

Malone v Metropolitan Hosp.
2018 NY Slip Op 31783(U)
July 24, 2018
Supreme Court, New York County
Docket Number: 452930/2017
Judge: George J. Silver
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEORGE J. SILVERPART 10*Justice*

EDWIN MALONE,

MOTION INDEX NO. 452930/2017

Plaintiff,

MOTION DATE

- v -

MOTION SEQ. NO. 001METROPOLITAN HOSPITAL and NYC HEALTH
AND HOSPITAL CORPORATION,

Defendants.

Cross-Motion: ☐ Yes ☒ No

Plaintiff EDWIN MALONE, (“plaintiff”) moves, by order to show cause, and pursuant to CPLR § 3025, for leave to: (1) amend the caption to add CROTHALL HEALTHCARE INC. as a defendant in this action on the grounds that justice so requires; (2) amend the Summons and Complaint to include plaintiff’s slip and fall claims; (3) amend the Summons and Complaint to reflect the same; and (4) deem plaintiff’s Supplemental Summons and Amended Verified Complaint as having been served *nunc pro tunc*.

Defendants METROPOLITAN HOSPITAL and NYC HEALTH AND HOSPITAL CORPORATION (“defendants”) fail to oppose the application. For the reasons discussed below, the motion is granted.

BACKGROUND AND ARGUMENTS

This action was commenced with the filing of plaintiff’s Summons and Complaint on April 9, 2017. Thereafter, on March 23, 2017, plaintiff served a Supplemental Summons and Amended Complaint. In this action, plaintiff alleges that he slipped and fell at Metropolitan Hospital Center

on May 4, 2016, and sustained serious personal injuries due to defendants' negligence, carelessness, and reckless.

An order dated October 16, 2017 consolidated the instant action with another action, *Edwin Malone v. Metropolitan Hospital and New York City Health and Hospitals Corporation* (Index No. 22936/2017E). Plaintiff contends that because he has alleged slip and fall claims in that separate action (Index No. 22936/2017E) that are not asserted in this action, he should be permitted to amend the complaint in this action to assert the same in order to protect his interests and prevent prejudice.

Plaintiff also argues that he has obtained through discovery the name and identity of an additional party who may be liable for the accident and his injuries. Specifically, plaintiff avers that Crothall Healthcare Inc. was responsible for the maintenance, repairs, upkeep, service, and care of the hospital in which the accident occurred, and therefore, the actions of Crothall Healthcare Inc. likely caused and contributed to his injuries.

DISCUSSION

"Leave to amend pleadings should be freely granted in the absence of prejudice or surprise to the opposing party" (*Lucido v. Mancuso*, 49 A.D.3d 220, 226–27 [2d Dept. 2008]; CPLR 3025[b]). "Prejudice has been defined as a special right lost in the interim, a change in position, or significant trouble or expense that could have been avoided had the original pleading contained the proposed amendment" (*Ward v. City of Schenectady*, 204 A.D.2d 779, 781 [3d Dept. 1994]). "A motion for leave to amend is committed to the sound discretion of the trial court" (*Colon v. Citicorp Inv. Servs.*, 283 A.D.2d 193, 193 [1st Dept. 2001]).

Here, because defendants failed to oppose plaintiff's motion, plaintiff's request to assert slip and fall claims and add Crothall Healthcare Inc. as an additional defendant is granted. Defendants failed to allege or demonstrate any prejudice or surprise caused by plaintiff's proposed amendment. Indeed, defendants cannot claim prejudice or surprise since they were also defendants in the separate action bearing Index No. 22936/2017E, in which plaintiff asserted slip and fall claims (*Reilly v. City of New York*, 271 A.D.2d 425, 426 [2d Dept. 2000] [granting plaintiff leave to amend the complaint where defendant did not oppose the motion for leave to amend on the ground relied upon by the court]; *Knight v. Knight*, 193 A.D.2d 416, 416 [1st Dept. 1993] [granting plaintiff leave to amend the complaint where there was no indication that the plaintiff sought leave to amend in bad faith]; *Annicaro v. Structurtone*, 175 A.D.2d 546, 548 [3d Dept. 1991] [granting plaintiff leave to serve amended complaint where plaintiff submitted a sufficiently compelling affidavit of merit detailing the facts surrounding his accident and plaintiff added no new facts to his complaint]). Accordingly, plaintiff's application to amend the complaint is granted.

As such, it is hereby

ORDERED that plaintiff's request for leave to amend the Summons and Complaint to include plaintiff's slip and fall claims is granted; and it is further

ORDERED that plaintiff's request for leave to amend the Summons and Complaint to reflect the same is granted; and it is further

ORDERED that plaintiff's request for leave to amend the caption to add CROTHALL HEALTHCARE INC., as a defendant is granted; and it is further

ORDERED that the caption is amended as follows:

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

EDWIN MALONE,

Index No. 452930/2017

Plaintiff,

-against-

METROPOLITAN HOSPITAL, NYC HEALTH
AND HOSPITAL CORPORATION, and
CROTHALL HEALTHCARE INC.,

Defendants.

; and it is further

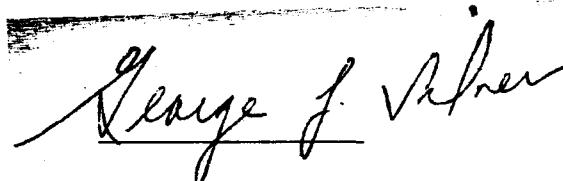
ORDERED that plaintiff's Supplemental Summons and Amended Complaint is deemed as
having been served *nunc pro tunc*; and it is further

ORDERED that plaintiff is directed to serve the Amended Complaint within 20 days of
service of a copy of the order of this Court with notice of entry; and it is further

ORDERED that the parties are directed to appear for a compliance conference on October
16, 2018 at 9:30 A.M. at 111 Centre Street, Room 1227 (Part 10) New York, New York 10013 to
ensure compliance with this court's order and to further facilitate discovery.

This constitutes the decision and order of the court.

Dated: July 24, 2018



HON. GEORGE J. SILVER

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION