Woolf v Empire State Crossfit LLC
2018 NY Slip Op 33726(U)
May 22, 2018
Supreme Court, Westchester County
Docket Number: 54185/2016
Judge: Terry Jane Ruderman

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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KAREN WOOLF, as Mother and Natural Guardian of B.W., an Infant, KAREN WOOLF, Individually, and ANDREW WOOLF, Individually,

Plaintiffs,

-against-

EMPIRE STATE CROSSFIT LLC, d/b/a EMPIRE STATE CROSSFIT and LUMIRAM DEVELOPMENT,

Defendants.

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DECISION AND ORDER
Index No. 54185/2016
Motion Sequence No. 1

RUDERMAN, J.

The following papers were considered in connection with the motion by plaintiff for an order granting leave to file and serve a supplemental summons and amended verified complaint, adding as a party defendant Daniel Stearns and adding allegations learned at the deposition of Daniel Stearns:

Papers	Numbered
Order to Show Cause, Affirmation, Exhibits A - D	1
Affirmation in Opposition	2

This personal injury action arises out of an accident that occurred on September 10, 2015 at Empire State Crossfit LLC in Larchmont, New York, when a shelf dislodged and fell on the head of infant plaintiff B.W., allegedly causing traumatic brain injury, necessitating emergency surgery. Plaintiffs initially commenced the action against Empire State Crossfit, the tenant and occupant of the premises, and Lumiram, the property owner. However, in plaintiffs' deposition of Daniel Stearns, the sole owner and operator of Empire State Crossfit, Stearns admitted that it was he who

personally bought the screws and brackets and installed the shelf in question, with the help of a former employee. Stearns acknowledges that he did not secure the shelf to the bracket, and that he screwed the brackets directly into the sheetrock wall, instead of into a stud or into an anchor in the sheetrock wall.

Stearns does not dispute the foregoing claims. Rather, he merely states that he was acting not in his individual capacity, but in his capacity as owner and operator of Empire State Crossfit LLC. He argues that allowing his inclusion as a party defendant would be tantamount to allowing a cause of action for piercing the corporate veil, without the necessary showing that he, as owner, used his domination of the corporation to abuse the corporate form in order to commit a wrong against the plaintiff.

Analysis

CPLR 1003 allows for the addition of parties at any state of the action by leave of court. "Leave to amend a pleading should be freely given (*see* CPLR 3025[b]), provided the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit" (*Reyes v Brinks Global Servs. USA, Inc.*, 112 AD3d 805, 806 [2d Dept 2013] [internal quotation marks and citations omitted]). "[P]rejudice requires that the defendant has been hindered in the preparation of his [or her] case or has been prevented from taking some measure in support of his [or her] position" (*Matter of Board of Mgrs. of Century Condominium v Board of Assessors*, 96 AD3d 739, 741 [2d Dept 2012] [internal quotation marks and citations omitted]).

Stearns relies on *Ravens Metal Prods. v McGann* (267 AD2d 527 [3d Dept 1999]), in which the Court affirmed the dismissal of an action brought against corporate officers alleging fraudulent conveyances and seeking to pierce the corporate veil; the Court held the lower court correctly refused to pierce the corporate veil because no wrongful act or fraud toward plaintiff was shown.

He also relies on a trial court decision denying the branch of a motion seeking to add defendants, reasoning that the factual allegations failed to "nam[e] who or how" in the claimed wrongdoing of the proposed defendants (*see Loren v Church St. Apt. Corp.*, 2016 N.Y. Misc. LEXIS 54, 2016 NY Slip Op 30031(U) [Sup Ct NY County 2016]).

Here, in contrast, not only would there be no surprise or prejudice arising out of the proposed amendment to the complaint and caption, because it merely seeks to add as a defendant the individual who created the dangerous condition, and it is not patently devoid of merit. Denial of the motion is not justified by Stearns' argument that allowing his inclusion as a party defendant would be tantamount to allowing plaintiffs to pierce the corporate veil in the absence of the necessary showing. Even if a finding of individual liability may be unlikely (*cf. Bay Ridge Lumber Co. v. Groenendaal*, 175 AD2d 94 [2d Dept 1991]), the possibility of personal liability is not entirely out of the question. As in *Enriquez v Home Lawn Care & Landscaping, Inc.* (49 AD3d 496 [2d Dept 2008]), where the Court affirmed an order allowing the plaintiff to amend the complaint to add as a defendant the owner of the corporate defendant, whose conduct formed the basis for the plaintiff's claim, "the plaintiff alleged facts which, if true, could subject [the individual defendant] to personal liability for the plaintiff's injuries" (*id.* at 497).

In view of the foregoing, it is hereby

ORDERED that plaintiff's motion is granted, and the supplemental summons and amended verified complaint filed and served as Exhibit D to plaintiff's moving papers (NYSCEF Doc. No. 21) are deemed served on all current parties as of the entry of this order, and shall be personally served on Daniel Stearns within 30 days of this order.

ORDERED that the parties are to appear, *as previously directed,* on July 16, 2018 at 9:30 a.m. in the Compliance Conference Part, Courtroom 800, Westchester County Supreme Court, 111

Dr. Martin Luther King Jr. Blvd, White Plains, New York.

This constitutes the Decision and Order of the Court.

Dated: White Plains, New York
May 22, 2018

HON. TERRY JANE RUDERMAN, J.S.C.