

Perciun v 120 Broadway, LLC
2021 NY Slip Op 31277(U)
April 15, 2021
Supreme Court, New York County
Docket Number: 451441/2020
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS PART 11

Justice

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ANDREI PERCIUN,

Plaintiff,

- v -

120 BROADWAY, LLC, 120 BROADWAY HOLDINGS, LLC,
120 BROADWAY PROPERTIES, LLC, SILVERSTEIN
PROPERTIES, INC. and TRI-STATE DISMANTLING
CORP.,

Defendants.

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INDEX NO. 451441/2020
MOTION DATE 08/07/2020
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 39

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

Upon the foregoing documents, including the Stipulation which was So-Ordered on April 15, 2021, the court grants Plaintiff Andrei Perciun’s (“Plaintiff) motion for leave to amend the caption to add defendants and grants Plaintiff’s request to add 120 Broadway Condominium and JRM Construction Management, LLC as parties to this action, to amend the caption, and to file and serve the Proposed Amended Complaint.

This matter involves a personal injury action which allegedly occurred on July 31, 2018. Plaintiff seeks leave to add two additional defendants, 120 Broadway Condominium and JRM Construction Management, LLC, to amend the caption, and file and serve the Proposed Amended Complaint.

Proposed Defendant JRM Construction Management, LLC consented to being added as a defendant, to the proposed amendment to the caption and waived formal service of the Proposed Amended Summons and Complaint.

Defendants 120 Broadway, LLC, 120 Broadway Holdings, LLC, 120 Broadway Properties, LLC and Silverstein Properties, Inc. partially opposed the motion and argued in substance that 120 Broadway Condominium is not a legal, recognized entity, nor the owner of the building and Plaintiff failed to allege sufficient facts to establish a prima facie cause of action in the proposed amended pleading.

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 120 Broadway Condominium as a party at this early stage of discovery. Therefore, the court grants Plaintiff's motion.

As such, it is hereby

ORDERED that the Plaintiff Andrei Perciun'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 parties in this action within 30 days after service of a copy of this order with notice of entry, unless otherwise Stipulated; and it is further

ORDERED that the action shall bear the following caption:

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ANDREI PERCIUN,

Plaintiff,

-against-

120 BROADWAY, LLC, 120 BROADWAY HOLDINGS, LLC, 120 BROADWAY PROPERTIES, LLC, 120 BROADWAY CONDOMINIUM, SILVERSTEIN PROPERTIES, INC., JRM CONSTRUCTION MANAGEMENT, LLC and TRI-STATE DISMANTLING CORP.,

Defendants.

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and it is further

ORDERED that counsel for Plaintiff Andrei Perciun 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 this constitutes the decision and order of the court.

4/15/2021
DATE


ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: