged incident, on May 20, 2014, plaintiff commenced the instant action asserting a cause of action for assault and battery against all defendants and a cause of action for negligence against 9C Realty and The Wayland based on their alleged negligent hiring practices and negligent supervision of their employees. Plaintiff now moves to amend his complaint to name Basim Grant as a defendant, properly name defendant The Wayland as “Eldridge Bistro, Inc. d/b/a The Wayland” and to add a negligence cause of action for premises liability against 9C Realty and The Wayland. Plaintiff also moves to compel The Wayland to produce the last known address of proposed defendant Basim Grant and an affidavit of its president providing all information presently known pertaining to the employment of Weeb Amy and Basim Grant.

As an initial matter, the portion of plaintiff’s motion seeking to amend his complaint to add Basim Grant as a defendant and properly name defendant The Wayland as “Eldridge Bistro, Inc. d/b/a The Wayland” is granted without opposition.

Additionally, the portion of plaintiff’s motion seeking to amend his complaint to add a negligence cause of action for premises liability against 9C Realty and The Wayland is granted. Pursuant to CPLR § 3025(b), “[m]otions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit.” *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 499-500 (1st Dept 2010) (internal citations omitted). Moreover, on a motion for leave to amend, the movant is not required to establish the merit of the proposed new allegations “but

simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.” *Id.*

In the present case, plaintiff’s motion to amend the complaint to add a negligence cause of action for premises liability against 9C Realty and The Wayland is granted as he has shown that defendants will not be prejudiced or surprised by the amendment and the amendment is not palpably insufficient or clearly devoid of merit. To state a negligence claim based on premises liability, a plaintiff must allege that the landowner or tenant created or had actual or constructive notice of a dangerous condition on its property that proximately caused the plaintiff’s injuries. *See Hoffman v. Brown*, 109 A.D.3d 791, 792 (1st Dept 2013). Here, plaintiff’s proposed amended complaint alleges that “Weeb Amy claimed that he was caused to fall to the ground on the exterior steps of The Wayland when he was extricating [plaintiff] from the premises” and defendants 9C Realty and The Wayland were negligent “in constructing, maintaining and permitting the exterior steps of the Wayland to be and remain in a defective, dangerous and hazardous condition, which contributed to causing Plaintiff’s injuries.” On this motion, such allegations are sufficient to show that the proposed amendment is not clearly devoid of merit. To the extent 9C Realty claims that it will be prejudiced by plaintiff’s delay in asserting the claim as alterations to the stairs have already taken place, such contention is without merit. Contrary to 9C Realty’s contention, the fact that the subject stairs may have been altered since the alleged accident took place does not bar it from asserting defenses to plaintiff’s action. Thus, plaintiff’s motion to amend its complaint to add a negligence cause of action is granted.

Finally, the remaining portion of plaintiff’s motion seeking to compel The Wayland to produce the last-known address of proposed defendant Basim Grant and an affidavit of its

president providing all information presently known about Weeb Amy and Basim Grant is severed and a final determination on the issue will be rendered after all parties appear before the court for a conference to discuss the matter.

Based on the foregoing, plaintiff's motion is granted in part and the remainder is severed to be determined after a conference before the court. Accordingly, it is hereby

ORDERED that the amended complaint, in the form annexed to plaintiff's motion 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 a supplemental summons and the amended complaint, in the form annexed to plaintiff's motion papers, shall be served, in accordance with the CPLR, upon the additional party 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:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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JOSE POPA-VIDAL,

Plaintiff,

-against-

9C REALTY ASSOCIATES LP, ELDRIDGE BISTRO
INC. d/b/a THE WAYLAND, WEEB AMY and
BASIM GRANT,

Defendants.

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And it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk in the General Clerk's Office (Room 119), who is directed to mark the court's records to reflect the additional party; and it is further

ORDERED that all parties are to appear for conference at 60 Centre St., Rm 432 on March 24, 2015 at 9:30 a.m. to discuss the remaining portion of the motion seeking to compel discovery from The Wayland. This constitutes the decision and order of the court.

Dated: 3/9/15

Enter: _____ CK

J.S.C.
CYNTHIA S. KERN
J.S.C.