

Ocean v Strivers Gardens Condominium Assn.
2017 NY Slip Op 31167(U)
May 30, 2017
Supreme Court, New York County
Docket Number: 154702/2016
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN, E. FREED, J.S.C.
Justice

PART 2

-----X
AMIRA OCEAN,

Plaintiff,

INDEX NO. 154702/2016

MOTION DATE _____

- v -

MOTION SEQ. NO. 002

STRIVERS GARDENS CONDOMINIUM ASSOCIATION, NEW
BEDFORD MANAGEMENT CORP., ROCK GROUP NY CORP.,

Defendant.

DECISION AND ORDER

-----X
The following e-filed documents, listed by NYSCEF document number 26, 27, 28, 29, 30, 31, 32
were read on this application to/for Amend Complaint

**Upon the foregoing documents, it is
ordered that the motion is granted.**

Plaintiff Amira Ocean commenced this personal injury action against defendants Strivers Gardens Condominium Association (“Strivers”), New Bedford Management Corp. (“New Bedford”), and Rock Group NY Corp. on June 3, 2016. Ex. A. In her complaint, plaintiff alleged that she was injured on February 24, 2016 at 300 West 135th Street, New York, New York due to the negligence of the defendants. In February of 2017, Strivers and New Bedford produced responses to plaintiff’s discovery demands reflecting that Rock Scaffolding Corp. (“Rock Scaffolding”), Yates Restoration Group LTD (“Yates”), and Superstructures Engineers and Architects (“Superstructures”) may have performed work which caused or contributed to the

alleged injuries. Ex. B. Plaintiff now moves, pursuant to CPLR 3025(b), to amend the complaint to name Rock Scaffolding, Yates, and Superstructures as defendants.

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 AD3d 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 AD3d 220, 227 [1st Dept 2008]), but must show that the proffered amendment is not palpably insufficient and not clearly devoid of merit. *See Pier 59 Studios, L.P. v Chelsea Piers, L.P.*, 40 AD3d 363, 366 (1st Dept 2007); *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010). Here, plaintiff has established, based on the discovery responses provided by Strivers and New Bedford, that the claims against the proposed additional defendants have a colorable basis (*see NAB Construction Corp. v Metropolitan Transportation Authority*, 167 AD2d 301 [1st Dept 1990]). The absence of any prejudice to the proposed new defendants is evident from their failure to oppose the instant motion despite being served with the same.

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

ORDERED that plaintiff's motion for leave to amend the summons and complaint to add Rock Scaffolding Corp., Yates Restoration Group LTD, and Superstructures Engineers and Architects as additional defendants is granted; and it is further,

ORDERED that the supplemental summons and amended verified complaint, in the proposed form annexed to the moving papers in Exhibit D, 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 the supplemental summons and amended verified summons and complaint, in the form annexed to the motion papers, shall be served, in accordance with the CPLR, upon Rock Scaffolding Corp., Yates Restoration Group LTD, and Superstructures Engineers and Architects American Chiropractic Care, P.C ., the additional parties to this action, within 30 days after service of a copy of this order with notice of entry; and it is further,

ORDERED that the caption of this action will hereinafter read as follows:

-----X

AMIRA OCEAN,

Plaintiff,

-v-

STRIVERS GARDENS CONDOMINIUM ASSOCIATION, NEW
BEDFORD MANAGEMENT CORP, ROCK GROUP NY CORP.,
ROCK SCAFFOLDING CORP., YATES RESTORATION
GROUP LTD and SUPERSTRUCTURES ENGINEERS AND
ARCHITECTS,

Defendants.

-----X

And it is further,

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

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

5/30/2017

DATE



HON. KATHRYN E. FREED, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐
☒
☐
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

DO NOT POST

☐

DENIED

☒
☐
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE