

**Negrillo v Board of Mgrs. of the LEX 54
Condominium**

2018 NY Slip Op 30963(U)

May 18, 2018

Supreme Court, New York County

Docket Number: 152882/2016

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
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2

Justice

-----X

INDEX NO. 152882/2016

JIM VILCA NEGRILLO,

MOTION DATE 05/15/2018

Plaintiff,

MOTION SEQ. NO. 003

- v -

THE BOARD OF MANAGERS OF THE LEX 54 CONDOMINIUM,
AKAM ASSOCIATES, INC., DOS TOROS HOLDINGS LLC, DOS
TOROS LLC, COOPER WORKS INC.,

DECISION AND ORDER

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 67, 68, 69, 70, 71,
72, 73, 74, 75

were read on this motion to/for

AMEND CAPTION/PLEADINGS

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

Plaintiff Jim Vilca Negrillo moves for an order, pursuant to CPLR 3025(b),
for leave to amend the caption herein to add as additional party defendants Macarthur
Properties, LLC, Macarthur Properties I, LLC, Macarthur Properties II, LLC,
Macarthur Properties III, LLC, Macarthur Properties MM Corp., Macarthur
Properties Ventures IIM, LLC, Macarthur Properties Ventures, LLC, Macarthur
Management Corp., 135 East 54th Street Associates and 135 East 54th Street
Associates, L.P. Plaintiff requests leave to file and serve an amended summons and
complaint on counsel for the new defendants. 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 which occurred on November 16, 2015, in which plaintiff was allegedly seriously injured when he was caused to fall from a ladder when said ladder fell out from under him. Plaintiff commenced this action on or about April 05, 2016. NYSCEF Doc. No. 1.¹ Issue was joined on May 16, 2016, with the service of defendants' answer. Id. Doc. No. 8.

During the course of discovery, information was provided by defendants' counsel, Stewart Greenspan, Esq. of Rubin Fiorella & Friedman, LLP (See Doc. No. 73) to plaintiff that the proposed new defendants were the owners of the subject premises where the accident occurred. See Doc. No. 74. Plaintiff now seeks to amend the caption and the complaint to add a new cause of action against the new defendants and submits a proposed supplemental summons and amended verified complaint setting forth these allegations. See Doc. No. 75.

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, plaintiff has established that the claims against the additional new defendant have a colorable basis (*see NAB Construction Corp. v Metropolitan Transportation Authority*, 167 AD2d 301 [1st Dept 1990]) based upon plaintiff counsel's representation, under oath, that the new defendants are the owners of the subject premises and that it is necessary to add the new defendants to protect plaintiff's rights. The absence of any prejudice to the new defendants is evident from their failure to oppose the instant motion despite being served with the same. See Doc. No. 69.

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

ORDERED that plaintiff's motion for leave to amend the summons and complaint to add Macarthur Properties, LLC, Macarthur Properties I, LLC, Macarthur Properties II, LLC, Macarthur Properties III, LLC, Macarthur Properties MM Corp., Macarthur Properties Ventures IIM, LLC, Macarthur Properties Ventures, LLC, Macarthur Management Corp., 135 East 54th Street Associates and 135 East 54th Street Associates, L.P. as additional defendants is granted; 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; and it is further,

ORDERED that the amended summons and complaint, in the proposed form annexed to the moving papers as Exhibit F (NYSCEF Doc. No. 75), 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 Macarthur Properties, LLC, Macarthur Properties I, LLC, Macarthur Properties II, LLC, Macarthur Properties III, LLC, Macarthur Properties MM Corp., Macarthur Properties Ventures IIM, LLC, Macarthur Properties Ventures, LLC, Macarthur Management Corp., 135 East 54th Street Associates and 135 East 54th Street Associates, L.P. the newly added defendants 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
JIM VILCA NEGRILLO,

Plaintiff,

-against-

THE BOARD OF MANAGERS OF THE
LEX 54 CONDOMINIUM, AKAM ASSOCIATES,
INC., DOS TOROS HOLDINGS LLC,
DOS TOROS LLC, COOPER WORKS INC.,
MACARTHUR PROPERTIES, LLC,
MACARTHUR PROPERTIES I, LLC,
MACARTHUR PROPERTIES II, LLC,
MACARTHUR PROPERTIES III, LLC,
MACARTHUR PROPERTIES MM CORP.,
MACARTHUR PROPERTIES VENTURES IIM, LLC,
MACARTHUR PROPERTIES VENTURES, LLC,
MACARTHUR MANAGEMENT CORP.,
135 EAST 54TH STREET ASSOCIATES AND
135 EAST 54TH STREET ASSOCIATES, L.P.,

Ind. No. 150156/17

Defendants.

-----X

And it is further,

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

5/18/2018
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE