

**207-09 E. 120th St. Condominium Assn. v
Bonaventura**

2019 NY Slip Op 32088(U)

July 8, 2019

Supreme Court, New York County

Docket Number: 655474/2018

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. 655474/2018

207-09 EAST 120TH STREET CONDOMINIUM ASSOCIATION

MOTION DATE 08/19/2019

Plaintiff,

MOTION SEQ. NO. 001

- v -

BEN BONAVENTURA,

DECISION AND ORDER

Defendant,

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for AMEND CAPTION/PLEADINGS

In this action to collect a money judgment for unpaid common charges, plaintiff moves, pursuant to CPLR 1021 to substitute the name of the Board of Managers of 207-09 East 120th Street Condominium for the current name of the plaintiff, as it is the correct name and there will be no prejudice to the defendants. See Doc. No. 26

Plaintiff further moves pursuant to CPLR 3025, to amend the caption and complaint to add as an additional defendant, Alexis Opulski, as she is one of the record owners of the subject unit, along with defendant Ben Bonaventura, and is also therefore, a necessary party, pursuant to CPLR 1001(a), whose interest in the unit might be inequitably affected by a judgment in this action. See Doc. No. 27

Finally, plaintiff also moves to amend the Complaint to withdraw the Third Cause of Action and to revise the sums due as set forth in the First Cause of Action to reflect the current amount due of \$61,973.85 as of April 2019. After a review of the motion papers and the relevant statutes and case law, the motion, which is unopposed, is granted.

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). The lack of any prejudice to defendants is evident from the fact that they have not opposed the instant motion.

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

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. 30), 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:

BOARD OF MANAGERS OF 207-09 EAST 120th
STREET CONDOMINIUM,

Plaintiff, Ind. No. 65547/18

V

BEN BONAVENTURA and ALEXIS OPULSKI,

Defendants.

And it is further

ORDERED that counsel for plaintiff 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 (ww.nycourts.gov/supctmanh); and it is further

ORDERED that the preliminary conference, currently set for July 23, 2019 is hereby rescheduled to be held on September 10, 2019 in Part 2 at 80 Centre Street, Room 280 at 2:15 p.m.; and it is further

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

7/8/2019
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	DENIED