

Motta v Chelsea 25th St LLC

2019 NY Slip Op 30261(U)

February 4, 2019

Supreme Court, New York County

Docket Number: 155255/2017

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 2EFM

Justice

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INDEX NO. 155255/2017

JUAN PABLO MOTTA,
Plaintiff,

MOTION SEQ. NO. 001

- v -

CHELSEA 25TH ST LLC, TALKAP LLC, and FRANCK MULLER
USA, INC.

DECISION AND ORDER

Defendants.

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27
were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is ordered that the motion is granted.

In this Labor Law action, plaintiff Juan Pablo Motta moves for an order, pursuant to CPLR 3025(b), for leave to amend the summons and complaint to name as an additional party defendant Aradco Limited. After a review of the motion papers, as well as the relevant statues and case law, the motion, which is unopposed, is granted.

This action arises from a construction accident on February 24, 2017 in which plaintiff was allegedly injured at a construction site located at 207-217 West 25th Street, New York, New York. Doc. 1.¹ Plaintiff commenced this action against defendants Chelsea 25th St. LLC (“Chelsea 25th”), Talkap LLC, and Franck Muller USA, Inc. on June 8, 2017, alleging that they owned, controlled, or maintained the work site. Doc. 1. Issue was subsequently joined by the named defendants. Docs. 3, 8.

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

At his deposition, Iair Rosenkranz of Chelsea 25th testified that Aradco Limited was the cooperative corporation which owned the building where plaintiff was allegedly injured. Doc. 25 at 11. Based on this testimony, plaintiff seeks to amend the complaint to name Aradco Limited as a defendant since it is considered an “owner” pursuant to Labor Law § 240(1). Doc. 22 at pars. 5-6.

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 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 the sworn deposition testimony reflecting that proposed additional defendant Aradco Limited owned, controlled or maintained the work site and that it is thus necessary to add Aradco Limited to protect plaintiff’s rights.

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

ORDERED that plaintiff’s motion for leave to amend the summons and complaint to add as an additional defendant Aradco Limited 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 party; and it is further,

ORDERED that the supplemental summons and amended verified complaint, in the proposed form annexed to the moving papers as Exhibit 2 (Doc. 20), 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 the supplemental summons and amended verified complaint, in the form annexed to the motion papers, shall be served, in accordance with the CPLR, on Aradco Limited, 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
JUAN PABLO MOTTA,

Plaintiff,

-against-

CHELSEA 25TH ST LLC, TALKAP LLC, FRANCK
MULLER USA, INC., AND ARADCO LIMITED,

Defendants.

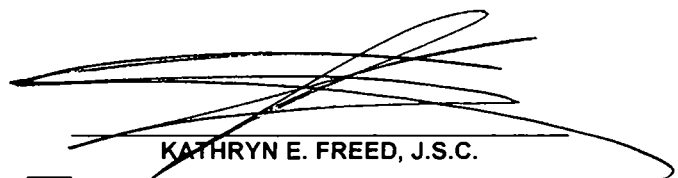
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And it is further,

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

2/4/2019

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