

Marte v Tishman Constr. Corp.
2019 NY Slip Op 31705(U)
June 10, 2019
Supreme Court, New York County
Docket Number: 154819/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. KATHRYN E. FREED

PART

IAS MOTION 2EFM

Justice

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FRANCISCO GOMEZ MARTE,

Plaintiff,

- v -

TISHMAN CONSTRUCTION CORPORATION, MOINIAN GROUP,
AND MEZUYRON, LLC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23,
24

were read on this motion to/for

AMEND CAPTION/PLEADINGS

DECISION AND ORDER

In this personal injury action, plaintiff Francisco Gomez Marte ("Gomez Marte") moves, pursuant to CPLR 3025, to amend the complaint to add as an additional plaintiff his wife, Gloria Jimenez ("Jimenez"), and to add a claim for loss of consortium on her behalf. He also seeks to correct the names of two of the defendants in the caption. After a review of the motion papers and the relevant statutes and case law, the motion, which is unopposed, is granted.

Gomez Marte was allegedly injured in a construction accident at West 43rd Street and 11th Avenue in Manhattan on March 13, 2017. As a result of his injuries, he commenced the captioned action, alleging negligence and a violation of Labor Law section 240(1), against defendants Tishman Construction Corporation ("Tishman"), Moinian Group ("Moinian"), and Mezuyron, LLC ("Mezuyron") on May 24, 2017, Doc. 1. He now moves, pursuant to CPLR 3025, to amend the caption to name Jimenez as a party and to amend the complaint to add a

claim for loss of consortium on her behalf. Doc. 19. He also moves to correct the names of Tishman and Mezuyron.¹ Doc. 19.

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, LLC*, 169 AD3d 604, 604 (1st Dept 2019). Here, plaintiff proffers no excuse for his delay in moving to add his wife as a party and to assert a claim for loss of consortium on her behalf. However, the lack of any prejudice to defendants is evident from the fact that they have not opposed the instant motion. Moreover, by submitting his marriage certificate (Doc. 26), plaintiff has established that the loss of consortium claim is facially sufficient.

Similarly, although plaintiff concedes that he knew the correct names of Tishman and Mezuyon when defendants served their answer in July of 2017, this Court does not find that defendants were prejudiced in any way by his delay in filing this motion since they did not oppose the same.

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

¹ Tishman Construction Corporation of New York was initially sued herein as Tishman Construction Corporation and Mezuyon LLC was initially sued herein as Mezuyron, LLC.

ORDERED that the plaintiff's motion for leave to amend the caption and the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers (Doc. 23), shall be deemed served upon defendants by 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 action shall bear the following caption:

FRANCISCO GOMEZ MARTE AND GLORIA JIMENEZ,

Plaintiffs,

Ind. No. 154819/17

V

TISHMAN CONSTRUCTION CORPORATION OF NEW YORK,
MOINIAN GROUP, and MEZUYON LLC,

Defendants.

And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the amended caption; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made 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)); and it is further

ORDERED that a compliance conference shall be held in Part 2 at 80 Centre Street, Room 280 at 2:15 p.m. on August 6, 2019; and it is further

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

6/10/2019

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

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OTHER

APPLICATION:

☐

SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

KATHRYN E. FREED, J.S.C.