

Chester v Rocking Horse Ranch Corp.
2021 NY Slip Op 34313(U)
September 9, 2021
Supreme Court, Ulster County
Docket Number: Index No. EF2018-1803
Judge: Christopher E. Cahill
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**SUPREME COURT OF THE STATE OF NEW YORK
ULSTER COUNTY**

KAREN CHESTER,

Plaintiff,

-against-

**DECISION & ORDER
INDEX NO. EF2018-1803**

**ROCKING HORSE RANCH CORP., and Fictitious
Defendants John Does 1-10 and ABC Corp. 1-10,**

Defendants.

Supreme Court, Ulster County
Motion Return Date: August 18, 2021

Present: Hon. Christopher E. Cahill, JSC

APPEARANCES: JACOBOWITZ AND GUBITS, LLP.
Attorneys for Plaintiff
158 Orange Avenue, P.O. Box 367
Walden, New York 12586-0367
BY: Rebecca B. Mantello, Esq.

ROEMER WALLENS GOLD & MINEAUX LLP
Attorneys for Defendant
Rocking Horse Ranch Corp.
13 Columbia Circle
Albany, New York 12203
BY: Matthew J. Kelly, Esq.

Cahill, J.:

Plaintiff Karen Chester has filed a motion for an order pursuant to CPLR §
3025 (b) for leave to amend the complaint to name Tee Bar Corp. and Turk Hospitality

Group as additional defendants in place of Fictitious Defendants ABC Corp 1-10.

Defendant has submitted an affidavit in opposition, and plaintiff has submitted a further affirmation in support of the motion.

Plaintiff commenced this action by the filing of the summons and complaint on May 21, 2018. The complaint alleges that the plaintiff was injured on or about July 26, 2016 while “mountain tubing” at the Rocking Horse Ranch Resort. In addition to naming the Rocking Horse Ranch Corp. as a defendant, the plaintiff named Fictitious Defendants John Doe 1-10 and ABC Corp 1-10 as defendants who owned, operated, managed, controlled and maintained the Ranch. Defendant Rocking Horse Ranch interposed its answer on June 19, 2016.

Plaintiff alleges that through discovery she learned that ownership and/or management responsibilities of the Resort are shared between defendant Rocking Horse Ranch Corp., non-party Tee Bar Corp. and non-party Turk Hospitality Group. All three are alleged to be owned by Steven Turk. The deposition of Mr. Turk has not been scheduled yet. Although the statute of limitations has expired, plaintiff seeks to amend the complaint and add the defendants under the relation back doctrine.

Three requirements must be met in order to satisfy the relation back doctrine: (1) the claims must arise out of the same occurrence, (2) the proposed defendant(s) must be united in interest with the original defendant; and (3) the proposed defendant(s) must have known or should have known that, but for a mistake by the plaintiff as to the proposed defendant’s identity, the action would have been also brought against it as well (Buran v Coupal, 87 NY2d 173[1995]). Plaintiff alleges all three requirements have been

met. All claims arise out of the July 27, 2016 accident, all three corporations are owned by Steven Turk, and as such, the proposed defendants were aware of the claims against the Rocking Horse Ranch Corp. The defendant admits that Tee Bar Corporation is the owner of Rocking Horse Ranch. The defendant does not challenge any of the plaintiff's allegations, but states that the motion should have been brought earlier when Tee Bar's existence became known to the plaintiff through discovery. Defendant also alleges that the plaintiff fails to submit any information regarding the appropriateness of Turk Hospitality Group as a defendant.

The defendant does not allege that the proposed defendants lacked knowledge of the suit, and no allegations of prejudice have been raised by the defendant. Based upon the facts and circumstances, the proposed defendants knew or should have known of the claims asserted against Rocking Horse Ranch, and the plaintiff is therefore entitled to the benefit of the relation back doctrine (NYAHS v People Care Incorporated, 167 AD3d 1305[3rd Dept. 2018]).

The court has considered the defendant's remaining arguments and finds them either unavailing or unnecessary to reach.

Accordingly, based on the foregoing, it is hereby

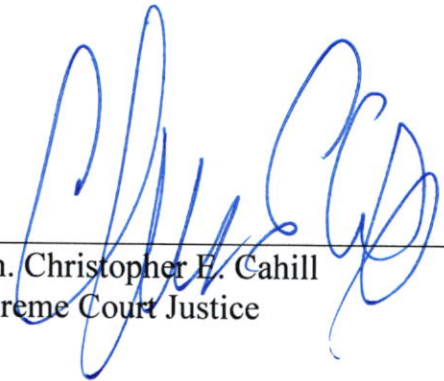
ORDERED, that Plaintiff's motion to amend the complaint is **granted** in its entirety.

This shall constitute the Decision and Order of the court. The original Decision and Order is being filed via the NYSCEF system. The signing of this Decision and Order

shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

**SO ORDERED AND ADJUDGED.
ENTER.**

Dated: September 9, 2021
Kingston, New York



Hon. Christopher E. Cahill
Supreme Court Justice

Papers Considered:

Notice of Motion dated July 27, 2021; Affirmation in Support of Rebecca Manello, Esq., dated July 27, 2021 with Exhibits A-C;

Affidavit of Opposition of Matthew J. Kelly, Esq. dated August 6, 2021 with Exhibits A-D.

Affirmation of in Support of Rebecca Manello, Esq. dated August 16, 2021.