

Malik v Style Mgt. Co., Inc.

2015 NY Slip Op 30720(U)

May 4, 2015

Supreme Court, New York County

Docket Number: 152317/2014

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 2**

KARAM MALIK & BASHARAT BEGUM,

Plaintiffs,

-against-

DECISION & ORDER

Index No. 152317/2014

Motion Sequence No. 004

STYLE MANAGEMENT CO., INC.,
1 ROSENBERG AUTO REPAIRS, INC.,
AR REAL ESTATE MANAGEMENT, INC.,
514 WEST 44th STREET, INC. &
S & S MAINTENANCE CORP.,

Defendants.

KATHRYN E. FREED, J.S.C.

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-D)
AFFIRMATION IN OPPOSITION	3
REPLY AFFIRMATION	4

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

In this personal injury action, plaintiffs move, pursuant to CPLR 1003 and 3025(b), to file and serve a third amended complaint bearing an amended caption naming Terry Bear Cab Corp. and Andrew Rosenberg as additional defendants. Counsel for defendants I. Rosenberg Auto Repairs, Inc. and S & S Maintenance Corp. Opposes the motion. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion is **granted in part.**

FACTUAL AND PROCEDURAL BACKGROUND:

This action was commenced by plaintiffs on or about March 14, 2014. Ex. A.¹ In the complaint, plaintiff Karam Malik alleged that, on March 6, 2014, he was injured when he tripped and fell while crossing the street in front of 518 West 44th Street in Manhattan due to the negligence of defendant Style Management Co., Inc. (“Style”) in creating an icy and dangerous condition at that location. Ex. A. Plaintiff’s wife, plaintiff Basharat Bedum, claimed a loss of consortium. Ex. A.

On March 17, 2014, plaintiffs amended the complaint as of right to correct the spelling of the name of plaintiff’s wife to Bashrat Begum. Ex. B. On July 14, 2014, the complaint was amended with leave of court to name as defendants I. Rosenberg Auto Repairs, Inc. (“IRAR”), AR Real Estate Mangement, Inc. (“AR”), 514 West 44th Street, Inc. (“514”), and S & S Maintenance Corp. (“S & S”), additional corporate entities which were related to the existing defendants. Ex. C.

Plaintiffs now seek to amend the complaint yet again, this time to name as defendants Terry Bear Cab Corp. (“Terry Bear”) and Andrew Rosenberg (“Rosenberg”). See Ex. D, Proposed Third Amended Complaint. Plaintiffs assert that the names of Terry Bear and Rosenberg were “just discovered upon obtaining New York City Taxi and Limousine Commission records, which reveal that [the proposed additional defendants] are also connected to the existing [d]efendants and may be liable for the damages caused to the [p]laintiffs.” Plaintiffs’ Aff. In Supp., at par. 7. Plaintiffs further assert that Terry Bear was “the owner of the taxi medallions that are managed by [Style and that Rosenberg] is the individual that appears to be in control of and the actual owner of all of the corporate defendants, which are alter egos.” Id., at par. 8. Additionally, plaintiffs claim that all of the defendants are interconnected, own and lease taxis from 514 and 518 West 44th Street, and are

¹All references are to the exhibits annexed to plaintiffs’ motion.

all owned by Rosenberg. Id., at pars. 13, 15.

THE PARTIES' CONTENTIONS:

Plaintiffs argue that they should be permitted to amend the complaint to assert claims against Terry Bear and Rosenberg since those entities are united in interest with the heretofore named defendants. They further assert that they could not have named those entities as defendants any sooner since they were not aware of their identities. They urge that motions to amend pleadings are generally granted unless a proposed amended pleading is palpably insufficient or devoid of merit or where the delay in seeking the amendment would cause prejudice or surprise.

In opposition to the motion, Terry Bear asserts that the motion should be denied as against it since it merely owns two taxi medallions, has no employees, does not own or operate any buildings, and did not cause or contribute to the alleged accident. Rosenberg opposes the motion on the ground that plaintiffs have failed to allege any facts which would warrant the piercing of the corporate veil so as to allow him to be sued in his personal capacity.

In an affidavit in opposition to the motion, Rosenberg asserts that he is an officer and shareholder of Style, S & S, IRAR, and AR. He states that AT owns 518 West 44th Street, Style is a tenant at 518 West 44th Street, S& S is a tenant at 514 West 44th Street, and IRAR is a tenant at 514 and 518 West 44th Street. He further asserts that he is an officer of Terry Bear and that that entity had "no connection whatsoever" to the [alleged] incident."

In reply, plaintiffs assert that defendants' opposition to the motion was untimely and should be disregarded. They further assert that they should be entitled to bring a claim against any entities potentially liable for the accident. Additionally, they assert that Rosenberg intentionally withheld videotape of the alleged incident, which arose from washing taxi cabs in front of 514 and/or 518

West 44th Street on a sub-freezing night and that discovery is needed regarding Rosenberg's involvement in the incident to determine whether there is evidence sufficient to pierce the corporate veil in connection with the claims against him.

LEGAL CONCLUSIONS:

Initially, this Court notes that, to the extent that defendants' opposition papers were untimely, plaintiffs were not prejudiced since they had the opportunity to respond to the same and thus the papers will not be disregarded. *See Prato v Arzt*, 79 AD3d 622 (1st Dept 2010).

With respect to the merits of the motion, it is well settled that leave to amend a pleading should be granted in the absence of evidence of substantial prejudice or surprise (*see* CPLR 3025[b]; *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]), or that the proposed amendment is "palpably insufficient or patently devoid of merit." *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010). Here, this Court grants the amendment of the complaint as against Terry Bear, as it is unclear from Rosenberg's conclusory affidavit whether that entity may be responsible in any way for the alleged injuries.

However, the motion is denied insofar as it seeks amendment of the complaint to add Rosenberg as a defendant. "[E]ven under the liberal 'notice pleading' requirements of CPLR 3013, a complaint still must allege, inter alia, 'the material elements of each cause of action' asserted." *East Hampton Union Free Sch. Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 127 (2d Dept 2009). "Conduct constituting an abuse of the privilege of doing business in the corporate form is a material element of any cause of action seeking to hold an owner personally liable for the actions of his or her corporation under the doctrine of piercing the corporate veil." *Id.*, at 127. There is no allegation in the proposed third amended complaint that Rosenberg acted other than in his capacity as an officer

of Terry Bear or the other previously named corporate defendants, that he treated corporate assets as his own, that he did not respect corporate formalities, or that he in any other way abused the privilege of conducting business in the corporate form. *Id.*, at 127. Given plaintiffs' failure to make the foregoing allegations against Rosenberg, the complaint cannot be amended to seek to assert claims against him in his personal capacity.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of plaintiffs' motion seeking to allow plaintiffs to serve a third amended complaint naming Terry Bear Cab Corp., Inc. as a defendant is granted; and it is further,

ORDERED that plaintiffs are directed to serve, within 20 days after service of this order with notice of entry, an amended complaint against Terry Bear Cab Corp., Inc. in a form substantially similar to the proposed third amended complaint annexed to their motion papers, and defendants shall serve an answer or shall otherwise respond to the third amended complaint within 20 days after service of the same; and it is further,

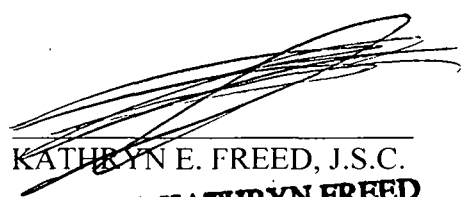
ORDERED that the caption is hereby amended to add as a defendant Terry Bear Cab Corp., Inc.; and it is further,

ORDERED that the branch of plaintiffs' motion seeking to allow plaintiff to serve a third amended complaint naming Andrew Rosenberg, Inc. as a defendant is denied; and it is further,

ORDERED that this constitutes the decision and order of the court.

DATED: May 4, 2015

ENTER:



KATHRYN E. FREED, J.S.C.
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT