

Vera v Tishman Interiors Corp.
2016 NY Slip Op 31724(U)
September 16, 2016
Supreme Court, New York County
Docket Number: 153555/2015
Judge: Robert D. Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 29

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Luis Silvio Vera

Plaintiff,

Index No. 153555/2015

-against-

Tishman Interiors Corporation, Tishman Construction
Corporation of New York, SL Green Reality Corp.
and SLG 331 Madison LLC

Defendant

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KALISH, J.:

Upon the foregoing submitted papers, the Plaintiff's motion to amend the caption naming Green 317 Madison LLC and Hines Interests L.P. as additional Defendants in the underlying action is hereby granted without opposition to the extent as follows:

Procedural History

In the underlying Labor Law action, the Plaintiff is seeking to recover damages for personal injuries allegedly sustained as the result an incident that occurred at a construction site located at 331 Madison Avenue, New York. Prior to the instant motion, an application was made by the attorneys for Jose Carchi, Maria Carchi, Oscar Fernandez and Galo Lema to consolidate their respective actions with the underlying action. Jose Carchi, Oscar Fernandez and Galo Lema also allege in their respective actions that they were injured in the same incident as the Plaintiff in the underlying action. By order dated November 2, 2015, Jose Carchi's action (index number 153548/2015), Oscar Fernandez's action (index number 153574/2015) and Galo Lema's action (index 153581/2015) were consolidated with the underlying action for discovery purposes only.

Analysis

The Plaintiff argues in support of the instant motion that during the course of discovery, the Defendants provided the Plaintiff with a contract between the Defendant Tishman Construction Corporation of New York and W5 Group LLC dated February 5, 2015. Plaintiff argues that said discovery response revealed that the proposed Defendants, Green 317 Madison LLC and Hines Interests L.P., are parties with an interest in the underlying action. As such, the Plaintiff argues that Green 317 Madison LLC and Hines Interests L.P. are proper parties to the underlying action. The Plaintiff further argues that adding Green 317 Madison LLC and Hines Interests L.P. as Defendants to the underlying action will not be prejudicial as discovery is still ongoing and the instant motion is well within the statute of limitations period.

The Plaintiff attaches with the instant motion, a copy of a proposed Supplemental Summons and Amended Verified Complaint that names Green 317 Madison LLC and Hines Interests L.P. (in addition to the current Defendants) as direct Defendants in the underlying action. The Plaintiff requests that service of the instant motion on the counsel for the current Defendants be deemed sufficient service of the proposed Supplemental Summons and Amended Verified Complaint. The Plaintiff further indicates to the Court that the Plaintiff will serve the Supplemental Summons and Amended Verified Complaint upon Green 317 Madison LLC and Hines Interests L.P. in accordance with the applicable provisions of the CPLR.

Standard for amending pleadings pursuant to CPLR §3025(b)

Pursuant to CPLR §3025(b), “motions 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 AD3d 499, 499-500 (NY App Div 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”

(MBIA Ins. Corp. v. Greystone & Co., Inc., 74 AD3d 499, 500 (NY App Div 1st Dept 2010)

(internal citations omitted)).

Upon review of the submitted papers, the Court finds that the Plaintiff has established that he is entitled to amend the caption naming Green 317 Madison LLC and Hines Interests L.P. as additional Defendants. Specifically, the Plaintiff has established a basis to show that Green 317 Madison LLC and Hines Interests L.P. are proper parties to the underlying action, and that there will be no prejudicial effect since discovery is still ongoing and the Plaintiff is still within the time frame to move to add Defendants to the underlying action.

Conclusion

Accordingly and for the reasons so stated it is hereby

ORDERED that the Plaintiff's motion to amend the caption naming Green 317 Madison LLC and Hines Interests L.P. as additional direct Defendants in the underlying action is hereby granted without opposition. It is further


ORDERED that the Plaintiff shall serve the Supplemental Summons and Amended Verified Complaint in the form attached to the Plaintiff's moving papers as Exhibit F upon the attorneys for the current Defendants, Tishman Interiors Corporation, Tishman Construction Corporation of New York, SL Green Reality Corp. and SLG 331 Madison LLC. It is further

ORDERED that the Plaintiff shall serve the Supplemental Summons and Amended Verified Complaint in the form attached to the Plaintiff's moving papers as Exhibit F upon the new Defendants, Green 317 Madison LLC and Hines Interests L.P., in accordance with the requirements of the CPLR for service of a summons and complaint within 20 days of the entry of this order. It is further

ORDERED that the Defendants including Green 317 Madison LLC and Hines Interests L.P. are hereby granted leave to serve and file answers and/or amended answers to the Supplemental Summons and Amended Verified Complaint or otherwise respond in accordance with the CPLR upon Plaintiff's service of the Supplemental Summons and Amended Verified Complaint upon them.

The foregoing constitutes the ORDER and DECISION of the Court.

Dated: Sept 16, 2016

ENTER:

_____, JSC
HON. ROBERT D. KALISH
J.S.C.