

Nunez v Central Parking Sys. of N.Y., Inc.
2018 NY Slip Op 33503(U)
September 12, 2018
Supreme Court, Bronx County
Docket Number: 22133/2014E
Judge: Doris M. Gonzalez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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INGRID ROSANNA NUNEZ,

Plaintiff,

Index No. 22133/2014E

v.

DECISION AND ORDER

CENTRAL PARKING SYSTEM OF NEW YORK, INC.,
ST. BARNABAS HOSPITAL AND BURNSIDE
ASSOCIATES, LLC,

Defendants.

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GONZALEZ, D.:

Upon: i) the Order to Show Cause, by Patrick W. Kenny, Esq., attorney for the defendant, Central Parking System of New York, Inc. (“CPS”), for an Order: 1) granting defendant CPS leave to amend its answer to assert cross-claims against co-defendants, St. Barnabas Hospital (“St. Barnabas”) and Burnside Associates, LLC (“Burnside”), sounding in contractual indemnification based on breach of contract for defense costs, expenses and attorneys’ fees to conform CPS’s answer to the summary judgment decision rendered by Judge Mary Briganti; and 2) granting such other and further relief as the Court deems just and proper; ii) the Affirmation in Opposition, dated August 2, 2018, by Rita F. Aronov, Esq., attorney for the defendants, St. Barnabas and Burnside; and iii) the Reply Affirmation, dated August 5, 2018, by Patrick W. Kenny, Esq.

PROCEDURAL HISTORY

The action was commenced by the filing of a Summons and Verified Complaint on May 1, 2014. Issue was joined by service of the defendant Burnside’s Answer, on or about July 16, 2014. The plaintiff served a Supplemental Summons and Amended Verified Complaint, on or about August 5, 2014. Issue was joined by service of the defendant CPS’s Answer, on or about October 14, 2014.

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The plaintiff, thereafter, moved to amend the complaint to add St. Barnabas as a defendant. By order, dated August 24, 2014, Justice Mary Ann Brigantti granted plaintiff's motion. The plaintiff served a Second Supplemental Summons and Amended Verified Complaint, on or about September 17, 2014. Issue was joined by service of the defendant Burnside's Answer, on or about September 25, 2014. Issue was joined by service of the defendant CPS's Answer, on or about November 11, 2014. Issue was joined by service of the defendant St. Barnabas's Answer, on or about November 11, 2014.

A note of issue and certificate of readiness was served and filed on or about May 27, 2016. The defendant CPS moved for summary judgment on or around September 20, 2016. By order, dated January 27, 2017, Justice Brigantti granted CPS's motion for summary judgment and dismissed all claims and cross-claims against it. Justice Brigantti also directed St. Barnabas to reimburse CPS its defense costs and attorney's fees upon a finding that the plaintiff's damages arose out of St. Barnabas' negligence. CPS now moves to amend its Answer to add crossclaims against co-defendants St. Barnabas and Burnside.

There have been multiple conferences in the pre-trial part and special trial part. The trial of this matter is scheduled for September 13, 2018.

FACTUAL BACKGROUND

This is an action to recover damages for personal injuries allegedly sustained by the plaintiff arising from a slip and fall accident that occurred on December 13, 2013, in the parking lot of St. Barnabas Hospital, at 2032 Creston Avenue, in the County of the Bronx, City and State of New York. It is alleged that the plaintiff slipped and fell on snow and ice.

Burnside owned the parking lot and leased it to St. Barnabas. St. Barnabas and CPS entered into a management agreement on or about September 1, 2005. Pursuant to the agreement and

Justice Brigantti's order of January 27, 2017, CPS had no duty to keep the parking lot clean from snow, ice and obstructions. St. Barnabas was responsible for snow and ice removal.

CPS argues that leave to amend its answer to add crossclaims against St. Barnabas and Burnside should be freely granted since the crossclaims are meritorious and conform to Justice Brigantti's order of January 27, 2017. CPS contends the co-defendants will not be prejudiced by the amendments since they are based on the management agreement.

St. Barnabas and Burnside oppose the motion arguing that the crossclaims would not conform to Justice Brigantti's order and lack merit. The co-defendants contend CPS waited till the eve of trial to seek leave to add new crossclaims and has not offered any excuse for the delay. The co-defendants argue that they will be prejudiced if amendments were permitted on the eve of trial, and any and all settlements discussions would cease.

DISCUSSION OF LAW

It is well settled that leave to amend pleadings, including a bill of particulars, is to be freely given, absent prejudice or surprise (CPLR 3025 [b]; *see also, Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23[1981]; *Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d 364 [1st Dept 2007]). The Court may deny a motion to amend the pleadings where the plaintiff waits till the eve of trial to make the application and does not offer a reasonable excuse for the extended delay (*Holliday v Hudson Armored Car & Courier Serv.*, 301 AD2d 392 [1st Dept 2003]).

The plaintiff served his Complaint four year ago and amended the Complaint twice. CPS served an Answer and an Amended Answer and failed to assert any crossclaims against the co-defendants, St. Barnabas and Burnside. CPS waited approximately four years after the Complaint and two years post-note of issue to seek to amend its Answer to add crossclaims against its co-defendants. CPS failed to proffer a reasonable excuse for the delay seeking the relief requested on

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the eve of trial. The amendment of the Answer at this late stage will only prejudice the defendants in their defense to the case.

CPS contends that the proposed crossclaims conform to Justice Brigantti's order of January 27, 2017, which granted CPS reimbursement of its defense costs and attorney's fees by St. Barnabas upon a finding that St. Barnabas was negligent. The proposed crossclaims, however, allege additional theories based on breach of contract and negligence.

ACCORDINGLY, after consideration of the foregoing, the applicable law, a review of the Court file, and due deliberation; it is hereby

ORDERED, the motion to amend the Answer is DENIED.

This constitutes the Decision and Order of the Court.

Dated: September 12, 2018
Bronx, New York

ENTER:



HON. DORIS M. GONZALEZ, J.S.C.