

**Torres v 120 Broadway Holdings, LLC**

2020 NY Slip Op 32726(U)

August 20, 2020

Supreme Court, New York County

Docket Number: 159374/2018

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*

-----X

**INDEX NO. 159374/2018**

RAFAEL TORRES and MARTA BENITEZ JARAMILLO,

**MOTION DATE 08/10/2020**

Plaintiffs,

**MOTION SEQ. NO. 003**

- v -

120 BROADWAY HOLDINGS, LLC, 120 BROADWAY  
CONDOMINIUM, and JRM CONSTRUCTION  
MANAGEMENT, LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.

-----X

JRM CONSTRUCTION MANAGEMENT LLC

Third-Party  
Index No. 595244/2020

Plaintiff,

-against-

RITE-WAY INTERNAL REMOVAL INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 64

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

In this personal injury action, plaintiffs RAFAEL TORRES and MARTA BENITEZ JARAMILLO move, pursuant to CPLR Sections 3025(b) and 1009, to amend the caption and complaint, respectively, to add as a direct defendant RITE-WAY INTERNAL REMOVAL, INC. (“Rite-Way”), which is currently the third-party defendant. See Docs. No. 57 and 64. After a review of the motion papers and the relevant statutes and case law, the motion, which is unopposed, is granted.

Torres was allegedly injured on July 31, 2018 at 120 Broadway in the City, County and State of New York and thereafter commenced the captioned action. Jaramillo asserts a claim for loss of consortium. Issue was joined on January 18, 2019. Defendant JRM Construction Management, LLC (“JRM”) thereafter impleaded Rite-Way as a third-party defendant. Plaintiffs now move to add Rite-Way as a direct defendant, having learned through the third-party action that JRM had entered into a contract with Rite-Way and that Rite-Way had performed work at the time and place of the accident. Plaintiffs argue that, since Rite-Way may have created or contributed to the hazardous condition which caused plaintiff Torres’ injury, it is a necessary party and must be named as a direct defendant in order to protect their rights.

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. 60), 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:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

RAFAEL TORRES and MARTA BENITEZ JARAMILLO,

Plaintiffs,

-v-

120 BROADWAY HOLDINGS, LLC, 120 BROADWAY  
CONDOMINIUM, JRM CONSTRUCTION MANAGEMENT, LLC,  
And RITE-WAY INTERNAL REMOVAL INC.,

Defendants.

-----X;

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 a preliminary conference, is hereby scheduled to be held on December 7, 2020 at 3:30 p.m. either in Part 2 at 80 Centre Street, Room 280; if possible, or by telephone conference, wherein the parties are directed to provide the Court with a dial-in number and access code for the conference and it is further

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

8/20/2020  
DATE

  
KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE