

Nunez v 608-614 W. 189th St. LLC
2021 NY Slip Op 32315(U)
November 16, 2021
Supreme Court, New York County
Docket Number: Index No. 158901/2014
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA JAMES

PART 59

Justice

-----X

IRIS NUNEZ,

Plaintiff,

- v -

608-614 WEST 189TH STREET LLC,

Defendant.

-----X

608-614 WEST 189TH STREET LLC

Plaintiff,

-against-

B07 CONSTRUCTION CORP.,

Defendant.

-----X

INDEX NO. 158901/2014

MOTION DATE 08/07/2020

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595125/2016

The following e-filed documents, listed by NYSCEF document number (Motion 004) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 154, 155, 156, 157, 158, 159, 160

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

ORDER

Upon the foregoing documents, it is

ORDERED that plaintiff's motion to amend the complaint to add third-party defendant B07 Constr. Corp. as a direct defendant and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint within twenty (20) days of such service; and it is further

ORDERED to the extent plaintiff seeks to consolidate this action with Nunez v B07 Constr. Corp. (New York Supreme Court, New York County, Index No. 159323/2019), such motion is DENIED; and it is further

ORDERED that counsel shall post on NYSEF a proposed Status Conference Order or competing proposed Status Conference Orders on January 18, 2022.

DECISION

Plaintiff moves to amend the complaint to add third-party defendant B07 Construction Corp. as a direct defendant pursuant to CPLR 3025 and 203 and to consolidate this action with Nunez v B07 Constr. Corp. (Index No. 159323/2019). The court shall grant the former relief and deny the latter.

The general rule is that absent prejudice, a party, upon application, should be freely granted the right to assert claims against parties, such as third-party litigants, present in the litigation absent a showing of prejudice to the parties sought to be claimed against. As stated by the Court:

"[t]hus, from the time of the service of the third-party complaint, the third-party defendants were fully parties to the action with full notice that they may ultimately be charged with the complete liability. In the circumstances, we think that it is desirable to permit the plaintiffs'

amended complaint as against the third-party defendants to relate back at least to the time of the service of the third-party complaint, thus enabling the court to render complete justice among all the parties.”

Holst v Edinger, 93 AD2d 313, 316 (1st Dept 1983). Third-party defendant B07 Constr. Corp. has not demonstrated any prejudice sufficient to justify denying plaintiff’s application to add it as a direct defendant and to deem the interposed claims arising out of the incident as timely (CPLR 203). Therefore, the court shall grant plaintiff the right to amend her pleading.

However, with respect to plaintiff’s motion to consolidate, the court in its discretion shall deny the relief sought at this late juncture as unnecessary. By Order dated September 22, 2020, the court in the other action (Index No. 159323/2019, NYSCEF Doc. No. 62, Freed, J.) granted dismissal of plaintiff’s complaint against all the corporate defendants except for B07 Constr. Corp. and, by subsequent Order dated June 9, 2021 (Index No. 159323/2019, NYSCEF Doc. No. 74, Hom, J.), granted default judgments against defendants MD Ashraf Ali and Ashraf Ali, P.E.

P.C. As plaintiff can pursue the claims against B07 Constr. Corp. herein by amendment and plaintiff's direct claims against the other proposed consolidated defendants have been determined in the other action, consolidation does not appear to be appropriate at this late juncture.

Debra A. James

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<u>11/16/2021</u>			<u>DEBRA JAMES, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input checked="" 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