

Rodriguez v 527 Greenwich LLC

2021 NY Slip Op 31275(U)

April 16, 2021

Supreme Court, New York County

Docket Number: 162323/2019

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS PART 11

Justice

-----X

ORLIN RODRIGUEZ,

Plaintiff,

- v -

527 GREENWICH LLC and PAVARINI MCGOVERN LLC,

Defendants.

-----X

527 GREENWICH LLC and PAVARINI MCGOVERN LLC,

Third-Party Plaintiffs,

-against-

SKYLINE WINDOWS LLC and SRCC CORP.,

Third-Party Defendants.

-----X

INDEX NO. 162323/2019

MOTION DATE 01/20/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party Index No. 595722/2020

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

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

Upon the foregoing documents, the court grants Plaintiff Orlin Rodriguez's ("Plaintiff) motion for leave to serve an amended summons and complaint adding Third-Party Defendant Skyline Windows, LLC as a Defendant and to amend the caption to reflect the addition of Skyline Windows, LLC as a party to this action. There is no opposition to this motion.

This matter involves a personal injury action which allegedly occurred on November 22, 2019 when Plaintiff was struck by a falling object.

Pursuant to CPLR 3025(b), the court has discretion to grant leave to amend pleadings at any time and such leave shall be freely given upon such terms as may be just, including the granting of costs and continuances (CPLR 3025[b]; Fahey v County of Ontario, 44 NY2d 934

[1978]). Such leave to amend shall be freely given in the absence of prejudice or surprise, unless it is palpably insufficient or patently devoid of merit (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]). However, “to conserve judicial resources, examination of the underlying merit of the proposed amendment is mandated” so “a motion for leave to amend a pleading must be supported by an affidavit of merits and evidentiary proof that could be considered upon a motion for summary judgment (*Zaid Theatre Corp. v Sona Realty Co.*, 18 AD3d 352, 354-355 [1st Dept 2005]).

A court may deny such amendment which is palpably insufficient as a matter of law, totally meritless, surprising or prejudicial (*see Morton v Brookhaven Mem’l Hosp.*, 32 AD3d 381, 381, 820 NYS2d 294 [2d Dept 2006]; *Moon v Clear Channel Communs., Inc.*, 307 AD2d 628, 629-630, 763 NYS2d 157 [3d Dept 2003]). Additionally, the movant must include the proposed amended or supplemental pleadings clearly showing the changes or additions to be made to the pleadings (CPLR 3015[b]).

Here, since leave to amend must be freely given and there does not appear to be any surprise or prejudice, the court finds that the Proposed Amended Complaint sufficiently sets forth the alleged merits of adding Third-Party Defendant Skyline Windows, LLC as a Defendant in the main action. Therefore, the court grants Plaintiff’s motion.

As such, it is hereby

ORDERED that the Plaintiff Orlin Rodriguez’s motion for leave to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon 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 a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional party in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

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ORLIN RODRIGUEZ,

Plaintiff,

-against-

527 GREENWICH LLC, PAVARINI MCGOVERN LLC and SKYLINE WINDOWS, LLC,

Defendants.

-----X

527 GREENWICH LLC and PAVARINI MCGOVERN LLC,

Third-Party Plaintiffs,

-against-

SKYLINE WINDOWS, LLC and SRCC CORP.,

Third-Party Defendants.

-----X

and it is further

ORDERED that counsel for Plaintiff Orlin Rodriguez 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 parties being added pursuant hereto; 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 all parties are required to appear for a Preliminary Conference before this court on July 22, 2021, at 10:00 a.m. via Microsoft Teams (link will be provided); and it is further

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

4/16/2021
DATE


ERIKA M. EDWARDS, 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"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE