

Tedeschi v PGRF 1633 Broadway Land, L.P.

2020 NY Slip Op 30122(U)

January 6, 2020

Supreme Court, New York County

Docket Number: Index No. 159865/2018

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
-----X

FRANK TEDESCHI and SARAH TEDESCHI,

Index No. 159865/2018

Plaintiffs

- against -

PGREF 1633 BROADWAY LAND, L.P., and
J.T. MAGEN & COMPANY, INC.,

Defendants

-----X
-----X

PGREF 1633 BROADWAY LAND, L.P.,

Third Party Plaintiff

- against -

ALLIANZ ASSET MANAGEMENT OF AMERICA,
L.P.,

Third Party Defendant

-----X

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

Plaintiffs sue for injuries to plaintiff Frank Tedeschi's eye from a table saw while Tedeschi was working as a carpenter on premises owned by defendant PGREF 1633 Broadway Land, L.P., which impleaded third party defendant. Plaintiffs move to join third party defendant as a defendant in plaintiffs' main action and to amend their complaint to interpose claims against third party defendant. C.P.L.R. §§ 1002(b), 3025(b).

Plaintiffs' proposed amended complaint, verified by Frank Tedeschi, alleges that third party defendant Allianz Asset

Management of America, L.P., was both the tenant and the general contractor at the premises where he was working; managed, controlled, inspected, and supervised the construction work there; and contracted with his employer for it to perform construction work there. The amended complaint further alleges that, due to Allianz Asset Management's negligent operations and violations of New York Labor Law §§ 200 and 241(6) in not providing adequate protective equipment, Tedeschi was subjected to the dangerous conditions that caused his injury.

Leave to amend pleadings is to be freely granted unless it would surprise or otherwise prejudice the opposing party.

C.P.L.R. § 3025(b); Davis v. South Nassau Communities Hosp., 26 N.Y.3d 563, 580 (2015); Kimso Apts., LLC v. Gandhi, 24 N.Y.3d 403, 411 (2014); Global Liberty Ins. Co. v. Tyrell, 172 A.D.3d 499, 500 (1st Dep't 2019); Y.A. v. Conair Corp., 154 A.D.3d 611, 612 (1st Dep't 2017). The court nevertheless must deny proposed amendments that lack merit. Davis v. South Nassau Communities Hosp., 26 N.Y.3d at 580; Thomas Crimmins Contr. Co. v. City of New York, 74 N.Y.2d 166, 170 (1989); Reyes v. BSP Realty Corp., 171 A.D.3d 504, 504 (1st Dep't 2019); Y.A. v. Conair Corp., 154 A.D.3d at 612.

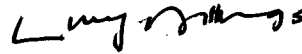
Allianz Asset Management, already defending against the third party action, does not claim surprise or other prejudice. Nor does third party defendant show through any admissible evidence, let alone conclusively, that Allianz Asset Management did not exercise supervisory control over the operations at the

construction site, in particular the use of the saw that injured Tedeschi, or did not at least retain the authority to control that activity. The site's commercial tenant, especially if it hired Tedeschi's employer, may be liable as an owner under the Labor Law, just as the site's owner is. Reyes v. Bruckner Plaza Shopping Ctr., LLC, 173 A.D.3d 570, 571 (1st Dep't 2019); Morato-Rodriguez v. Riva Constr. Group, Inc., 115 A.D.3d 401, 401 (1st Dep't 2014); Kwang Ho Kim v. D & W Shin Realty Corp., 47 A.D.3d 616, 618 (1st Dep't 2008); Bush v. Goodyear Tire & Rubber Co., 9 A.D.3d 252, 253 (1st Dep't 2004). Allianz Asset Management likewise fails to show that it did not act as the general contractor or as a statutory agent of the premises' owner or of another general contractor at the site under the Labor Law. Saint v. Syracuse Supply Co., 25 N.Y.3d 117, 124 (2015); Sanatass v. Consolidated Inv. Co., Inc., 10 N.Y.3d 333, 338 (2008); Reyes v. Bruckner Plaza Shopping Ctr., LLC, 173 A.D.3d at 571. See Ferluckaj v. Goldman Sachs & Co., 12 N.Y.3d 316, 320 (2009).

Since the proposed defendant has not shown that plaintiffs' new claims will cause surprise or other prejudice or are devoid of merit, plaintiffs are entitled to amend their complaint add their new claims. Global Liberty Ins. Co. v. Tyrell, 172 A.D.3d at 500; Gottwald v. Sebert, 172 A.D.3d 445, 446 (1st Dep't 2019); Eshaghian v. Eshaghian, 170 A.D.3d 416, 416 (1st Dep't 2019). Therefore the court grants plaintiffs' motion to join Allianz Asset Management of America, L.P., as a defendant in plaintiffs' main action and to amend their complaint in the form attached as

Exhibit F to the Affirmation of Louis Grandelli in support of plaintiffs' motion. C.P.L.R. §§ 1002(b), 3025(b). If admissible evidence establishes that this defendant's negligence did not cause Tedeschi's injury and this defendant did not act as a statutory agent under the Labor Law, Allianz Asset Management may move for summary judgment dismissing plaintiffs' claims. C.P.L.R. § 3212(b).

DATED: January 6, 2020



LUCY BILLINGS, J.S.C.

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J.S.C.