

Brown v New Beginning Community Redevelopment Corp.
2019 NY Slip Op 32546(U)
July 8, 2019
Supreme Court, Bronx County
Docket Number: 31429/2018E
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY
Part 4

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Ernest Brown,
Plaintiff

Decision and Order

-against -

Index No. 31429/2018E

New Beginning Community Redevelopment
Corp., Innovative Property Management &
Development, Inc., and S & J Construction
Services, Inc.,
Defendants

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New Beginning Community Redevelopment
Corp., and Innovative Property Management &
Development, Inc.,

Third-Party Index No.

Third-Party Plaintiffs

-against-

FG-PH Corp.,

Third-Party Defendant

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The following papers numbered 1 read on this motion by plaintiff for an order amending the complaint to add the third-party defendant as an additional defendant submitted June 25, 2019

PAPERS NUMBERED

Notice of Motion - Affirmation and Exhibits A-D	1	
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Upon the foregoing papers, this motion by plaintiff to amend the complaint to add FG-PH Corp. as a defendant, submitted without opposition, is granted.

In this action plaintiff seeks damages for personal injuries alleged to have been sustained in a slip/trip and fall on a sidewalk adjacent to premises located at 441 East 155th Street, Bronx, New York.

In April 2019, defendants commenced a third-party action against FG-PH Corp., seeking indemnification pursuant to a contract contending, among other things that if plaintiff was caused to sustain damages by reason of anything bu his own negligence, such damages were caused by the active negligence of the third-party defendant .

Plaintiff now seeks to add FG-PH Corp. as a party defendant.

No opposition is interposed.

Motions for leave to amend pleadings, which are addressed to the sound discretion of the court should be freely granted . . . absent prejudice or surprise resulting therefrom . . ., unless the proposed amendment is palpably insufficient or patently devoid of merit. . . . [P]laintiff[s] need not establish the merit of [their] proposed new allegations . . ., but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit" (MBIA Ins. Corp. v Greystone & Co., Inc., 74 AD3d 499, 499-500, 901 N.Y.S.2d 522 [1st Dept 2010]; CPLR 3025 [b]). Prejudice in this context is shown where the nonmoving party is "hindered in the preparation of his case or has been prevented from taking some measure in support of his position" (Loomis v Civetta Corinno Constr. Corp., 54 NY2d 18, 23, 429 N.E.2d 90, 444 N.Y.S.2d 571 [1981]). A delay in seeking leave to amend is not grounds for denial of the motion except where the delay would cause prejudice or surprise (see Lucido v Mancuso, 49 AD3d 220, 229, 851 N.Y.S.2d 238 [2d Dept 2008]). Although leave to amend should be freely granted, an examination of the underlying merits of the proposed causes of action

is warranted in order to conserve judicial resources (see Eighth Ave. Garage Corp. v H.K.L. Rlty, Corp., 60 AD3d 404, 405, 875 N.Y.S.2d 8 [1st Dept 2009]).

Upon consideration of the moving papers and the applicable law, the motion is granted in its entirety as set forth below.

Accordingly, it is ORDERED that plaintiff's motion be and hereby is granted , and plaintiff granted leave to serve the proposed supplemental summons and amended complaint, (Exhibit D) upon FG-PH Corp. within thirty (30) days hereof, and it is further

ORDERED that service of a copy of this decision and order and the supplemental summons and amended complaint upon counsel for defendants New Beginning Community Redevelopment Corp., and Innovative Property Management by regular mail within twenty (20) days hereof shall be deemed service of the supplemental summons and amended complaint , and it is further

ORDERED that defendants have thirty (30) days from the date of service to serve an answer or an amended answer or to make any motion addressed to the second amended complaint, and it is further

ORDERED that the caption of the action be and hereby is amended as follows:

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Ernest Brown,

Plaintiff

-against -

New Beginning Community Redevelopment Corp., Innovative Property Management & Development, Inc., and S & J Construction Services, Inc. and FG-PH Corp.

Defendants

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This shall constitute the decision and order of this court.

Dated: July 8, 2019

Howard H. Sherman