

Hollis v Fulton Holdings Use LLC
2021 NY Slip Op 30758(U)
March 9, 2021
Supreme Court, Kings County
Docket Number: 506728/2018
Judge: Wayne P. Saitta
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At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on 9th the day of March, 2021.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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JAMELL HOLLIS,

Plaintiff,

Index No. 506728/2018

-against-

FULTON HOLDINGS USE LLC, ALL PURPOSE GC LLC, B CONTRACTORS GROUP LLC and YATZIV CORPORATION,

DECISION AND ORDER MS 1

Defendants.

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FULTON HOLDINGS USA LLC,

Third-Party Plaintiff,

-against-

MAGELLAN CONCRETE STRUCTURE CORP.,

Third-Party Defendant.

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The following papers numbered on this motion:

NYSCEF Doc Numbers

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____	45-46
Answering Affidavit (Affirmation) _____	55, 57
Reply Affidavit (Affirmation) _____	92
Supplemental Affidavit (Affirmation)	
Pleadings – Exhibits _____	47-53, 58-64, 93-95
Stipulations – Minutes _____	
Filed Papers _____	

Plaintiff HOLLIS moves for an Order granting leave to amend his Complaint and to serve and file a Supplemental Summons and Amended Complaint adding CORE SCAFFOLD SYSTEMS INC., SYNERGY BUILDING CONSULTANTS, VICTOR TEMPLE, DOROTHY SAWAO and CLASSON LAUNDROMAT as party Defendants and amend the caption accordingly.

Plaintiff's original complaint alleges that he slipped and fell on ice on a sidewalk in front of 1068 Fulton Street, Brooklyn, and named as one of the Defendants FULTON HOLDINGS USE LLC, the owner of the property located at 1068 Fulton Street.

Plaintiff HOLLIS, at this deposition on March 11, 2020, testified that the point on the sidewalk where he fell was in front of 1066 Fulton Street at the beginning of a sidewalk shed. The shed was erected in front of 1068 Fulton Street, but extended 5 feet onto the sidewalk in front of 1066 Fulton Street.

Plaintiff seeks to add CORE SCAFFOLD SYSTEMS INC., SYNERGY BUILDING CONSULTANTS, VICTOR TEMPLE, DOROTHY SAWAO and CLASSON LAUNDROMAT as Defendants. The proposed amended complaint alleges generally that CORE SCAFFOLD SYSTEMS INC. and SYNERGY BUILDING CONSULTANTS were contractors who controlled, maintained and operated the premises at 1068 Fulton Street. VICTOR TEMPLE and DOROTHY SAWAO are alleged to be owners of 1066 Fulton Street, and CLASSON LAUNDROMAT is alleged to operate the laundromat at 1066 Fulton Street.

Plaintiff argues that these proposed Defendants share in the liability and damages for his accident as they own the property abutting the sidewalk where he fell and that they allowed the sidewalk shed to be placed on the sidewalk in front of 1066 Fulton Street.

Defendant FULTON HOLDINGS USA LLC argues that it would be prejudiced if additional parties were added to this action and that Plaintiff should start a separate action against the proposed Defendants.

“Generally, leave to amend a pleading should be freely given when there is no significant prejudice or surprise to the opposing party and where the evidence submitted in support of the motion indicates that the proposed amendment may have merit” (*Assevero v. Hamilton & Church Props., LLC*, 154 AD3d 728, 729 [2d Dept 2017]; see CPLR 3025 [b]).

“[A] party seeking leave to amend a pleading need not make an evidentiary showing of merit, and leave to amend will be granted unless such insufficiency or lack of merit is clear and free from doubt” (*id.* at 729, quoting *Stein v. Doukas*, 128 AD3d 803, 805 [2d Dept 2015]). “Whether to allow an amendment is generally committed to the court’s sound discretion” (*id.* at 730).

Here, there is no prejudice to current Defendants or proposed Defendants as the Note of Issue has not been filed and no Defendant depositions have been conducted.

Non-party CORE SCAFFOLD SYSTEMS INC. (CORE) in opposes the motion on three grounds.

First, CORE argues that it installed a sidewalk shed at 1068 Fulton, not 1066 Fulton Avenue, where Plaintiff HOLLIS testified his accident happened. However, the shed extended five feet in front of 1066 Fulton Street and there is a question of fact whether Plaintiff fell under the portion of the shed in front of 1066 Fulton Street.

Second, CORE argues that the sidewalk shed had nothing to do with Plaintiff’s accident because Plaintiff testified that he slipped and fell on ice on the sidewalk and at

the time of his accident was avoiding walking under the sidewalk shed because he “never liked walking under scaffolds”.

Plaintiff has alleged that it was dark where he fell under the shed which impaired his ability to see the ice on the sidewalk. This may raise a question of whether inadequate lighting under the scaffold contributed to the accident.

Third, CORE asserts that it merely erected the scaffold and had no duty to maintain or inspect it after the initial post construction sign off, and submits its contract to construct the scaffold and an affidavit from the CEO of CORE which indicate that CORE did not undertake to maintain the scaffold.

However, CORE’s opposition is premature at this time. Plaintiff should be given an opportunity to depose CORE, as well as the current Defendants that hired CORE, to ascertain the nature and extent of CORE’s role.

Unlike in *Manhattan Real Estate Equities Group LLC v. Pine Equity NY, Inc* (27 AD3d 323 [1st Dept 2006]), cited by CORE, Plaintiff, after conducting his deposition, has made specific allegations that CORE was the owned and installed the scaffold at the behest of Fulton.

WHEREFORE, it is ORDERED that Plaintiff JAMEL HOLLIS’ motion for leave to amend the Complaint adding CORE SCAFFOLD SYSTEMS INC., SYNERGY BUILDING CONSULTANTS, VICTOR TEMPLE, DOROTHY SAWAO and CLASSON LAUNDROMAT as party Defendants is granted; and it is further

ORDERED that the caption be amended to read:

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JAMELL HOLLIS,

Plaintiff,

-against-

FULTON HOLDINGS USE LLC, ALL PURPOSE GC LLC,
B CONTRACTORS GROUP LLC and YATZIV
CORPORATION, CORE SCAFFOLD SYSTEMS INC.,
SYNERGY BUILDING CONSULTANTS, VICTOR TEMPLE,
DOROTHY SAWAO and CLASSON LAUNDROMAT

Defendants.

-----X

FULTON HOLDINGS USA LLC,

Third-Party Plaintiff,

-against-


MAGELLAN CONCRETE STRUCTURE CORP.,

Third-Party Defendant.

-----X

This constitutes the decision and order of the Court.

ENTER,



J.S.C.