

Lynch v CS 122 W. 146th St. LLC.

2018 NY Slip Op 30443(U)

March 13, 2018

Supreme Court, New York County

Docket Number: 154811/2016

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

PART 2

Justice

-----X

PERRY LYNCH and NATASHA LYNCH,

INDEX NO. 154811/2016

Plaintiffs,

- v -

CS 122 WEST 146TH STREET LLC., TREASURE ASSET
STORAGE LLC., INSPIRON, INC.

MOTION SEQ. NO. 001

Defendants.

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number 14, 15, 16, 17, 18
were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is ordered **that the motion is granted without opposition.**

Plaintiffs Perry and Natasha Lynch move, pursuant to CPLR 3025(b), for an order permitting them to amend the caption and summons and complaint to add AK 511 Ventures, LLC (hereinafter "the new defendant") as an additional defendant. Plaintiff also moves for leave to amend the summons and complaint to add a new cause of action against the new defendant and further requests leave to file and serve an amended summons and complaint on the new defendant. No opposition has been submitted to the motion. After a review of the motion papers, all relevant statutes and case law, this Court **grants** the motion.

This action arises from a construction accident at 122 West 146th Street, County, City, and State of New York, on February 10, 2016, in which plaintiff Perry Lynch (“plaintiff”) was allegedly injured when he was caused to fall from a height as a result of the negligence of, and Labor Law violations by, defendants. Plaintiff and his wife, Natasha Lynch, who asserts a derivative claim, commenced this action on or about June 8, 2016. NYSCEF Doc. 1.¹ Issue was joined on November 4, 2016 by service of defendants’ answer. Id. Doc. 6.

During the course of discovery, plaintiffs learned that AK 511 Ventures, LLC, the proposed new defendant, was the construction manager at the work site and, thus, may have been responsible for plaintiff’s injuries. Plaintiffs now seek to amend the caption and the complaint to add a new cause of action against the new defendant and submit a proposed supplemental summons and an amended verified complaint setting forth these new allegations. See Exhibit C.

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

¹ Unless otherwise noted, all references are to the documents filed on NYSCEF in this matter.

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, plaintiffs have established that the claims against the new defendant have a colorable basis (*see NAB Construction Corp. v Metropolitan Transportation Authority*, 167 AD2d 301 [1st Dept 1990]) through counsel's representation, under oath, that the new defendant may have been responsible for the plaintiff's injury and that it is necessary to add the said party to protect plaintiffs' rights. The absence of any prejudice to the new defendant is evident from its' failure to oppose the instant motion despite being served with the same.

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

ORDERED that plaintiffs' motion for leave to amend the summons and complaint to add AK 511 Ventures, LLC as an additional defendant is granted; and it is further,

ORDERED that, within 20 days of the entry of this order, plaintiffs' 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 party; and it is further,

ORDERED that the amended summons and complaint, in the proposed form annexed to the moving papers as Exhibit C (NYSCEF Doc. 18), 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, on AK 511 Ventures, LLC, the newly added defendant 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 hereinafter bear the following caption:

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

-----X
PERRY LYNCH and NATASHA LYNCH,

Plaintiffs,

-against-

Ind. No. 154811/2016

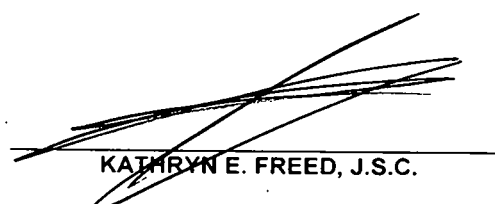
CSS 122 WEST 146TH STREET, LLC,
TRESURE ASSET STORAGE LLC,
INSPIRON, INC. and AK 511 VENTURES, LLC,

Defendants.
-----X

And it is further,

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

3/13/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE