

**Nejat v 29 E. 29th St. (NY) Owner, LLC**

2022 NY Slip Op 30362(U)

February 2, 2022

Supreme Court, New York County

Docket Number: Index No. 158968/2019

Judge: Leslie Stroth

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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. LESLIE STROTH PART 52TR**

*Justice*

-----X

KRIS NEJAT,

Plaintiff,

- v -

29 EAST 29TH STREET (NY) OWNER, LLC, 33 EAST 29TH STREET (NY) OWNER, LLC, 33 EAST 29TH STREET OWNER, LLC, THE CITY OF NEW YORK

Defendant.

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INDEX NO. 158968/2019

MOTION DATE 01/26/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 42, 44, 45, 46

were read on this motion to/for

AMEND CAPTION/PLEADINGS

Plaintiff moves for leave to amend the Summons and Complaint pursuant to CPLR 3025 (b) to add the parties CIM Group; CIM Group, LP; and the Redbury Hotel a/k/a the Redbury New York. (See Plaintiff's Exhibit A, Proposed Supplemental Summons and Amended Verified Complaint). Upon the foregoing papers, Plaintiff's motion is granted.

This is an action arising out of an incident that occurred on March 10, 2019 when Plaintiff allegedly tripped and fell on a broken, cracked, and uneven sidewalk and curb located between 29 East 29<sup>th</sup> Street and 35 East 29<sup>th</sup> Street, New York, New York, causing alleged injuries to Plaintiff. (See Plaintiff's Exhibit A, Notice of Claim). Plaintiff moves to amend the Summons and Complaint to add additional defendants based upon the Examination Before Trial (EBT) testimony of two witnesses produced by Defendants 29 East 29<sup>th</sup> Street (NY) Owner, LLC; 33 East 29<sup>th</sup> Street (NY) Owner, LLC; and 33 East 29<sup>th</sup> Street Owner, LLC (the Non-Municipal Defendants).

On May 27, 2021, Kevin Barnes, General Manager of the Redbury Hotel, appeared for an EBT on behalf of the Non-Municipal Defendants. (See Plaintiff's Exhibit E, Barnes EBT tr). Mr. Barnes testified that the Redbury Hotel staff would clean the sidewalk at issue and remove snow in front of the hotel and vacant lot adjacent thereto. (See Plaintiff's Exhibit E, Barnes EBT Tr. at 37, lines 5-15). Further, he testified that the Redbury Hotel was and is owned by an entity known as CIM. (*Id.* At 15, lines 7-16). Mr. Barnes also testified that the Redbury Hotel, on behalf of the Non-Municipal Defendants, subsequently undertook to repair the defective sidewalk where Plaintiff's incident occurred. (*Id.* at 28, lines 16-26; 28, lines 2-3).

On October 14, 2021, Gary Schweikert appeared for a further EBT on behalf of the Non-Municipal Defendants. (See Plaintiff's Exhibit F, Barnes EBT tr). Mr. Schweikert is currently employed by CIM as Managing Director and was the project manager overseeing the Redbury Hotel at the time of Plaintiff's accident. (*Id.* at 24, lines 2-9). Mr. Schweikert testified that the LLCs which own the properties where the hotel and vacant lot are located, Defendants 29 East 29<sup>th</sup> Street (NY) Owner, LLC and 33 East 29<sup>th</sup> Street (NY) Owner, LLC, are entities controlled by CIM. (*Id.* at 28, lines 10-12; 30, lines 21-25). Mr. Schweikert further testified that CIM Group controls the operation of the Redbury Hotel property. (*Id.* at 28, lines 10-20).

Leave to amend pleadings should be freely given. See CPLR 3025 (b). The First Department, Appellate Division has held that, "[the] plaintiff need not establish the merit of its proposed new allegations...but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 (1st Dept 2010) (citations omitted). "The burden of establishing prejudice is on the party opposing the amendment." *Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 (2014) (citations omitted).

Courts are given "...considerable latitude in exercising their discretion, which may be upset by us only for abuse as a matter of law." *Matter of Von Bulow*, 63 NY2d 221 (1984).

Plaintiff argues that the Summons and Complaint must be amended to add the proposed Defendants because, as evidenced by Defendants' own witnesses, the entities are inextricably intertwined with one another in the operation, maintenance, management and control of the area where the Plaintiff's accident took place.

In opposition, Defendants argue that the proposed pleading is without merit, because the New York City Administrative Code only imposes obligations on property *owners* with respect to the abutting sidewalk. *See* Administrative Code of City of NY §§7-210 and 19-152. Defendants maintain that no viable cause of action exists as against the purported "owners of the owners" (CIM Group and CIM Group, LP) or its affiliates (the Redbury Hotel a/k/a the Redbury New York). (Hilton Affirmation in Opposition at ¶ 9). Defendants also argue that allowing the amended pleading would needlessly complicate discovery and result in immediate motions to dismiss.

Given the permissive standard of CPLR 3025, Plaintiff's motion is granted. Through Defendants' EBT testimony, Plaintiff has met its burden in demonstrating that its proposed amendments are not palpably insufficient or devoid of merit. In turn, Defendants have failed to establish that any colorable prejudice would result from granting Plaintiff's request, other than potential ensuing motion practice, which does not constitute hinderance in preparation of the case or bar the existing or proposed Defendants from taking any measures in support of their position. Accordingly, it is

ORDERED that 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 by Plaintiff, 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:

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KRIS NEJAT.,

Plaintiff,

-against-

29 EAST 29TH STREET (NY) OWNER, LLC,33  
EAST 29TH STREET (NY) OWNER, LLC,33  
EAST 29TH STREET OWNER, LLC,  
THE CITY OF NEW YORK, CIM GROUP, CIM  
GROUP, LP, and THE REDBURY HOTEL a/k/a  
THE REDBURY NEW YORK,

Defendant

-----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 (www.nycourts.gov/supctmanh)].

2/2/2022  
DATE

  
LESLIE STROTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE