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| Stabile v Century 21 Dept. Stores, LLC. |
| 2019 NY Slip Op 30517(U) |
| February 28, 2019 |
| Supreme Court, New York County |
| Docket Number: 152389/2018 |
| Judge: Kathryn E. Freed |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

-----X

INDEX NO. 152389/2018

CAROL STABILE,

MOTION DATE 02/15/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

CENTURY 21 DEPARTMENT STORES, LLC.,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for

AMEND COMPLAINT

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

In this personal injury action against defendant Century 21 Department Stores, LLC (“Century 21”), plaintiff Carol Stabile moves, pursuant to CPLR 3025 (b), for an order granting her leave to amend the complaint to name as an additional defendant Blue Millennium Realty LLC (“Blue Millennium”). After a review of the motion papers, as well as the relevant statutes and case law the motion, which is unopposed, is granted.

In her initial complaint, plaintiff claimed that she was injured on December 27, 2017 while walking on a defective sidewalk in front of the Century 21 store located in downtown Manhattan. Doc. 1. The complaint named Century 21 as the sole defendant.

Plaintiff subsequently learned that the owner of the premises where the alleged accident occurred was actually Blue Millennium and filed the instant motion to amend the complaint to name that entity. In support of the motion, plaintiff provides a deed reflecting that the premises were owned by Blue Millennium. Doc. 22.

Pursuant to CPLR 3025 (b), "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." "A request for leave to amend a complaint should be freely given, and denied only if there is prejudice or surprise resulting directly from the delay, or if the proposed amendment is palpably improper or insufficient as a matter of law'. *CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 64-65 (1st Dept 2016) (internal quotation marks omitted); CPLR 3025(b)." *Crossbeat NY v Liirn*, ___ AD3d ___, 2019 N.Y. App. Div. LEXIS 1347, at *2 (1st Dept Feb. 26, 2019).

Plaintiff's motion to amend the complaint is granted, as she has demonstrated that the proposed amended complaint, annexed to her motion as Exhibit E (Doc. 18) is not devoid of merit or palpably insufficient, as it merely adds a new party which could be instrumental in the resolution of this action.

Moreover, by failing to oppose the motion, defendant has not demonstrated that any prejudice would result from the granting of the instant motion.

Therefore, in light of the foregoing, it is hereby:

ORDERED that plaintiff's motion to amend the complaint is granted, and the caption shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

CAROL STABILE,

Plaintiff,

-against-

Index Number 150935/17

CENTURY 21 DEPARTMENT STORES, LLC and

BLUE MILLENNIUM REALTY LLC,

Defendants.

and it is further

ORDERED that, within 20 days of entry of this order, plaintiff is directed to serve a copy of the same, with notice of entry, upon the Clerk of the Court and upon the Clerk of the General Clerk's office in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh), who are directed to amend their records to reflect the change in the caption herein; and it is further

ORDERED that, within 20 days of the entry of this order, plaintiff is directed to serve a copy of the same, with notice of entry, on counsel for defendant Century 21 Department Stores, LLC and on newly added defendant Blue Millennium Realty LLC; and it is further

ORDERED that the amended complaint, in the proposed form annexed to plaintiff's moving papers as Exhibit E (NYSCEF Document 18) shall be deemed served on defendant Century 21 Department Stores, LLC upon service of a copy of this order with notice of entry on said defendant; and it is further

ORDERED that, within 20 days after entry of this order, plaintiff shall serve newly added defendant Blue Millennium Realty LLC with a summons and amended complaint in the proposed form annexed to plaintiff's moving papers as Exhibit E (NYSCEF Document 18); and it is further

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

2/28/2019

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

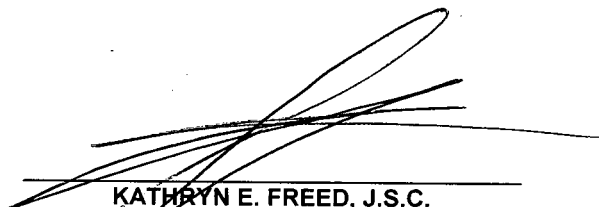
CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE


KATHRYN E. FREED, J.S.C.