

Calabrese v City of Albany
2021 NY Slip Op 34337(U)
July 15, 2021
Supreme Court, Albany County
Docket Number: Index No. 900844-20
Judge: Christina L. Ryba
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

HENRY E. CALABRESE

Plaintiff,

-against-

THE CITY OF ALBANY,
Defendant.

DECISION/ORDER

Index No. 900844-20

RJI No. 01-20-134905

APPEARANCES:

Philip S. Mazzotti, Esq.
For Plaintiff
1222 Troy-Schenectady Rd.
PO Box 15141
Albany, NY 12212

Robert G. Magee, Esq.
Deputy Corporation Counsel of the City of Albany
For Defendant
City Hall
24 Eagle St.
Albany, NY 12207

RYBA, J.,

Plaintiff commenced this action against defendant City of Albany for negligent design, construction, repair, maintenance, marking, signage, and inspection arising from an accident that occurred when plaintiff's motorcycle struck a large pothole on Lark Street in the City of Albany. According to plaintiff, when his motorcycle struck the pothole, he lost control of his vehicle, causing him to sustain personal injuries from being ejected from his motorcycle and coming into violent contact with ground. Discovery is currently underway, and defendant now moves for leave to amend its Answer to correct three separate pleading oversights involving the alleged inadvertent failure to respond to certain enumerated paragraphs in the Complaint. Plaintiff opposes the motion.

Motions to amend pleadings shall be freely granted in the absence of prejudice or surprise to the nonmoving party resulting directly from the delay in seeking leave, unless the proposed amendment is palpably insufficient or patently devoid of merit (see Nyasha Servs., Inc., Self-Ins. Tr. v. People Care Inc., 156 AD3d 99, 101-102 [2017]). It is undisputed that Defendant's original Answer sets forth no responses to Paragraphs 15, 19, and 23 of the Complaint. Defendant contends that leave to amend its Answer to include responses to these Paragraphs is warranted because plaintiff would not be prejudiced by the correcting of these inadvertent omissions.

Defendant first seeks to amend Paragraph 1 of the Answer by including Paragraph 19 of the Complaint among the list of allegations of which it claims to lack information sufficient to form a belief as to their truth or falsity. Paragraph 19 of the Complaint states, "That on said date and time, plaintiff was operating said motorcycle proceeding in a southerly direction on Lark Street, approximately thirty feet north of First Street, in the City of Albany, County of Albany, State of New York" The proposed response to this claim would not prejudice nor could reasonably surprise plaintiff, as it does not impede his cause of action, nor could defendant reasonably gain knowledge of or confirm this alleged fact. For these reasons, the first proposed amendment is appropriate and granted.

The second requested amendment is to incorporate the allegation of Paragraph 15 of the Complaint into the list of allegations which the defendant denies in Paragraph 3 of the original Answer. The allegation of Paragraph 15 reads, "The Defendant, its officers, agents, servants and/or employees created the dangerous, hazardous and/or unsafe condition of said roadway." While defendant does not explicitly deny Paragraph 15 in its Answer, such a denial is heavily implied throughout the Answer and made apparent through the parties' correspondence.

Additionally, the entire course of discovery has been primarily focused upon such a denial. Because a denial of this allegation has been a presumption of both parties throughout the course of this action, it cannot be said to prejudice or surprise plaintiff. Moreover, because CPLR 3018 mandates that an allegation is presumed admitted if not denied, the prevailing lack of this denial's inclusion into the Answer would seriously prejudice defendant. In light of the foregoing, the second requested amendment is granted.

The Third requested amendment is to incorporate Paragraph 23 of the Complaint into the several denials of Paragraph 3 of the Answer. Paragraph 3 reads, "The collision and resulting injuries of plaintiff were caused and contributed to solely by reason of the careless and negligent acts of Defendant, without any negligence on the part of Plaintiff contributing thereto." While not explicitly denied in the original Answer, defendant's denial of the preceding allegation in Paragraph 22 implies the denial of Paragraph 23. Moreover, discovery has commenced with the presumption of this denial and has subsequently highlighted the contrasting positions of the parties as to the allegation. For these reasons, and because plaintiff would suffer no prejudice or surprise by this amendment to the Answer, the third requested amendment is granted.

In light of the foregoing, it is

ORDERED that defendant's motion for leave to amend its complaint is granted in its entirety, and it is further

ORDERED that defendant shall serve the amended Complaint within twenty days from the date of this decision.

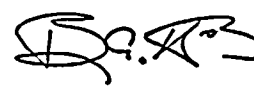
This constitutes the Decision and Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry,

defendant's counsel shall promptly serve notice of entry on all other parties (see Uniform Rules for Trial Courts [22 NYCRR § 202.5-b [h] [1], [2])).

SO ORDERED.

ENTER.

Dated: July 15, 2021


HON. CHRISTINA L. RYBA
Supreme Court Justice

07/15/2021