

**Mendez v New York City Hous. Auth.**

2021 NY Slip Op 32110(U)

October 26, 2021

Supreme Court, New York County

Docket Number: Index No. 153798/2016

Judge: William Perry

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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. WILLIAM PERRY**

**PART 23**

*Justice*

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INDEX NO. 153798/2016

MAGLENY MENDEZ,

MOTION DATE 07/19/2021

Plaintiff,

MOTION SEQ. NO. 002

- v -

NEW YORK CITY HOUSING AUTHORITY, NEW YORK  
CITY HOUSING AUTHORITY TRIBOROUGH  
PRESERVATION DEVELOPMENT, NEW YORK CITY  
COUNCIL FOR HOUSING DEVELOPMENT FUND  
COMPANIES

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

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

In this personal injury action, plaintiff seeks an order pursuant to CPLR §3025(b), CPLR §203(c), and CPLR §203(f) permitting plaintiff to amend the complaint to add TRIBOROUGH PRESERVATION, LLC and NEW YORK CITY HOUSING AUTHORITY TRIBOROUGH PRESERVATION HOUSING DEVELOPMENT FUND CORPORATION (hereinafter "TP defendants") as defendants. Defendants oppose the motion claiming that any claims against TP defendants are time barred and thus, the proposed claims lack merit.

Plaintiff is asking this court to exercise its discretion and permit her to amend her complaint and add the TP defendants as defendants, as TP defendants are united in interest with the New York City Housing Authority ("NYCHA") and thus, the relation-back doctrine operates to revive plaintiff's time barred claim against the TP defendants.

## BACKGROUND

In this action plaintiff seeks to recover damages alleged to have been sustained on July 18, 2015, when the ceiling located at the premises known as 4-20 East 117th Street, New York, New York fell on top of her. (NYSCEF Doc. No. 36). Plaintiff claims that following the collapse of the ceiling, she left the apartment to seek help, but slipped and fell down the stairs due to the presence of rainwater dripping from the ceiling onto the steps. (NYSCEF Doc. No. 38, pp. 45-72; pp. 168-170).

Plaintiff commenced this action on May 5, 2016, by filing a summons and complaint naming NEW YORK CITY HOUSING AUTHORITY, ("NYCHA"), NEW YORK CITY HOUSING AUTHORITY TRIBOROUGH PRESERVATION DEVELOPMENT, ("NYCHA TPD"), NEW YORK CITY COUNCIL FOR HOUSING DEVELOPMENT FUND COMPANIES, ("NYC Council for HFC"). Defendants NYCHA and NYCHA TPD subsequently appeared by filing a Verified Answer on or about June 10, 2016 and depositions were held thereafter. (NYSCEF Doc. Nos. 37, 38, 39).

In support of her motion to amend, plaintiff submits the deposition testimony of Juan J. Barahona, who testified on behalf of NYCHA as the project manager for BFC Partners Development, one of the two construction companies selected by NYCHA to renovate ten (10) buildings located in New York City, one of which was the building where plaintiff's accident occurred. (NYSCEF Doc. No. 39, p. 8). Mr. Barahona testified that on the day of the accident, the owner of the building was TRIBOROUGH PRESERVATION LLC (TP LLC). A deed to the property had been conveyed by NEW YORK CITY HOUSING AUTHORITY (NYCHA) to TP LLC prior to July 18, 2015. (NYSCEF Doc. No. 39, pp.7-9). Plaintiff contends that notwithstanding this testimony concerning the deed conveyance by NYCHA to TP LLC, Mr.

Barahona testified that NYCHA had an ownership interest in the building where the subject accident occurred; he further testified that various entities made up TP LLC, and although the witness was able confirm some of the relationships between the entities involved in the construction project that plaintiff described during her deposition, Mr. Barahona was not entirely clear on the ownership structure testifying that he "couldn't really speak to the governments [sic] on that side of the transaction truthfully." (NYSCEF Doc. No. 39, p.13).

In seeking leave to amend her complaint, plaintiff maintains that defendants will not be prejudiced by adding the TP defendants as direct defendants to this action, because the proposed defendants are intricately intertwined and related to the named defendants, and because her delay in amending the complaint was the result of "a complex web of entities" as evidenced by Mr. Barahona's testimony and the protracted delay in defendants producing a witness in this case, noting that his deposition did not occur until February 11, 2021.

Plaintiff avers that she did not discover the role these additional proposed TP defendants played in the financing and operation of the entities involved in NYCHA's construction project until the deposition of Mr. Barahona. As such, plaintiff argues that she should not suffer the consequences of defendants' protracted delay when the record demonstrates that the responsibility for the delay in holding the defendant's deposition lies entirely with the defendants who have not suffered any prejudice by the delay as the TP defendants are united in interest with the named defendants. (NYSCEF Doc. Nos. 43-45).

Defendants oppose plaintiff's motion seeking leave to amend claiming that defendants complied with all discovery demands and that plaintiff's failure to investigate the relationship between the identities identified by defendants during the discovery process, resulted in the delay in identifying the proposed TP defendants.

## STANDARD OF REVIEW/ANALYSIS

"Under the relation-back doctrine of CPLR 203 (b) and (c), new parties may be joined as defendants in a previously commenced action, after the statute of limitations has expired on the claims against them, where the plaintiffs establish that each of the following three criteria are satisfied" (*Higgins v City of New York*, 144 AD3d 511, 512, 43 N.Y.S.3d 1 [1st Dept 2016]). First, plaintiff must show that the claims against the new defendant arise from the same conduct, transaction, or occurrence as the claims against the original defendant. Second, plaintiff must show that the new defendant is "united in interest" (CPLR 203 [b], [c]), with the original defendant, and will not suffer prejudice due to lack of notice. Third, plaintiff must show that the new defendant knew or should have known that, but for the plaintiff's mistake, they would have been included as a defendant (*id.*, at 513); see also (*Garcia v New York-Presbyt. Hosp.*, 114 AD3d 615, 981 NYS2d 84 [1st Dept 2014]).

The requirement of unity of interest is "more than a notice provision" (*Mongardi v BJ's Wholesale Club, Inc.*, 45 AD3d 1149, 1151, 846 NYS2d 441 [3d Dept 2007] [internal quotation marks omitted]). The test is whether "the interest of the parties in the subject-matter is such that they stand or fall together and that judgment against one will similarly affect the other" (*Vanderburg v Brodman*, 231 AD2d 146, 147-148, 660 NYS2d 438 [1st Dept 1997] [internal quotation marks omitted]). "[U]nity of interest will not be found unless there is some relationship between the parties giving rise to the vicarious liability of one for the conduct of the other" (*Higgins*, 144 AD3d at 513). "[T]he question of unity of interest is to be determined from an examination of (1) the jural relationship of the parties whose interests are said to be united and (2) the nature of the claim asserted against them by the plaintiff" (*LeBlanc v Skinner*, 103

AD3d 202, 210, 955 N.Y.S.2d 391 [2d Dept 2012] [internal quotation marks and citation omitted]).

Here, there is no question that plaintiff has satisfied the first and second prong of the relation-back criteria as the claims in the proposed amended complaint clearly arise from the same conduct as the claims against the defendants, specifically, all claims arise out of the collapse of the ceiling allegedly causing plaintiff to suffer personal injuries. (NYSCEF Doc. Nos. 36, 42). Moreover, plaintiff has established that the proposed TP defendants are united in interest with the original defendants by demonstrating that the entities stand or fall together as TP LLC is a single purpose entity jointly controlled by the NYCHA, and TP LLC agreed to indemnify NYCHA TPHDFC for any claims " . . . arising out of or in any way relating to the ownership of the Property from and after the date of transfer of title to the Property to the HDFC, the Project, use or occupancy of the Project . . . " including the indemnification of all claims ". (NYCEF Doc. Nos. 40, 41. P. 3, ¶ 3).

"New York law requires merely mistake—not excusable mistake—on the part of the litigant seeking the benefit of the [relation back] doctrine". (*Buran v Coupal*, 87 NY2d 173, 176, 661 N.E.2d 978, 638 N.Y.S.2d 405 [1995]). Indeed, the relation-back doctrine "enables a plaintiff to correct a pleading error - by adding either a new claim or a new party - after the statutory limitations have expired" to allow for a decision on the merits in those cases that "justify the relaxation of limitation strictures" and where defendants have not demonstrated that they would suffer prejudice as a result of the proposed amendment. (*Buran*, 87 NY2d at 177).

Based on the record, plaintiff has satisfied her burden to amend the complaint. Defendants have simply failed to demonstrate that they will be prejudiced by the proposed amended complaint. Defendants offer no proof of any significant prejudice that will result from

permitting plaintiff to amend her complaint and add the TP defendants. Accordingly, the motion to amend the complaint and add TRIBOROUGH PRESERVATION, LLC and NEW YORK CITY HOUSING AUTHORITY TRIBOROUGH PRESERVATION HOUSING DEVELOPMENT FUND CORPORATION as defendants is granted, and it is hereby,

ORDERED that the plaintiff'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; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEWYORK  
COUNTY OF NEW YORK  
-----X  
MAGLENY F. MENDEZ,  
Plaintiff(s),

-against-

NEW YORK CITY HOUSING AUTHORITY, NEW YORK CITY HOUSING AUTHORITY TRIBOROUGH PRESERVATION DEVELOPMENT, NEW YORK CITY COUNCIL FOR HOUSING DEVELOPMENT FUND COMPANIES, TRIBOROUGH PRESERVATION LLC, and NEW YORK CITY HOUSING AUTHORITY TRIBOROUGH PRESERVATION HOUSING DEVELOPMENT FUND CORPORATION,  
Defendant(s).

-----X

And it is further

ORDERED that counsel for the moving party 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)).

10/26/2021

DATE

WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE